

# DELAWARE

## Equipment Dealers Contract Act

### Chapter 21-Subchapter III. Equipment Dealer Contracts

#### Sec. 2720. Definitions.

As used in this subchapter, unless the context requires otherwise:

1. 1. "Dealer" means a person, firm, or corporation engaged in the business of selling at retail, construction, farm, industrial or outdoor power equipment and maintains a total inventory of new equipment and repair parts valued at \$50,000.00 or over and provides repair service for the above mentioned equipment.
2. 2. "Supplier" means a wholesaler, manufacturer, or distributor who enters into a contract agreement with a dealer.
3. 3. "Contract agreement" means a written or oral contract or agreement between a dealer and a supplier by which the dealer is granted the right to sell their equipment and the dealer is required to order and maintain an inventory in excess of \$25,000.00 at current net price from the supplier.
4. 4. "Inventory" means the tractors, implements, attachments, equipment, and repair parts that the dealer purchased from the supplier.
5. 5. "Termination of a contract agreement" means the termination, cancellation, non renewal, or noncontinuation of the agreement.
6. 6. "Current net price" means the price listed in the supplier's price list in effect at the time the contract agreement is terminated, less any applicable discount allowed.
7. 7. "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly performed by the dealer.
8. 8. "Construction," "farm," "industrial," and "outdoor power," when used to refer to tractors, implements, attachments, or repair parts, have the meanings commonly used and understood among dealers and suppliers of those trades.

#### Sec. 2721.

##### Notice of termination of contract agreements.

A. Notwithstanding any agreement to the contrary, a supplier who terminates a contract agreement with a dealer shall notify the dealer of the termination not less than 6 months prior to the effective date of the termination. If termination results from an ongoing program or standard of which the dealer was aware at least 6 months prior to termination, the supplier shall give 90 days notice of termination.

However, the supplier may immediately terminate the agreement at any time after the occurrence of any of the following events:

1. A petition under bankruptcy or receivership law has been filed against the dealer.
1. 2. The dealer has made an intentional misrepresentation with the intent to defraud the supplier.
2. 3. Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier.
3. 4. Close out or sale of a substantial part of the dealer's business related to the handling of the supplier's product, the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation, or a change, without the prior written approval of the supplier, in the location of the dealer's principal place of business under the agreement.
4. 5. Withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.
5. 6. Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

B. Notwithstanding any agreement to the contrary, a dealer who terminates a contract agreement with a supplier shall notify the supplier of the termination not less than 6 months prior to the effective date of the termination.

C. The contract agreement may also be terminated by the mutual written consent of the parties, with the effective date of such termination to be such as may be mutually agreed upon.

D. Notification under this section shall be in writing and shall be by certified mail or personally delivered to the recipient. It shall contain:

1. 1. A statement of intention to terminate the agreement.
2. 2. A statement of the reasons for the termination.
3. 3. The date on which the termination takes effect.

A. Whenever a contract agreement between a dealer and a supplier is terminated by either party, the supplier shall repurchase the dealer's inventory as provided in this subchapter unless the dealer chooses to keep the inventory.

B. If the dealer principal, who is a party to a contract agreement, dies or becomes incompetent, the supplier shall, at the option of the personal representative of guardian, repurchase the inventory as if the agreement had been terminated. The personal representative of guardian has one year from the date of the death or incompetency of the dealer principal to exercise the option under this subchapter.

C. The subchapter does not apply to a supplier that does not require the dealer to order and maintain an inventory in excess of \$25,000.00 at current net price from the supplier.

**Sec. 2723. Repurchase terms.**

A. The supplier shall repurchase from the dealer within 90 days after termination of the contract agreement all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement.

B. The supplier shall pay the dealer:

1. 1. One hundred percent (100%) of the net cost of all new, unused, undamaged, and complete inventory except repair parts, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location.
2. 2. Eighty-five percent (85%) of the current net price of all new, unused, and undamaged repair parts that are currently listed in the supplier's price book. The supplier may perform the handling, packing, and loading of repair parts returned and withhold five percent (5%) of the current net price of the repair parts returned for their services.

C. The inventory shall be returned FOB to the dealership. The dealer and the supplier may each furnish a representative to inspect all inventory and certify acceptability before being returned.

D. The supplier shall pay the full repurchase amount to the dealer not later than 60 days after receipt of the inventory.

**Sec. 2724.**

**Exceptions to repurchase requirements.**

This subchapter does not require the repurchase from a dealer of:

- .1. A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries.
- .2. Multiple packaged repair parts when the package has been broken.
- .3. A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning.
- .4. Any inventory that the dealer chooses to keep.
2. 5. Any inventory that was acquired by the dealer from a source other than the supplier.
3. 6. Any tractors, implements, attachments or equipment that the dealer purchased from the supplier more than 36 months before date of the notice of termination.

**Sec. 2725.**

**Uniform commercial practice.**

A. This subchapter does not affect a security interest of the supplier in the inventory of the dealer.

B. A repurchase of inventory under this subchapter shall not be subject to the bulk sales provisions of Article 6, Title 6.

**Sec. 2726. Warranty claims.**

If, after the termination of a contract agreement, the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination, the supplier shall

accept or reject the claim within a maximum of forty-five days from the day that the supplier received the claim. A claim not rejected before the deadline shall be deemed accepted. The supplier shall pay an accepted claim not later than sixty days after the day that the supplier received the claim.

**Sec. 2727.**

**Civil remedy for failure to repurchase.**

A. If a supplier fails or refuses to repurchase any inventory covered under the provisions of this subchapter within the time periods established, the supplier is civilly liable for one hundred percent (100%) of the “current net price” of the inventory, plus the amount the dealer paid for freight costs from the supplier’s location to the dealer’s location, plus reasonable cost of assembly performed by the dealer, and plus the dealer’s reasonable attorney’s fee and court costs, and interest on the “current net price” of the inventory computed at the legal rate of interest, but not to exceed 18% annual percentage rate, from the 91st day after termination of the contract agreement.

B. Notwithstanding any agreement to the contrary, and in addition to any other legal remedies available, any person who suffers monetary loss due to a violation of this subchapter or because he refuses to accede to a proposal for an arrangement that, if consummated, is in violation of this subchapter, may bring a civil action to enjoin further violations and to recover damages sustained by him together with the costs of the suit, including a reasonable attorney’s fee.

C. A civil action commenced under the provisions of this subchapter shall be brought within four years after the violation complained of is or reasonably should have been discovered, whichever occurs first.

D. In the event of the failure to provide required notice of termination or otherwise comply with provisions of the law, the supplier is civilly liable for the dealers loss of business for the time period the supplier is in violation of the notice termination provisions of this subchapter, plus reasonable attorney’s fees and court costs.

E. The provisions of this Section are in addition to all legal or equitable remedies available at law, as well as any agreement between the supplier and dealer.