

Delivery and Return of Films

(9) (a) *Delivery*—The renter shall make deliveries hereunder to the exhibitor at the renter's premises or by forwarding or consigning to the exhibitor either by the renter or by some other person at the renter's direction, and either by rail, steamer, post, air, or other means of transport, as the renter may decide, and shall use its best efforts to have each and every film delivered to the exhibitor in time for the authorised exhibition on the exhibition date in said theatre: provided that the renter shall not be liable in any way whatever for failure or delay in making delivery by reason of the elements, accidents, industrial troubles, fires, Government proclamations, ruling of censors, or by reason of any other delay, accident, or hindrance of whatsoever kind beyond the control of the renter.

(b) *Possession*—For the purposes of this agreement all films and advertising material shall be deemed to be in the possession of the exhibitor from the time the exhibitor takes delivery from the premises of the renter or from the time the film is forwarded or consigned to the exhibitor as aforesaid until delivery by the exhibitor to the renter at the renter's premises or consignment by any of the means of transport as aforesaid to another exhibitor notified to the exhibitor in writing by the renter.

(c) The exhibitor shall unless otherwise instructed by the renter return all films to the renter during the ordinary business hours of the renter together with all spools and straps in the same condition as same were received (reasonable wear and tear excepted) and properly packed in containers and properly addressed to the renter's premises or alternatively the exhibitor shall observe any written or telegraphed instructions relating to consignment as aforesaid. The exhibitor shall consign by such means of transport, as may be specified in writing or by telegram by the renter and shall, if called on to do so, produce to the renter documentary evidence of such consignment.

(d) *Freight*—The exhibitor will pay all costs of transportation of the said films and/or advertising material from the renter's premises, and return to the renter's premises or to another exhibitor, as the case may be. If due to any emergency the original freight arrangements are altered and if the exhibitor is required to despatch by air, or receive by air from the renter then the renter will pay the difference between a normal freighting method and airfreight.

(e) *Damages*—The exhibitor agrees that if for any reason not beyond his control despatch instructions are not carried out by him, with the result that loss is thereby caused to the renter and/or the exhibitor to whom the films should have been despatched in accordance with the despatch instructions of the renter, he will pay to the renter by way of liquidated damages a sum equivalent to the amount of the loss thereby suffered by the renter and/or such other exhibitor, and will indemnify the renter against any claim preferred by such other exhibitor against the renter in respect of such loss.

Sound and Projection Equipment

(10) The exhibitor undertakes that the projection equipment used in connection with any films supplied hereunder will operate properly, reliably, and efficiently to reproduce such recorded sound with adequate volume and high quality, and that he will maintain and keep the projection equipment and all other apparatus used by him in a good, proper, and substantial state of repair, order, and condition and will permit the same to be operated only by an appropriately trained projectionist, and will at all times allow free access for a representative of the renter appointed in writing by the renter for that purpose to enter into every part of the said theatre or theatres for the purpose of inspecting and/or testing such sound and/or projection equipment and apparatus. If, after any such inspection or test, the representative (being a person approved in writing on that behalf by an inspector for the time being approved by the Film Trade Board) serves upon the exhibitor or leaves for him at the said theatre notice in writing requiring the exhibitor, within a time specified in such notice to do or to refrain from anything in connection with the said equipment or the use thereof which in the opinion of the representative is necessary for the more satisfactory exhibition of the said films, the exhibitor shall observe and/or perform the requirements of such notice within the time specified therein, and in the event of the exhibitor failing to observe or perform the requirements of such notices, and so long as such failure continues, the renter shall be entitled to refuse to supply or allow the said films or any of them to be exhibited, but nevertheless without prejudice to any other right or remedy the renter may have under this agreement.

Copyright

(11) (a) The right to exhibit the said films shall include a right under all copyrights in respect of such films and of the recorded sound in synchronism therewith, but not the right to perform in public any musical work included in such recorded sound.

(b) The exhibitor undertakes to pay the Australasian Performing Rights Association Ltd., or other person or association of persons designated in writing by the renter such fee for performing right for which the exhibitor may be legally liable.

(c) Each party will indemnify the other against any claim in respect of infringement of copyright or infringement of the right of public performance, as the case may be, where the same arises by reason of a breach by such first-named party of his obligations under this clause.

Slander or Libel

(12) The renter will indemnify the exhibitor against any claim in respect of any slander or libel which arises exclusively from the contents of any film exhibited pursuant hereto and/or the use of advertising matter in relation thereto supplied by the renter.

Cutting and Alteration of Films

(13) The exhibitor shall exhibit each film on every occasion in its entirety and shall not copy, record, duplicate, cut, or alter any film excepting with the written or telegraphic consent of the renter.

Loss and Damage to Films

(14) (a) The exhibitor shall forthwith on the receipt of any film hereunder report to the renter on a form to be supplied by the renter upon application by the exhibitor the condition of such film.

(b) The exhibitor shall immediately notify the renter by prepaid telegram of the loss, theft, or destruction of or damage or injury to any print. If any film shall be received from the exhibitor by the renter or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed while in possession of the exhibitor, unless the latter before or immediately after the first public exhibition thereof shall have telegraphed the renter that such print was received by the exhibitor in a damaged or partially or wholly destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

(c) The exhibitor shall pay to the renter a sum equal to the cost of replacement at the renter's premises for each linear metre of film which may be lost, stolen, destroyed, or so damaged as to be unfit for further exhibition while in the possession of the exhibitor.

(d) If damage occurs to any film while in the possession of the exhibitor, but such damage is not of such nature as to preclude further exhibition, the exhibitor shall pay to the renter a sum in proportion to the nature and extent of such damage. The amount of such damage shall be determined by mutual agreement or by arbitration, but in no case shall it exceed the value of the film as set out in subclause (c) hereof.

Insurance

(15) The exhibitor shall insure and keep insured all films to be supplied hereunder while in his possession under a block risk policy effected and operated from time to time by the Mutual Films Insurance Board, constituted of an equal number of representatives of the Motion Picture Distributors Association of New Zealand (Inc.) and the New Zealand Motion Picture Exhibitors Association (Inc.), and constituted pursuant to an agreement between the said associations, dated the 6th day of August 1935, or to any agreement in substitution or renewal thereof, and shall punctually pay to the said board all contributions or levies required of or made upon him by the said board to enable such insurance to be effected and maintained; and, in the event of default by the exhibitor in payment of any such contribution or levy, the renter may if it thinks fit pay the same and recover the amount thereof from the exhibitor: provided however, that in the event of such board for any reason ceasing to exist or to function, the exhibitor shall insure and keep insured the said films whilst the same are deemed to be in his possession hereunder against the same risks as specified in the said block policy in some insurance office approved by the renter, the total insurance cover in respect of any one programme to be not less than \$600 or such other sum as may be agreed upon from time to time or in default of agreement fixed by arbitration and shall punctually pay all premiums in respect thereof, the renter having the right in the event of default by the exhibitor to pay the same and recover the amount from the exhibitor.