

## NEW YORK STATE EQUIPMENT DEALER LAW COMPILATION

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### **§ 696-a. Definitions. As used in this article unless the context requires otherwise:**

1. "Current net price" means the price listed in the supplier's effective price list or catalogue, less any applicable trade and cash discounts.
2. "Dealer" means any person selling or agreeing to sell primarily equipment under an agreement with a supplier.
3. "Equipment" means vehicles and machinery and the accessories and parts thereto which are designed to be used for farm and agricultural purposes, lawn, garden, golf course, landscaping or grounds and maintenance or utility activities, provided however that self-propelled vehicles primarily for the transportation of persons or property on a street or highway are specifically excluded.
4. "Dealer agreement" means any agreement between a supplier and a dealer by which the dealer is authorized to engage in the business of the retail sale, lease and/or service of equipment in accordance with methods and procedures prescribed by the supplier.
5. "Net cost" means the price the dealer paid to the supplier for the equipment, less all applicable discounts allowed, plus the freight costs from the supplier's location to the dealer's location.
6. "Supplier" means the manufacturer, wholesaler or distributor of the equipment to be sold by the dealer.

### **§ 696-b. Dealer agreements; unlawful acts and practices.**

It shall be a violation of this article for a supplier:

1. To coerce, compel, or attempt to coerce or compel any dealer to order or accept delivery of any equipment or parts, or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the dealer has not voluntarily ordered; or
2. To coerce or compel any dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with such supplier; or
3. To coerce or compel, any dealer to refuse to purchase equipment from another supplier however it shall not be a violation of this section to require separate facilities, financial statements or sales staff for major competing lines provided that the dealer is given at least thirty-six months notice of such requirements; or
4. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of the dealer's order to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this article if such failure is due to prudent and reasonable restriction on extension of credit by the supplier to the dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control; or
5. To terminate or cancel the dealer agreement of any such dealer without due cause; or
6. To condition the renewal or extension of a dealer agreement on the dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the dealer unless the supplier has advised the dealer in writing of its demand for such renovation, construction, purchase, acquisition or rental within a



reasonable time prior to the effective date of the proposed date of renewal or extensions (but in no case less than one year) and provided the supplier demonstrates the need for such change in the place of business and the reasonableness of such demand in view of the need to service the public and economic conditions existing at the time and, provided further, that the dealer makes a good faith effort to complete such construction or renovation plans within one year; or

7. To sell or offer to sell any new equipment to any other dealer at a lower actual price therefore than the actual price sold or offered to any other dealer for the same equipment identically equipped or to utilize any device including, but not limited to, sale promotion plans or programs which result in such lesser actual price, or result in a fixed price predetermined solely by the supplier provided, however, the provisions of this subdivision shall not apply to sales to a dealer for resale to any unit or agency of the United States government, the state, or any of its political subdivisions or any municipality located within this state; and provided, further, that the provisions of this subdivision shall not apply so long as a supplier sells or offers to sell such new equipment to all of its dealers at an equal price; or

8. To willfully discriminate, either directly or indirectly, in price, programs, or terms of sale offered to dealers, where the effect of such discrimination may be to substantially lessen competition or give to one holder of a dealer agreement any economic business or competitive advantage not offered to all holders of the same or similar dealer agreements; or

9. To prevent by contract or otherwise, any dealer, from changing its capital structure, ownership or the means by or through which the dealer finances its operations, so long as the dealer gives prior notice to the supplier and provided the dealer at all times meets any responsible capital standards agreed to between the dealer and the supplier and imposed on similarly situated dealers and provided such change by the dealer does not result in a change in the person with actual or effective control of a majority of the voting interests of the dealer; or

10. If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealer's business or an equity ownership interest therein, the supplier shall approve or deny such a request within sixty days after receiving a written request from the dealer. If the supplier has neither approved nor denied the request within the sixty-day period, the request will be deemed approved. The dealer's request shall include reasonable financial, personal background, character references and work history information for the acquiring persons. If a supplier denies a request made pursuant to this subdivision, the supplier must provide the dealer with a written notice of such denial that states the reasons for such denial. A supplier may only deny a request based on the failure of the proposed transferees to meet the reasonable requirements consistently imposed by the supplier in determining approval of such transfer and/or approvals of new dealers; or

