

Chapter 14a Equipment Repurchase from Retail Dealers

13-14a-1 Definitions.

- (1)
 - (a) "Dealer" means any person, firm, or corporation engaged in the business of selling and retailing farm equipment, implements, utility and light industrial equipment, attachments, or repair parts, and includes retailers of yard and garden equipment not primarily engaged in the farm equipment business.
 - (b) "Dealer" does not include:
 - (i) a person who is engaged in the business of sales and service of heavy industrial or construction equipment; or
 - (ii) a person, firm, or corporation who serves as the dealer for a membership group purchasing program.
- (2) "Independent wholesaler" means a person, firm, or corporation who stocks inventory for resale to retail dealers and who holds title to that inventory.
- (3) "Manufacturer" means any person, firm, or corporation engaged in the business of manufacturing and distributing for retail sale farm implements, machinery, utility and light industrial equipment, attachments, or repair parts, and includes manufacturers of yard and garden equipment not primarily intended for farm use.
- (4) "Parts inventory" means repair parts held for resale and used to service farm implements, machinery, attachments, utility and light industrial equipment, and yard and garden equipment.
- (5) "Sales agreement" means a written, verbal, or implied on-going agreement between a dealer and a manufacturer or wholesaler under which the dealer agrees to sell at retail those items supplied by the manufacturer or wholesaler. "Sales agreement" can include an assignment of an exclusive sales area by the manufacturer or wholesaler or the filing of UCC security documents by the manufacturer or wholesaler.
- (6) "Wholegoods" or "wholegoods inventory" means assembled or complete units of farm implements, machinery, utility and light industrial equipment, and yard and garden equipment and includes assembled or complete attachments.
- (7) "Wholesaler" as an entity's business or as the context requires may mean:
 - (a) an independent wholesaler engaged in the business of distributing for retail sale the items listed in Subsection (4) or (6), that is obligated under Section 13-14a-2 to accept new and unsold wholegoods and parts from retailers on behalf of the manufacturer, but the obligation of the wholesaler may not exceed the obligation of the manufacturer; or
 - (b) a dealer, as defined in Subsection (1), who in addition to retailing distributes equipment at the wholesale level.

Amended by Chapter 317, 1995 General Session

13-14a-2 Right of return on termination of retailing agreement -- Credit on return.

- (1) Upon termination of all sales agreements in which the dealer has agreed to offer the products of the manufacturer or wholesaler for retail sale and to stock wholegoods and parts inventories as may or may not be required by the manufacturer or wholesaler, the retailer is entitled to payment or credit from the manufacturer or wholesaler for all new and unsold wholegoods and parts inventories held by the dealer on the date the agreement was terminated.
- (2)

- (a) Except as otherwise provided in this section, the amount of payment or credit due for unsold and undamaged wholegoods is 100% of the original invoice price paid by or invoiced to the dealer, plus any freight charges paid by or billed to the dealer, less any volume, sales, or special discounts on the wholegoods previously paid to the dealer.
 - (b) The manufacturer shall bear the freight charges incurred by the dealer in shipping any wholegoods inventory to the manufacturer's choice of destination. The dealer is responsible for freight charges from the dealer's location to the wholesaler on inventory purchased from that wholesaler.
- (3)
- (a) Payment or credit due to the dealer on wholegoods inventory that has been in the dealer's inventory for more than 36 months from the date of invoice may be adjusted downward from the original invoice price to cover demonstration or rental use. The amount of adjustment shall be agreed upon by the dealer and the manufacturer or wholesaler, but in no case shall the adjustment cause the value of the wholegood to go below the wholesale value listed for that equipment in the edition of the trade-in guide customarily used by dealers or if the equipment is not listed in the trade-in guide, the local retail auction price will prevail at the dealer's choice.
 - (b) If an agreement cannot be made on adjustment, the adjustment shall be submitted to arbitration under procedures approved by both the manufacturer and the dealer. The manufacturer shall pay the cost of the arbitration.
- (4)
- (a) The amount of payment or credit due to the dealer for parts inventory is 100% of the current wholesale price of the parts listed in the manufacturer's or wholesaler's price book.
 - (b) The dealer is entitled to reimbursement for any handling or packaging incurred to return the parts inventory to the manufacturer or wholesaler in the amount of 5% of the currently listed wholesale price of the returned parts. The manufacturer or wholesaler shall bear the freight cost to return the inventory to their choice of destination.
- (5)
- (a) New, unsold parts that are listed and priced in the manufacturer's or wholesaler's price book at the time of the termination of the agreement are eligible for return.
 - (b) Parts with superseded part numbers are eligible for return at 85% of the price listed for the superseding part number, if they meet the criteria of being new and unsold.
 - (c) Parts that have been deleted from the price book within the previous 24 months prior to termination of the sales agreement shall be repurchased at 50% of the last published price.
 - (d) Parts that are not eligible for return are:
 - (i) parts that are normally sold at retail in packages of two or more due to precision machining, such as piston rings or connecting rod bearing liners, if one of the parts is missing; and
 - (ii) any parts that are improperly identified.
 - (e) Package quantity between the dealer and the manufacturer or wholesaler will not be cause for rejection of a returned part.
 - (f) Parts manuals, service manuals, and owners manuals that the dealer has purchased and held for resale at retail shall be repurchased at current wholesale cost.
- (6) Upon the payment or credit due to the dealer's account of the amounts required by this section, title to the wholegoods, attachments, and parts inventories is vested in the manufacturer or wholesaler and the manufacturer or wholesaler is entitled to possession of those items.
- (7) All credits due and the final payments to the dealer shall be made within 60 days of the date of shipment of the inventory back to the manufacturer or wholesaler.

