

MARYLAND

Equipment Dealers Contract Act

Title 19 Chapter 436 Commercial Law: Equipment Dealer Contract Act

Subtitle 1. Definitions; General Provisions.

19-101. Definitions.

(A) In this title, unless the context requires otherwise, the following words have the meanings indicated.

(B) "Contract" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which:

(1) The dealer is granted the right to sell or distribute goods or services; or

(2) The dealer is granted the right to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

(C) "Current model" means a model listed in a wholesaler's, manufacturer's, or distributor's current sales manual or a supplement to the current sales manual.

(D) "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the contract agreement is terminated, less any applicable discount allowed.

(E) "Dealer" means a person engaged in the business of selling at retail construction, farm, utility, or industrial equipment, implements, machinery, attachments, outdoor power equipment, or repair parts.

(F) "Family member" means a spouse, sibling, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, or a lineal descendant of the dealer or principal owner of the dealership.

(G) "Good cause" means failure by a dealer to comply with requirements imposed on the dealer by a contract if the requirements are not different from requirements imposed on other dealers similarly situated in the state.

(H) "Inventory" means farm implements or machinery, construction, utility, and industrial equipment, consumer products, outdoor power equipment, attachments, or repair parts.

(I) "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 the reasonable cost of assembly or disassembly performed by the dealer.

(J) "Superseded part" means a part that will provide the same function as a currently available part as of the date of cancellation of a contract.

(K) "Supplier" means:

(1) A wholesaler, manufacturer, or distributor who enters into a contract with a dealer; or

(2) A purchaser of assets or stock of a surviving corporation resulting from a merger or liquidation, a receiver or assignee, or a trustee of the original manufacturer, wholesaler, or distributor who enters into a contract with a dealer.

(L) "Termination" means the termination, cancellation, nonrenewal, or noncontinuation of a contract.

(M) "Utility" and "industrial," when used to refer to equipment, implements, machinery,

attachments, or repair parts, have the meanings commonly used and understood among dealers and suppliers of farm equipment as a usage of trade.

19-102. Applicability and effect of title; applicability of bulk transfer provisions of Title 6.

Good cause exists in any of the following circumstances:

- (1) The filing of a petition against the dealer to commence:
 - (I) A receivership proceeding; or
 - (II) A bankruptcy proceeding;
- (2) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;
- (3) The dealer defaults under a chattel mortgage or other security agreement between the dealer and the supplier or the dealer revokes or discontinues a guarantee of a present or future obligation of the retailer to the supplier;
- (4) The closeout or sale of a substantial part of the business of a dealer related to the handling of the products of the supplier;
- (5) The commencement of procedures to dissolve or liquidate the dealer if the dealer is a partnership or corporation;
- (6) A change, without the prior written approval of the supplier, that shall not be unreasonably withheld, in the location of the principal place of business of the dealer or additional locations set forth in the agreement;
- (7) The 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;
- (8) The revocation or discontinuance of any guarantee of the present or future obligations of the dealer to the supplier;
- (9) The dealer fails to operate in the normal course of business for 7 consecutive business days or otherwise abandons the business;
- (10) The guilty plea or conviction of a felony of a dealer affecting the relationship between the dealer and supplier; or
- (11) The dealer transfers an interest in the dealership or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership.

19-103.

(A) A supplier may not directly or through an officer, agent, or employee terminate, cancel, fail to renew, or substantially change the competitive circumstances of a contract without good cause.

(B) (1) Except as provided in paragraph (2) of this subsection, a supplier who terminates, cancels, fails to renew, or substantially changes the competitive circumstances of a contract with good cause is not required to provide any notice or the right to cure a deficiency to a dealer.

(2) If a supplier terminates, cancels, fails to renew, or substantially changes the competitive circumstances of a contract based upon the dealer's failure to capture the share of the market required in the contract and the supplier has worked with the dealer for a minimum of 12 months to gain the desired market share, the supplier shall provide a dealer with at least 90 days' written notice of the termination of the agreement and a 60 day right to cure.

(C) Notwithstanding any agreement to the contrary, a dealer who terminates a contract with a

supplier shall notify the supplier of the termination within 90 days prior to the effective date of the termination.

(D) Each notification required under this section shall:

- (1) Be in writing;
- (2) Contain:
 - (I) A statement of intention to terminate the contract;
 - (II) A statement of the reasons for the termination; and
 - (III) The date on which the termination takes effect; and
- (3) Be delivered to the supplier or dealer by:
 - (I) Certified mail; or
 - (II) Personal delivery.

Subtitle 2. Repurchase Requirements and Terms.

19-201. Repurchase of inventory.