11. To require a dealer to assent to a release, assignment, notation, waiver, or estoppel which would relieve any person from liability imposed by this article; or

12. (a) To unreasonably withhold consent, in the event of the death of the dealer or the principal owner of the dealership, to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership or to another qualified individual if the family member or other qualified individual meets the reasonable financial, business experience and character standards of the supplier. Furthermore, and only in the event that the transfer proposed is to a person other than a family member, such person shall have actively participated in the dealership or in the equipment or similar industry for at least twelve months preceding the proposed date of transfer. Should a supplier determine that the designated family member or other qualified individual is not acceptable, it shall provide the dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have thirty days to consider a dealer's request to make a transfer to a family member or other qualified individual. As used in this paragraph, "family" means and includes a spouse, parents,



siblings, children, step-children, sons-in-law, daughters-in-law and lineal descendants, including those by adoption of the dealer or principal owner of the dealership.

(b) Notwithstanding the foregoing, in the event that a supplier and dealer have duly executed an agreement concerning succession rights prior to the dealer's death, and if such agreement has not been revoked, such agreement shall be observed, even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

**§ 696-c. Termination and non-renewal of dealer agreements.**

1. Except where a grounds for termination or non-renewal of a dealer agreement are contained in paragraph (a), (b), (c), (d), (e) or (f) of subdivision two of this section, a supplier shall give a dealer ninety days' written notice of the supplier's intent to terminate, cancel or not renew a dealer agreement. The contractual term of the dealer agreement shall not expire, without the written consent of the dealer, prior to the expiration of at least ninety days following such notice. Nothing in this section shall prohibit a dealer from terminating a dealer agreement with cause provided, however, that the dealer notify the supplier in writing at least ninety days prior to the effective date of such termination with the reasons for such termination. This notice will not apply for grounds of termination in following paragraphs A thru K of subdivision two of this section.

2. As used in this article, a termination by a supplier of a dealer agreement shall be with cause when the dealer has:

- (a) transferred a controlling ownership interest in the dealership without the supplier's consent;
- (b) made a material misrepresentation in applying for the dealer agreement;
- (c) filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within sixty days after the filing; is in default under the provisions of a security agreement in effect with the supplier; or is insolvent or in receivership;
- (d) been convicted of a crime, punishable for a term of imprisonment for one year or more;
- (e) failed to operate in the normal course of business for ten consecutive business days or has terminated said business;
- (f) Significantly relocated the dealer's place of business without supplier's consent; or
- (g) consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, failure to provide service and replacement parts or perform warranty obligations;
- (h) inadequately represented supplier over a measured period causing lack of performance in sales, service or warranty areas and failed to achieve market penetration at levels consistent with similarly located dealerships based on available recorded information compiled by industry associations regarded as the authorities in this area both in local and national standards;
- (i) consistently failed to meet building and housekeeping requirements, or has failed to provide adequate sales, service or parts personnel commensurate with the dealer agreement;
- (j) consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf;
- (k) consistently failed to comply with the terms of the dealership agreement.

3. No supplier shall base its decision to terminate, cancel or not to renew a dealer agreement on any of the paragraphs of subdivision two of this section except paragraph (a), (b), (c), (d), (e) or (f) thereof unless such supplier can demonstrate, through written documentation, the alleged misconduct and/or lack of performance by the dealer, and furthermore, such supplier shall also show that the reason for the decision to terminate, cancel or not to renew the dealer agreement was in no way caused by such supplier.



**§ 696-d. Violations. It shall be deemed a violation of this article for a dealer:**

1. To require a retail purchaser of new equipment, as a condition of sale and delivery thereof, also to purchase special features, appliances, parts, or accessories not desired or requested by the purchaser. However, this prohibition shall not apply to special features, appliances, parts or accessories which are already installed when the equipment is received by the dealer from the supplier thereof.

2. To represent and sell as new and unused any equipment which has been used and operated for demonstration or other purposes without stating to the purchaser prior to the sale the approximate amount of use the equipment has experienced or undergone.

3. To use any false or misleading advertisement in connection with such dealer's business.

**§ 696-e. Parts and return of parts.**

1. Every supplier shall provide for the availability of repair parts throughout the reasonable useful life of any equipment sold.