- (8) Special tools for repair of the manufacturer's equipment that the dealer maintains or tools that the manufacturer requires the dealer to maintain shall be repurchased by the manufacturer upon termination of the agreement. The repurchase price shall be the fair market value, but may not be less than 25% of the replacement cost for a usable tool.
- (9) The manufacturer shall repurchase for fair market value:
 - (a) any sign that the dealer has purchased for the exclusive advertisement of the manufacturer's or wholesaler's product; and
 - (b) any computer or communication equipment the dealer has purchased for direct interface with the manufacturer or wholesaler.
- (10) In calculating the fair market value of any item the manufacturer or wholesaler shall repurchase under Subsection (9), the depreciation of the item may not exceed 10% a year for the useful life of the item, but may not go below 25% of the replacement cost.
- (11)
 - (a) A representative or agent of a manufacturer who does not stock inventory for resale or does not hold or anticipate holding title to any inventory is exempt from the repurchase obligations of this chapter.
 - (b) If a sales agreement is terminated, the manufacturer bears the responsibility to repurchase inventory sold by a manufacturer's representative or agent.

Amended by Chapter 317, 1995 General Session

13-14a-3 Right of return on death of dealer -- Continuation of business by heirs or survivors -- Right to sell business.

- (1) Upon the death of a dealer, the death of a general partner in a partnership operating as a dealer, or the death of a majority shareholder in a corporation operating as a dealer, the manufacturer or wholesaler shall repurchase the inventory under Section 13-14a-2.
- (2) Subsection (1) does not apply if the heirs of the decedent, the remaining partners, or the remaining shareholders elect to continue to operate the dealership and reaffirm an existing agreement or enter into a new agreement with the manufacturer or wholesaler within 180 days or any longer period as they may agree.
- (3) A manufacturer may not unreasonably withhold approval of a new sales agreement from a third party if:
 - (a) the dealer elects to sell the dealer's business to the third party; or
 - (b) on the death of a dealer, the death of a general partner in a partnership operating as a dealer, or the death of a majority shareholder in a corporation operating as a dealer, the heirs of the decedent, the remaining partners, or the remaining shareholders elect to sell the business to the third party.

Amended by Chapter 317, 1995 General Session

13-14a-4 Termination of retailing agreement at will.

Any retailing agreement between a dealer and a manufacturer or wholesaler that is entered into or renewed after May 1, 1989, shall terminate at will, notwithstanding any agreement or law to the contrary, upon written notice of termination from the dealer. Any right arising from a prior breach of the contract survives a termination under this section.

Enacted by Chapter 63, 1989 General Session

13-14a-5 Notice or consent required before changing terms of retailing agreement -- Limitations on pledge of personal assets -- Cancellation of retailing agreement.

- (1) Each manufacturer, wholesaler, financing subsidiary or division of the manufacturer, or any independent lender shall give the dealer prior written notice and obtain the dealer's consent before:
 - (a) changing either the time or manner of payment;
 - (b) making any changes in notes or security;
 - (c) adding or releasing guarantors; or
 - (d) granting extensions or renewals in payment schedules on any contract that is executed by the dealer in behalf of and in the name of any third purchaser of goods or services in which the dealer is obligated to assume contingent liability for the repurchase of that contract upon default by that third party.
- (2) A person who signs a security agreement or guarantee agreement with a manufacturer or wholesaler may not be required to pledge or encumber his personal assets in a value in excess of the amount of the indebtedness secured.
- (3) If any manufacturer or wholesaler fails to give notice or obtain consent under Subsection (1), or fails to comply with Subsection (2), the guarantee or security agreement affected is considered cancelled and terminated.

Enacted by Chapter 63, 1989 General Session

13-14a-6 Security interest of wholesaler or manufacturer not affected.

This chapter may not be construed to affect in any way any security interest that the wholesaler or manufacturer may have in the inventory of the dealer. The retailer, manufacturer, or wholesaler may furnish a representative to inspect all parts and certify their acceptability when packed for shipment.

Amended by Chapter 185, 2002 General Session

13-14a-7 Attorneys' fees and court costs -- Punitive damages.

The court, in any action to compel compliance with this chapter, shall award costs and reasonable attorneys' fees to the prevailing party. The court may award punitive damages.

Amended by Chapter 317, 1995 General Session

13-14a-8 Contractual right of return -- Election of penalties.

If the agreement between a dealer and a manufacturer or wholesaler confers rights and duties covering the return of wholegoods and parts inventories upon termination of the agreement, the dealer may elect to proceed under the agreement. The dealer is not considered to have made this election to the extent that the rights and duties conferred by this chapter exceed those conferred by the sales agreement.

Enacted by Chapter 63, 1989 General Session

13-14a-9 Continuing obligation of manufacturer or wholesaler.

- (1) If a manufacturer or wholesaler is purchased by or merges with another company, the purchasing or surviving entity shall bear all of the responsibilities of the original or purchased manufacturer or wholesaler under this chapter.

- (2) If a manufacturer sells a product line, the purchasing entity bears the responsibility of repurchase.
- (3) In the case of a wholesaler who discontinues representing a line for any reason, the manufacturer of that line bears the responsibility to repurchase.

Amended by Chapter 317, 1995 General Session