(A) (1) Subject to §19-203 of this title, whenever a dealer enters into a contract in which the dealer agrees to maintain inventory and the contract is terminated by either party, the supplier shall repurchase the dealer's inventory on the terms specified in §19-202 of this subtitle unless the dealer chooses to keep the inventory.

(2) If the dealer has any outstanding debts to the supplier, the repurchase amount may be set off or credited to the retailer's account.

(B) (1) If a dealer enters into a contract in which the dealer agrees to maintain inventory and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or is adjudicated incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person that succeeds to the stock of the majority stockholder if the dealer is a corporation, repurchase the inventory as if the contract had been terminated.

(2) An heir, personal representative, guardian, or succeeding stockholder has 1 year from the date of the death or adjudication of incompetency of the dealer or majority shareholder to exercise the option provided under this subsection.

19-202. Terms of Repurchase.

(A) Within 90 days after termination of the contract the supplier shall repurchase from the dealer all inventory, previously purchased from the supplier, that remains unsold on the date the contract terminates.

(B) (1) The supplier shall pay the dealer:

(I) 100 percent of the current net price of all new, unused, unsold, undamaged, and complete farm, construction, utility, and industrial equipment, implements, machinery, outdoor power equipment, and attachments;

(II) 90 percent of the current net price of all new, unused, and undamaged repair parts and superseded parts;

(III) 75 percent of the net cost of all specialized repair tools purchased in the previous 3 years and 50 percent of the net cost of all specialized repair tools purchased in the previous 4 through 6 years in accordance with the requirements of the supplier and held by the dealer on the date of termination, if the specialized repair tools are unique to the supplier's product line and are in complete and resalable condition;

(IV) The agreed depreciated value of farm implements, machinery, utility and industrial

equipment, and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease; and

(V) At its amortized value, the price of any specific data processing hardware and software and telecommunications equipment that the supplier required the dealer to purchase within the past 5 years.

(2) (I) The supplier shall pay:

1. The cost of shipping the inventory from the dealer's location; and

2. The dealer 10 percent of the current net price of all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading.

(II) The supplier may perform the handling, packing, and loading of repair parts instead of paying the 10 percent for the services.

(III) The dealer and the supplier may each furnish a representative to inspect all parts and certify the acceptability of any part when packed for shipment.

(C) (1) The supplier shall pay the full repurchase amount to the dealer not later than 30 days after receipt of the inventory.

(2) If the dealer has any outstanding debts to the supplier, the repurchase amount shall be credited to the dealer's account.

(D) (1) On payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier.

(2) At the end of each calendar year or after termination or cancellation of the contract, a supplier or lender may not debit the dealer's reserve account for recourse, retail sale, or lease contracts for any deficiency unless the dealer or the heirs of the dealer have been given at least 7 business days' notice by certified or registered United States mail, return receipt requested, of any proposed sale of the financed equipment and an opportunity to purchase the equipment.

(3) The former dealer or the heirs of the dealer shall be given quarterly status reports on any remaining outstanding recourse contracts.

(4) As the recourse contracts are reduced, any reserve account funds shall be returned to the dealer or the heirs of the dealer in direct proportion to the outstanding liabilities.

(E) (1) In the event of the death of the dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heir of the dealer or majority stockholder, repurchase the inventory from the heir of the dealer or majority stockholder as if the supplier had terminated the contract.

(2) Within 1 year after the date of the death of the dealer or majority stockholder, the heir shall exercise the heir's options under this section.

(3) Nothing in this section shall require the repurchase of any inventory if the heir and the supplier enter into a new contract to operate the retail dealership.

(F) (1) Within 90 days a supplier shall consider and make a determination on a request by a family member to enter into a new contract to operate the dealership.

(2) If the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance.

(3) This section does not entitle an heir, personal representative, or family member to operate a dealership without the specific written consent of the supplier.

(G) Notwithstanding the provisions of this section, if a supplier and a dealer have executed an

agreement concerning succession rights prior to the dealer's death, and if the agreement has not been revoked, the agreement shall be enforced even if it designates someone other than the surviving spouse or heir of the decedent as the successor.

19-203.

- (A) This title does not require the repurchasing from a dealer of:
- (1) A repair part with a limited storage life or otherwise subject to deterioration, such as a gasket or battery, except for industrial "press on" industrial pneumatic tires;
 - (2) A single repair part that is priced as a set of two or more items;
 - (3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning;
 - (4) A repair part that is not in new, unused, and undamaged condition;
 - (5) An item of inventory for which a dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier;
 - (6) Any inventory that the dealer chooses to retain;
 - (7) Any inventory that was ordered by the dealer after either party's receipt of notice of termination of a franchise agreement;
 - (8) Any farm implements or machinery, construction, utility, or industrial equipment, outdoor power equipment, or attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that equipment that is used in demonstrations or leased under §19-202 of this title shall be considered new and unused;
 - (9) Any farm implements or machinery, construction, utility, or industrial equipment, outdoor power equipment, or attachments that were purchased more than 36 months before notice of termination of the contract; or
- (10) Any inventory that was acquired by the dealer from a source other than the supplier.

