

Terms and Conditions

General

Screenwave Australia PTY LTD is a company which promotes cinema and screen education, principally through the Screenwave International Film Festival (SWIFF), Nextwave Youth Film Festival, and Nextwave Online Program, which it conducts annually. According to the below terms, the nextwavefilmfest.com.au website ('Website') is operated by Screenwave Australia. By accessing or otherwise using the Nextwave Website, including Nextwave Online services, you agree to be bound by these conditions of use and acknowledge that Screenwave Australia provides the Nextwave Website to you on these conditions of use.

You must read and accept (or reject) the conditions of use (see below) as a condition of you using or relying on any part of this Website or a service provided via the Website. If you do not accept these conditions and the privacy policy, then you must stop using the Website immediately.

Amendments

Screenwave Australia is entitled at its sole discretion to change, modify, amend, add or remove any part of these conditions of use and to change, amend or delete any features of the Nextwave Website at any time by posting the amendment on the Website or by notifying you by any other means of communication. Your continued use of the Website after this time constitutes an agreement by you to abide by and be bound by these conditions of use, as so amended.

Intellectual Property Protection

Screenwave Australia owns, or is otherwise licensed to use, all intellectual property on the Nextwave Website, unless indicated otherwise. Subject to these conditions of use, Screenwave Australia grants to you a non-exclusive and non-transferable licence to view, download and use information directly accessible through the Website for personal and non-commercial use.

You agree that, subject to your use of the Website in accordance with the limited licence granted to you, you will not infringe Screenwave Australia's intellectual property (including its trade marks and copyright) in the Nextwave Website and will not reproduce, modify, transmit (including broadcast), copy, adapt, sell, publish, frame, distribute or communicate any part of the Nextwave Website or any information contained therein or otherwise use them in a way which will infringe Screenwave Australia intellectual property or other property rights, except as permitted by statute or with Screenwave Australia's prior written consent.

Who we are

We are Screenwave Australia PTY LTD, operators of Screenwave International Film Festival, Nextwave Youth Film Festival, Nextwave Online Program. Please note that throughout these terms when we mention “we”, “us”, “our” etc., we mean the Nextwave Online Program. When we refer to “you” we mean the user and/or browser of our website.

1 Nextwave Online Program (‘Nextwave Online’)

The Nextwave Online Program comprises the provision of educational workshop episodes, complete with videos and resources, for viewing and use by you in accordance with these Terms.

2 Duration

- 2.1 The Nextwave Online Program will be provided and available to you for a period of 12-months from date of purchase of Subscription.
- 2.2 These Terms will apply to the entire duration of Subscription to the Nextwave Online Program and certain provisions will continue to apply after the expiration of Nextwave Online Program as specified in these Terms.
- 2.3 Your Subscription to Nextwave Online will commence immediately on your acceptance of these Terms and your Purchase to Nextwave Online via our payment portal, or such other instructions or payment indicating that you wish to proceed. Access will immediately commence in providing you the Nextwave Online Program on and from such acceptance.

3 Fees and payment

- 3.1 Fees for Subscription to the Nextwave Online Program are those described in the Nextwave website and portal which are to be paid in accordance with the payment terms.
- 3.2 The total Subscription Fees applicable will be notified to you and payable within the timeframe specified on the Nextwave website and portal
- 3.3 You are not entitled to reduce, to withhold or deduct for any reason any monies payable to us pursuant to these Terms.
- 3.4 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 Subscription to the Nextwave Online Program that you request.

4 What we provide

- 4.1 We will provide you with access to all Nextwave Online episodes and resources via our website and portal issued by us.
- 4.2 You must not allow any person to have access to, copy, duplicate, distribute, screen, borrow or hire any episodes or resources provided to you comprising the Nextwave Online Program.

5 What we require from you

- 5.1 You are solely responsible for accessing the Nextwave Online Program. If you have any difficulty accessing the Nextwave Online Program otherwise using the login details that we will provide to you, you should immediately contact us for assistance.

6 Intellectual Property

- 6.1 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 Subscription to Nextwave Online and after its expiration or termination remain our sole property or the sole property of the relevant third party.
- 6.2 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.

7 Copyright

- 7.1 Access to and use of Site Content on the Nextwave Website is subject to these Terms of Use. Copyright, Intellectual Property Rights and other proprietary rights in Site Content presented on the Nextwave Website is either owned by Screenwave Australia or may be owned by individuals and entities other than and used under licence.
- 7.2 "Site Content" means all material found on Screenwave Australia sites whether contributed by SWIFF, Nextwave Youth Film Festival – Nextwave Online or individuals or entities other than Screenwave Australia. Site Content may include text, data, images, audio, video, databases, design, codes, software, trademarks, and any other works or subject matter in which copyright, intellectual property rights or other proprietary rights subsist or may subsist.