2. Every supplier shall provide to its dealers, on an annual basis, an opportunity to return a portion of their surplus parts inventory for credit. The surplus procedure shall be administered as follows:

(a) The supplier may notify its dealers of a time period, of at least sixty days duration, during which time dealers may submit their surplus parts list and return their surplus parts to the supplier.

(b) If a supplier has not notified a dealer of a specific time period for returning surplus parts within the preceding twelve months, then it shall authorize and allow the dealer's surplus parts return request within thirty days after receipt of such request from the dealer.

(c) Pursuant to the provisions of this subdivision, a supplier must allow surplus parts return authority on a dollar value of parts equal to six percent of the total dollar value of parts purchased by the dealer from the supplier during the twelve month period immediately preceding the notification to the dealer by the supplier of the surplus parts return program, or the month the dealer's return request is made, whichever is applicable. However, the dealer may elect to return a dollar value of the dealer's surplus parts equal to less than six percent of the total dollar value of parts purchased by the dealer from the supplier during the preceding twelve month period as provided herein.

(d) No obsolete or superceded part, may be returned, but any part listed in the supplier's current returnable parts list or any superceded part that has not been the subject of the supplier's parts return program at the date of notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable, shall be eligible for return and the credit specified. However, returned parts must be in new and unused condition and must have been purchased by the dealer from the supplier to whom they are returned unless no program for the return of such part has been offered by the supplier.

(e) The minimum lawful credit to be allowed for returned parts shall be eighty-five percent of the cost thereof as listed in the supplier's current returnable parts list at the date of the notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable.

(f) Applicable credit hereunder must be issued or furnished to the dealer within sixty days after receipt of the dealer's returned parts by the supplier.

(g) Packing and return freight expense incurred in any return of surplus parts pursuant to the terms of this subdivision shall be borne by the supplier.



(h) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of equipment, attachments and repair parts which provides the dealer with greater protection. The dealer can elect to pursue either his or her contract remedy or the remedy provided by state law, and an election by the dealer to pursue his or her contract remedy shall not bar his or her right to the remedy provided herein as to those repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law. Additionally, nothing shall preclude a price for return parts which is greater than the total allowance for parts allowed herein and the shipping allowance, in such case the packing, freight and handling expense charge, shall not be borne by the supplier.

**§ 696-f. Repurchase of equipment upon termination.**

1. Whenever any dealer enters into a dealer agreement with a supplier wherein the dealer agrees to maintain an inventory of equipment or repair parts and the dealer agreement is subsequently terminated, the supplier shall repurchase the inventory as provided in this article. The dealer may keep the inventory if such dealer desires provided the dealer has a contractual right to do so. If the dealer has any outstanding debts to the supplier then part or all of the repurchase amount equal to, but no more than, the total amount of the debts may be credited to the dealer's account.

2. If the dealer decides not to keep the inventory, the supplier shall repurchase that inventory previously purchased and held by the dealer on the date of termination of the contract. The supplier shall pay one hundred percent of the net cost of all new, unsold, undamaged and complete equipment which is resalable, less a reasonable allowance for depreciation due to usage by the dealer and deterioration directly attributable to weather conditions at the dealer's location and less all programs and discounts previously allowed thereon and eighty-five percent of the current net price of all new, unused, undamaged repair parts and accessories which are listed in the supplier's effective price list or catalogue less all programs and discounts previously allowed thereon by the supplier to the dealer. The supplier shall also pay the dealer six 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 supplier shall have the option of performing the handling, packing and loading or paying one hundred percent of the current net price of parts in lieu of paying the six percent sum imposed herein for these services and in this case the dealer shall make available to the supplier, at the dealer's address or at the places at which it is located, all equipment previously purchased by the dealer, after receipt by the dealer of the full repurchase amount.

3. Upon payment within sixty days of the repurchase amount to the dealer, the title and right to possession of the repurchased inventory shall transfer or be transferred to the supplier.

4. The provisions of this article shall not require the repurchase from the dealer of: (a) any repair part which has a limited storage life or is otherwise subject to deterioration;

(b) any single repair part which is priced as a set of two or more items;

(c) any repair part which because of its condition is not resalable as a new part without repairing or reconditioning;

(d) any inventory for which the dealer is unable to furnish evidence reasonably satisfactory to the supplier, of good title, free and clear of all claims, liens and encumbrances;

(e) any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so;



- (f) any equipment which is not in new, unused, undamaged, and complete condition;
- (g) any equipment which has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the supplier receives a reasonable allowance for such usage or deterioration;
- (h) any repair parts which are not in new, unused, undamaged condition;
- (i) any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the dealer agreement; or
- (j) any inventory which was acquired by the dealer from any source other than the supplier.