19-204.

- (A) This title does not affect a security interest of the supplier in the inventory of the dealer.
- (B) Repurchase of inventory under this title is not subject to the bulk transfers provisions of title 6 of this article.
- (C) (1) The dealer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment.
- (2) Failure of the supplier to provide a representative within 60 days shall result in automatic acceptance by the supplier of all returned items.

19-205.

- (A) (1) When a supplier and a dealer enter into a contract, the supplier shall pay a warranty claim made by the dealer for warranty parts or service within 30 days after its approval.
- (2) The supplier shall approve or disapprove a warranty claim within 30 days after its receipt.
- (3) If a claim is disapproved, the manufacturer, wholesaler, or distributor shall notify the dealer within 30 days stating the specific grounds on which the disapproval is based.
- (4) If a claim is not specifically disapproved in writing within 30 days after its receipt, the claim shall be considered approved and payment must follow within 30 days.
- (B) When a supplier and a dealer enter into a contract, the supplier shall indemnify and hold harmless the dealer against any judgment for damages or a settlement agreed to by the supplier,

including court costs and reasonable attorney's fees, arising out of a complaint, claim, or lawsuit including negligence, strict liability, misrepresentation, breach of warranty, or rescission of the sale, to the extent the judgment or settlement relates to the manufacture, assembly, or design of inventory, or other conduct of the supplier beyond the dealer's control.

(C) If, after termination of a contract, the dealer submits a claim to the manufacturer, wholesaler, or distributor for warranty work performed prior to the effective date of the termination of the contract, the manufacturer, wholesaler, or distributor shall accept or reject the claim within 30 days of receipt of the claim.

(D) If a claim is not paid within the time allowed under this section, interest shall accrue at the maximum lawful interest rate.

(E) (1) Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions.

(2) The cost of the work shall be computed by multiplying the time required to complete the work by the dealer's established customer hourly retail labor rate.

(3) The dealer shall inform the manufacturer, wholesaler, or distributor for whom the dealer is performing warranty work of the dealer's established customer hourly retail labor rate before the dealer performs any work.

(F) Expenses expressly excluded under the warranty of the manufacturer, wholesaler, or distributor to the customer may not be included or required to be paid for warranty work performed, even if the dealer requests compensation for the work performed.

(G) (1) The dealer shall be paid for all parts used by the dealer in performing warranty work.

(2) Payment shall be in an amount equal to the dealer's net price for the parts, plus a minimum of 15 percent.

(H) The manufacturer, wholesaler, or distributor may adjust compensation for errors discovered during an audit and may adjust claims paid in error.

(I) The dealer shall have the right to accept the reimbursement terms and conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and conditions of this section.

Subtitle 3. Violations by Suppliers; Remedies.

19-301.

A supplier may not:

(1) Coerce a dealer to accept delivery of equipment, parts, or accessories that the dealer has not ordered voluntarily unless the parts or accessories are safety parts or accessories required by the supplier;

(2) Condition the sale of additional equipment to a dealer on a requirement that the dealer also purchase other goods or services, except that a supplier may require the dealer to purchase parts that are reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area;

(3) Coerce a dealer into refusing to purchase equipment manufactured by another supplier; or

(4) Terminate, cancel, or fail to renew or substantially change the competitive circumstances of the retail agreement based on the results of any circumstance beyond the dealer's control, including a natural disaster such as a sustained drought, high unemployment in the dealer market area, or a labor dispute.

19-302.

If a supplier fails or refuses to repurchase, in accordance with §19-202 of this title, any inventory covered under the provisions of this title within the time periods established, the supplier is civilly liable for:

- (1) 100 percent of the current net price of the inventory;
- (2) The amount the dealer paid for freight costs from the supplier's location to the dealer's location;
- (3) The dealer's reasonable attorney's fees and court costs; and
- (4) Interest on the current net price of the inventory computed from the 91st day after termination of the contract at the legal rate of interest.

19-303.

Notwithstanding an agreement to the contrary, and in addition to any other available legal remedies, a person who suffers monetary loss due to a violation of this title or who refuses to accede to a proposal for an arrangement that, if consummated, would be in violation of this title may bring a civil action to enjoin further violations and to recover damages and the costs of the action, including reasonable attorney's fees.

19-304.

A civil action commenced under the provisions of this title shall be brought within 4 years after the violation complained of is or reasonably should have been discovered, whichever occurs first.

19-305.

If any provision of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Section 3. And be it further enacted, That this Act shall take effect July 1, 2005.