

(26) Breach.

- (a) If during the term hereof the renter fails or refuses to deliver and/or the exhibitor fails or refuses to exhibit any of the said films (save and except such as may be rejected under section 8 of the Cinematograph Films Amendment Act, 1934, or where elimination of any film or delay or failure is due to any of the permissible reasons provided herein), or if either party violate or breach the provisions contained herein the renter or the exhibitor, as the case may be, shall pay to the other party the damage so caused.

(b) If the exhibitor—

(i) Shall fail or refuse to pay the rental of any such film as provided in this agreement or to furnish statements of the receipts of such theatre if any are required hereunder, or to give the renter's representative access to the said theatre or its box-office and/or to the exhibitor's books and records relative to films the rentals of which are based upon the said theatre's admission receipts as herein provided; or

(ii) Makes default in the due observance and performance of the obligations on his part under clauses numbered 2 (Time and Place of Exhibition), 7 (Admission Prices), 11 (Copyright), 15 (Insurance), 16 (Broadcasting), 18 (Observance of Acts and By-laws), or any of them; or

(iii) Commits any other breach going to the root of the contract; or

(iv) Becomes insolvent or is adjudicated a bankrupt, or in the case of a company goes into liquidation except for reconstruction, or executes an assignment for the benefit of his creditors; or if a receiver is appointed for any of the property of the exhibitor; or

(v) Voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, making it impossible for the exhibitor to exhibit the said films at the said theatre; then upon the happening of any one or more of said events, the renter may at his option (1) terminate this agreement, or (2) suspend the delivery of films hereunder until such default or defaults should cease and be remedied. Upon or after receipt of notice of termination or suspension of this agreement the exhibitor shall despatch to any place named by the renter in writing each film which is in his possession and to the possession of which the renter is entitled and failing immediate despatch the exhibitor shall pay to the renter by way of liquidated damages the sum of twenty-five pounds (£25) in respect of each film for every day default is made in making such despatch: Provided that the renter may not suspend delivery of films as provided herein on account of any payment arising out of this agreement which may be *bona fide* in dispute and in respect of which arbitration as provided for in this agreement is applied for. The lodgment of the amount in dispute with the Secretary of the New Zealand Motion Picture Exhibitors' Association to abide the result of the dispute shall be a sufficient warranty of the exhibitor's *bona fides*.

- (c) In the event of suspension of delivery by the renter in exercise of the foregoing power in that behalf, the renter shall have the right to reduce the number of films by the number the delivery of which is suspended pending rectification of the breach, and to deal with such suspended films in all respects as the renter thinks fit.

(d) If the renter shall—

(i) Persistently fail to supply film on due dates; or

(ii) Give prior exhibition to a competitive theatre in breach of this agreement; or

(iii) Commit any other breach going to the root of the contract

then, upon the happening of any such events, the exhibitor may at his option—

(1) Terminate this agreement; or

(2) Suspend payments herein until such default or defaults shall cease and be remedied, and in the event of such suspension may reject such number of films as would otherwise have been screened by him during such period of default in addition to any other rights of rejection he may have hereunder.

- (e) It is agreed that the exercise of any of the said remedies by the renter or the exhibitor shall be in addition to and without prejudice to any right or remedy of either against the other at law or in equity and/or otherwise provided for in this agreement.

(27) Tender of Film.

In any circumstances arising in connection with the exercise by the renter of its remedies under this agreement where the formal tender to the exhibitor of any film may be necessary to the proper exercise of any such remedy a written offer to supply such individual film on the due date shall for that purpose be deemed a sufficient tender to the exhibitor of the film therein named. No such offer shall be effective unless it contains an intimation that it is intended as a formal tender of film for the purposes of this clause.

(28) Arbitration.

If any question, difference, or dispute herein specifically referred to arbitration or any other question, difference, or dispute whatsoever shall arise between the parties hereto touching these presents, or any clause or thing herein contained or the construction of this agreement or as to any matter in any way connected with or arising thereout or the operation thereof or the rights, duties, or liabilities of either party in connection with the premises, then and in every such case the matter in difference shall be referred for determination to the Film Industry Board (hereinafter referred to as "the Board") constituted by an agreement in writing bearing date the 8th day of June, 1939, made between the New Zealand Motion Picture Exhibitors' Association, Incorporated, and the Film Exhibitors' Association, Incorporated, of the one part, and the Film Exchanges Association of New Zealand, Incorporated, of the other part, to the intent that any such matter in difference shall be dealt with pursuant to the arbitration functions of the Board in the manner set out in the said last-mentioned agreement and that in the event of the Board being unable to bring about a settlement between the parties the dispute shall be referred to arbitration in the terms of such agreement so as to constitute a submission under the Arbitration Act, 1908, and the award made in such arbitration shall finally determine the matter in difference between the parties.

(29) Venue.

This agreement shall be deemed to have been made at the office of the renter in the City of Wellington, New Zealand, and shall be governed by the laws of New Zealand.

(30) Acceptance by Renter.

Until accepted in writing by the renter, its managing director, or manager, or other authorized agent on behalf of the renter, and notice of acceptance sent to the exhibitor, this agreement shall be deemed an application for a contract only and may be withdrawn by the exhibitor any time before such acceptance. Unless such notice is sent to the exhibitor within twenty-eight days after the date of the exhibitor making such application, the said application shall be deemed to have been withdrawn. A copy of this application signed by the exhibitor shall be left with the exhibitor at the time of signing, and in the event of the acceptance thereof as above provided, a duplicate copy signed by the renter in manner aforesaid shall be forwarded to the exhibitor.

(31) Interpretation of Terms.

The word "film" means a motion-picture film with all discs, records, and/or other devices other than sound reproducing equipment, which may be necessary to reproduce sound (including music and/or words) in synchronization with such film. The reference in this agreement to "the said theatre" shall, unless the context otherwise requires, mean the theatre of which the name is set out in the introductory part of these presents or the Schedule hereto, and where the names of two or more theatres are set out reference in this agreement to "the said theatre" shall, unless the context otherwise requires, mean such of the theatres so set out at which any film in question was or is to be or ought to be or ought to have been exhibited as the case may require. In this agreement, except where the context otherwise requires, words importing the singular number shall be deemed to include the plural number and *vice versa*, and words importing the masculine gender shall be deemed to include the feminine and neuter genders. This agreement has for convenience of reference been set out in paragraphs with suitable captions but such captions shall not be read so as to indicate that all the provisions relating to any one subject are necessarily contained under the caption suggesting that subject.

(32) Standard Form.

This standard form may not be varied so as to provide for any right of cancellation at the option of the renter other than for a breach coming within clause 26 hereof. Any addition hereto not inconsistent herewith shall be written or printed in Part C hereof, or in some separate document.