8 Confidential information

- 8.1 Non-disclosure
Each party will:
- (a) keep the Confidential Information of the other party confidential in the same manner as it 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); and
 - (b) use the Confidential Information of the other party solely for the purpose of performing its obligations under this Agreement.
- 8.2 Need to Know
Each party may only disclose the Confidential Information of the other party to its officers, employees and permitted subcontractors who:
- (a) have a need to know the Confidential Information (and only to the extent that each has a need to know); and
 - (b) have undertaken to maintain the confidentiality of the Confidential Information in accordance with this clause.
- 8.3 Early termination by us
We may terminate your Subscription at any time by providing written notice to you by email if:

- (a) you breach 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 your assets, undertaking or business;
- (c) you become insolvent;
- (d) you behave in a way that brings, or has the potential to bring, the name, reputation and goodwill of us into disrepute;
- (e) we or any officer, agent, employee or representative experiences any inappropriate or improper behaviour including condescending, discriminating or offensive language or conduct, harassment or bullying.

9 General provisions

9.1 Goods and Services Tax

- (a) All Fees are exclusive of GST unless otherwise expressly advised.
- (b) If a payment by a party under this 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.

9.2 Continued Rights

The expiry or termination of this Agreement will not affect or limit any accrued rights of the parties.

9.3 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 Subscription, whether verbally or in writing, at any time after receipt by the Customer of these Terms.

10 Definitions and interpretation

10.1 Definitions

In this Agreement, unless the context requires another meaning:

- (a) **“Agreement”**
means this agreement.
- (b) **“Subscription”**
means your agreement to purchase the Nextwave Online Program within the timeframe allocated.
- (c) **“Business Day”**
means a day (other than a Saturday, Sunday or public holiday) on which the banks are open for general banking business in NSW.

- (d) 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.
- (e) **“Fees”**
means those fees applicable to the delivery of the Nextwave Online Program in the amounts and payable in the allocated timeframe.
- (f) **“Nextwave Online Program”**
means all available materials related to the content described in the Nextwave Online Program including provision of any additional resources.
- (g) **“GST”**
means a goods and services tax, consumption tax, value-added tax, retail turnover tax or a tax of a similar nature.
- (h) **“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.
- (i) **“Payment Terms”**
means the Fees payable during the Subscription period in relation to the Nextwave Online Program in the amounts and on the dates indicated for the Subscription period.
- (j) **“Terms”**
means these terms governing your Booking.

11 General Provisions

11.1 Assignment

This document

- (a) shall ensure for the benefit of and be binding upon the parties hereto and their respective successors and assigns, and
- (b) may not be assigned by any party without the prior written consent of all of the parties.

11.2 Issue of notices

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

11.3 Receipt of Notice

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

- (a) in the case of a letter sent by pre-paid ordinary post, on the 3rd day after posting;

- (b) in the case of an email, on receipt by the sender of confirmation of the recipient party'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.

11.4 Standard warranties

Each and every party warrant that:

- (a) each has voluntarily entered into this document without any duress
- (b) other than as set out in this document, no promises, representations or inducement has been made to enter into this document;
- (c) each has had full opportunity and has consulted with their solicitors and received legal advice concerning the nature, effect and extent of this document; and
- (d) each is aware that each of the others is relying on this Warranty in executing this document.

12 **Construction of document**

12.1 Merger

The rights and obligations of the parties in respect of agreements, indemnities, covenants and warranties contained in this document are

- (a) continuing agreements, covenants, indemnities and warranties and accordingly,
- (b) are not merged or extinguished by the partial performance by a party of their obligations under this document, and will remain in full force and effect until the obligations of all parties under this document are discharged in full.

12.2 Governing Law

This document 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.

12.3 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

- (a) a waiver of strict and literal performance of and compliance with any other provisions, conditions, or requirement herein, and
- (b) a waiver of or in any other manner release any party from strict compliance with any provision, condition or requirement in the future.

12.4 Severability

Any provision in this document 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 document or affecting the validity or enforceability of that provision in any other jurisdiction.

12.5 Entire Agreement

This document 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.

12.6 Counterparts

This document 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.

12.7 Read down

If any provision of this document 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.