

SOUTH CAROLINA FRANCHISE AGREEMENTS RELATING TO RETAIL AND REPURCHASE OF FARM IMPLEMENTS, ETC.

SECTION 39-59-10. Definitions.

As used in this chapter:

(1) "Current Model" means a model listed in the wholesaler's, manufacturer's, or distributor's sales manual or any supplements to the manuals.

(2) "Current Net Price" means the price listed in the wholesaler's, manufacturer's, or distributor's current price list or catalog in effect at the time the contract is cancelled or discontinued, less any applicable trade and cash discounts.

(3) "Retailer" means any person engaged in the business of selling and retailing farm implements, machinery, utility and industrial, and yard and garden equipment, attachments or repair parts. The term also includes any person engaged in such business, his heirs, personal representative, or his guardian or the major stockholder of the business.

(4) "Inventory" means farm implements, machinery, utility and industrial, and yard and garden equipment, attachments, or repair parts.

(5) "Net Cost" means the price the retailer paid for the merchandise to the wholesaler, manufacturer, or distributor, less all applicable discounts allowed, plus the freight costs from the wholesaler, manufacturer, or distributor location to the retailer's location plus reasonable cost to assemble or disassemble.

SECTION 39-59-20. Repurchase of inventory upon termination of franchise agreement.

Whenever any retailer enters into a franchise agreement, evidenced by a written contract, or oral contract with a wholesaler, manufacturer, or distributor wherein the retailer agrees to maintain an inventory and the contract is terminated, the wholesaler, manufacturer, or distributor shall repurchase the inventory as provided in this chapter. The retailer may keep the inventory if he desires. If the retailer has any outstanding debts to the wholesaler, manufacturer, or distributor, then the repurchase amount may be credited to the retailer's account.

SECTION 39-59-30. Repurchase of inventory within ninety days; handling costs.

The wholesaler, manufacturer, or distributor shall repurchase the inventory previously purchased from him and held by the retailer within ninety days of the date of termination of the contract by either party. The wholesaler, manufacturer, or distributor shall pay one hundred percent of the net cost of all new, unsold, undamaged, and complete farm implements, machinery, utility, and industrial equipment, and attachments, ninety percent of the current net price of all new, unused, undamaged repair parts, and eighty-five percent of the new price of superseded parts. The wholesaler, manufacturer, or distributor shall pay the retailer five percent of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. The wholesaler, manufacturer, or distributor may perform the handling, packing, and loading in lieu of paying the five percent for the services.

SECTION 39-59-40. Repurchase amount due within thirty days; title to inventory.

The wholesaler, manufacturer, or distributor shall make payment of the full repurchase amount to the retailer not later than thirty days after the receipt of inventory as provided for in Section 39-59-30. Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the wholesaler, manufacturer, or distributor.

SECTION 39-59-50. Limitations upon repurchase of certain inventory.

The provisions of this chapter do not require the repurchase from a retailer of:

- (1) Any repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, but not industrial “press on” or industrial pneumatic tires;
- (2) Any single repair part which is priced as a set of two or more items;
- (3) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
- (4) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer, or distributor, of clear title, free and clear of all claims, liens, and encumbrances;
- (5) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (6) Any farm implements, machinery, utility, and industrial equipment, and attachments which are not in new, unused, undamaged, complete condition;
- (7) Any repair parts which are not in new, unused, undamaged condition;
- (8) Any farm implements, machinery, utility, and industrial equipment, yard, and garden equipment, or attachments which were purchased thirty-six months or more prior to notice of termination of the contract;
- (9) Any inventory which was ordered by the retailer on or after the actual receipt of the date of notification of termination of the contract;
- (10) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer, or distributor.

SECTION 39-59-60. Liability for failure to make timely repurchase of inventory.

If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory covered under the provisions of this chapter within the time periods established in Section 39-59-30, he is civilly liable for one hundred percent of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer’s reasonable attorney’s fees, court costs, and interest on the current net price computed at the legal rate of interest from the ninety-first day after contract termination.

SECTION 39-59-70. Repurchase of inventory upon death or incapacity of retailer.

In the event of the death or incapacity of the retailer or the majority stockholder of a corporation operating as a retailer, the wholesaler, manufacturer, or distributor shall repurchase, at the option of the heir or retailer, as defined in item (3) of Section 39-59-10, the inventory from the heir or retailer, of the

retailer or majority stockholder as if the wholesaler, manufacturer, or distributor had terminated the contract. The heir or retailer has one year from the date of the death of the retailer or majority stockholder to exercise his option under this chapter. Nothing in this chapter requires the repurchase of any inventory if the heir or retailer and wholesaler, manufacturer, or distributor enter into a new contract to operate the retail dealership.

SECTION 39-59-80. Security interests in inventory.

The provision of this chapter may not be construed to affect in any way any security interest which the wholesaler, manufacturer, or distributor may have in the inventory of the retailer, and any repurchase is not subject to the provisions of Chapter 6 of Title 36. The retailer, wholesaler, manufacturer, or distributor may furnish a representative to inspect all parts and certify their acceptability when packed for shipment.

SECTION 39-59-90. Audit of books or records.

The wholesaler, manufacturer, or distributor has no more than ninety days to audit the books or records regarding any pay-offs, floor plans material or goods and to make any collections from them. If the retailer is involved in any promotional contest or promotion scheme, the wholesaler, manufacturer, or distributor has no more than ninety days to audit any books or records in order to determine compliance with the regulations of the contest or scheme in order to make any collections from them. The ninety day period shall run concurrently with the time period provided for in Section 39-59-30.

SECTION 39-59-100. Warranty claims.

All warranty claims made by the retailer to the wholesaler, manufacturer, or distributor, for labor and parts must be paid within thirty days following their approval. All warranty claims must be either approved or disapproved within thirty days after their receipt, and any claim not specifically disapproved in writing within thirty days after the receipt must be construed to be approved and payment must follow within thirty days. Any part that is subject to a warranty claim and the retailer is required by the manufacturer to hold a part or parts for inspection, the inspection must be accomplished within sixty days from the date of the filing of the subject claim, otherwise the retailer has the right to scrap such parts without prejudicing the claim.

SECTION 39-59-110. Indemnification of retailer.

A wholesaler, manufacturer, or distributor shall fully indemnify and hold harmless its retailer against any losses, including but not limited to: court costs and reasonable attorney's fees, or damages arising out of complaints, claims, or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale where the complaint, claim, or lawsuit relates to the manufacture, assembly, or design of new items covered by this chapter, parts or accessories, or other functions by the manufacturer, beyond the control of the dealer.

SECTION 39-59-120. Legal remedy for violation of chapter.

Notwithstanding the terms, provisions, or conditions of any dealer agreement or franchise or the terms or provisions of any waiver, and any other legal remedies available, any person who is injured in his business or property by a violation of this chapter by the commission of any unfair and deceptive trade practices, or because he refuses to accede to a proposal for an arrangement which, if consummated, is in violation of this chapter, may bring a civil action in a court of competent jurisdiction in this State to

enjoin further violations, to recover the damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.

SECTION 39-59-130. Limitations period.

Any civil action commenced under the provisions of this chapter must be brought within four years after the cause of action has accrued. The cause of action shall not accrue until the discovery by the aggrieved party of the facts constituting a violation of the provisions of this chapter.