5. If any supplier shall fail or refuse to repurchase any inventory covered under the provisions of this article within sixty days after termination of a dealer's contract, he shall be civilly liable for a total amount of one hundred fifteen percent of the current net price of the inventory plus any freight charges paid by the dealer plus all cost of financing such repurchase, including courts costs and reasonable attorneys' fees allowed by the court.

#### **§ 696-g. Death or incapacity of dealer.**

1. In the event of the death or incapacity of the dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heirs at law, if the dealer died intestate, or the executor under the terms of the deceased dealer's last will and testament, if said dealer died testate, repurchase the inventory from the estate as if the supplier had terminated the contract and the inventory repurchase provisions of section six hundred ninety-six-f of this article are made expressly applicable hereto. The heirs or executor shall have nine months from the date of the death of the dealer or majority stockholder to exercise the option under this article. However, nothing in this article shall require the repurchase of inventory if the heirs or executor and the supplier enter into a new dealer agreement, or if a successor to the dealer is established pursuant to paragraph (j) of subdivision three of section six hundred ninety-six-b of this article. This section shall be subject to that portion of the supplier's agreement with the dealer pertaining to death of the dealer or succession, to the extent such agreement is not inconsistent herewith.

2. The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of equipment, attachments and repair parts which provides the dealer with greater protection. The heirs or executor can elect to pursue either the contract remedy or the remedy provided herein, and an election by the heirs or executor to pursue contract remedy shall not bar such heirs' or executor's right to the remedy provided herein as to those equipment, attachments and repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law. Additionally, nothing shall preclude a price for return parts which is greater than the total allowance for parts allowed herein and the shipping allowance, in such case the packing, freight and handling expense charge shall not be borne by the supplier.

#### **§ 696-h. Warranty.**

1. Every supplier shall provide a fair and reasonable warranty agreement on any new equipment which it sells and shall fairly compensate each of its dealers for labor and parts used in fulfilling such warranty agreement. All claims for payment under such warranty agreements made by dealers hereunder for such labor and parts shall be paid within thirty days following their approval. If such claims are not approved or disapproved within thirty days after their receipt they shall be deemed approved and shall be paid within the time specified herein. When any such claim is disapproved, the dealer who submits it shall be notified in writing of its disapproval within such

period and each such notice shall state the specific grounds upon which the disapproval is based. Any special handling of claims required of the dealer by the supplier and not uniformly required of all dealers of that make, may be enforced only after thirty days' notice in writing to the dealer and upon good and sufficient reason.

2. (a) The minimum basis for compensating said dealer for warranty work as provided for herein shall be calculated for labor, repair service, diagnostic work, and parts and shall be adequate for the work to be performed in accordance with the reasonable and customary account of time required to complete such work including such reasonable time as required by the dealer for the diagnosis of such repair, expressed in hours and fractions of hours multiplied by the dealer's established hourly retail labor rate. Prior to filing a claim for reimbursement for warranty work, the dealer must notify the supplier of his hourly retail labor rate. The minimum lawful basis for compensation to the dealer for parts used in fulfilling said warranty work shall be at the dealer's costs thereof, including all freight and handling charges applicable thereto, plus at least twenty percent of said sum to reimburse the dealer's reasonable costs of doing business and providing such warranty service on the supplier's behalf. (b) Nothing contained in this section shall prohibit a supplier from auditing such warranty claims submitted by such dealers for a period of up to one year following the payment of such claims and further provided that such suppliers may seek reimbursement from the dealers on all warranty claims which were misrepresented.

3. The provisions of this section shall not apply to a dealer agreement in writing that provides for compensation to a dealer for warranty costs either in the sale price of the equipment to the dealer or in the form of a lump sum payment or to any other written agreement approved by both the dealer and supplier that provides for equitable terms consistent with paragraph 2(a) of this section.

#### **§ 696-j. Separability.**

If any provision of this article or the application of such provision to any person or circumstance is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected by such holding.