

# MASSACHUSETTS

General Laws  
PART I  
TITLE XV  
CHAPTER 93G Equipment Dealers

## Definitions

Section 1. For purposes of this chapter the following words shall have the following meanings:

“Current net price”, the price listed in the supplier’s price list or catalog in effect at the time the dealer agreement is terminated, less any applicable discounts allowed.

“Dealer”, a person, corporation or partnership primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, light industrial equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories and repair parts. The term “dealer” shall not include a single line dealer primarily engaged in retail sale and service of industrial, forestry and construction equipment.

“Dealer agreement”, a written or oral contract or agreement between a dealer and a wholesaler, manufacturer or distributor by which the dealer is granted the right to sell or distribute goods or services or to use a trade name, trademark, service mark, logotype, or advertising or other commercial symbol.

“Inventory”, farm, utility, forestry, or light industrial equipment, implements, machinery, yard and garden equipment, attachments or repair parts; provided, however, that inventory shall not include heavy construction equipment.

“Net cost”, 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. In the event of termination of a dealer agreement by the supplier, “net cost” shall include the reasonable cost of assembly and/or disassembly performed by a dealer.

“Single line dealer”, a person partnership or corporation who:

- (1) has purchased seventy-five per cent or more of the dealer’s total new product inventory from a single supplier; and
- (2) who has a total annual average sales volume for the previous three years in excess of twenty million dollars for the entire territory for which the dealer is responsible.

“Supplier”, a wholesaler, manufacturer, or distributor of inventory who enters into a dealer agreement with a dealer.

“Termination of dealer agreement”, the cancellation, nonrenewal or discontinuance of the agreement.

## Termination

Section 2. (a) Notwithstanding any agreement to the contrary, prior to the termination of a dealer agreement, a supplier shall notify the dealer of the termination not less than one hundred and twenty days prior to the effective date of the termination. No supplier may terminate, cancel or fail to renew a

dealer agreement without cause. For purposes of this paragraph cause means failure by an equipment dealer to comply with requirements imposed upon the equipment dealer by the dealer agreement; provided however, that the requirements are not substantially different from those requirements imposed upon other similarly situated dealers in the commonwealth.

(b) The supplier may immediately terminate an agreement at any time upon the occurrence of any of the following events:

(1) the filing of a petition for bankruptcy or for receivership either by or against the dealer;

(2) the making by the dealer of an intentional and material misrepresentation as to the dealer's financial status;

(3) any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;

(4) the commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;

(5) a change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;

(6) withdrawal of an individual proprietor, partner, major shareholder, or the involuntary termination of the manager of the dealership, or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier.

(c) Unless there is an agreement to the contrary, a dealer who intends to terminate a dealer agreement with the supplier shall notify the supplier of such intent not less than one hundred and twenty days prior to the effective date of the termination.

(d) Notification required by either party under this section shall be in writing and shall be made by certified mail or by delivery in hand and shall contain:

(1) a statement of intention to terminate the dealer agreement;

(2) a statement of the reasons for the termination; and

(3) the date on which the termination shall be effective.

### **Repurchase of Dealers Inventory**

Section 3. (a) Whenever a dealer enters into a dealer agreement under which the dealer agrees to maintain an inventory, and the agreement is terminated by either party as provided in this chapter, the supplier, upon written request of the dealer filed within thirty days of the effective date of the termination, shall repurchase the dealer's inventory as provided in this chapter. There shall be no requirement for the supplier to repurchase inventory pursuant to this section if:

(1) the dealer has made an intentional and material misrepresentation as to the dealer's financial status;

(2) the dealer has defaulted under a chattel mortgage or other security agreement between the dealer and supplier; or

(3) the dealer has filed a voluntary petition in bankruptcy.

(b) Whenever a dealer enters into a dealer agreement in which the dealer agrees to maintain an inventory and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person who succeeds to the stock of the majority stockholder, repurchase the inventory as if the agreement has been terminated. The heir, personal representative, guardian or succeeding stockholder has six months from the date of the death of the dealer or majority stockholder to exercise the option under this chapter.

**Examination of dealer's books and records; payment for repurchased inventory**

Section 4. (a) Within ninety days from receipt of the written request of the dealer, a supplier under the duty to repurchase inventory pursuant to this chapter may examine the books and records of the dealer to verify the eligibility of any item for repurchase. Except as otherwise provided in this chapter, the supplier shall repurchase from the dealer all inventory, required signage, special tools, books, supplies, data processing equipment and software previously purchased from the supplier or other qualified vendor and in the possession of the dealer on the date of termination of the dealer agreement.

(b) The supplier shall pay the dealer:

(1) One hundred per cent of the net cost of all new and undamaged and complete farm and utility tractors, forestry equipment, light industrial equipment, farm implements, farm machinery, yard and garden equipment, purchased within the past thirty-six months from the supplier, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location;

(2) ninety per cent of the current net prices of all new and undamaged repair parts;

(3) eighty-five per cent of the current net price of all new and undamaged superseded repair parts;

(4) eighty-five per cent of the latest available published net price of all new and undamaged non-current repair parts;

(5) either the fair market value, or assume the lease responsibilities of any specific data processing hardware that the supplier required the equipment dealer to acquire or purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment required and approved by the supplier to communicate with the supplier; and

(6) repurchase at seventy-five per cent of the net cost specialized repair tools, signage, books and supplies previously purchased, pursuant to requirements of the supplier and held by the equipment dealer on the date of termination. Specialized repair tools must be unique to the supplier product line and must be complete and in usable condition.

(7) repurchase at average as-is value shown in current industry guides dealer-owned rental fleet financed by the supplier or its finance subsidiary.

(c) The party that initiated the termination of the dealer agreement shall pay the cost of the return, handling, packing and loading of such inventory.

(d) Payment to the dealer required under this section shall be made by the supplier not later than forty-five days after receipt of the inventory by the supplier. A penalty shall be assessed in the amount of two per cent per day of any outstanding balance over the required forty-five days. The supplier shall be entitled to apply any payment required under this section to be made to the dealer, as a set-off against any amount owed by the dealer to the supplier.

Items exempted from repurchase

Section 5. The provisions of this chapter shall not require the repurchase from a dealer of:

(1) a repair part with a limited storage life or otherwise subject to physical or structural deterioration including, but not limited to, gaskets or batteries;

(2) a single repair part normally priced and sold in a set of two or more items;

(3) a repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer;

(4) any inventory that the dealer elects to retain;

(5) any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier;

(6) any inventory that was acquired by the dealer from a source other than the supplier.

**Request for Transfer; consent by supplier**

Section 6. (a) No supplier shall unreasonably withhold or delay consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership, whenever the dealer to be substituted meets the material and reasonable business and financial requirements of the supplier. Should a supplier determine that a proposed transferee does not meet such requirements, it shall give the dealer written notice stating the specific reasons for withholding consent. No prospective transferee may be disqualified to be a dealer because it is a publicly held corporation. A supplier shall have ninety days to consider a dealer's request to make a transfer under this paragraph.

(b) No supplier shall unreasonably withhold consent to the transfer of the dealer's business to a member or members of the family of the dealer or the principal owner of the dealership, if the family member meets the reasonable business ability, business experience, and character standards of the supplier, and if the transferee can demonstrate that the dealership will be adequately capitalized. Should a supplier determine that the designated family member does not meet those requirements; the supplier shall provide the dealer with written notice of the supplier's objection and specific reasons for withholding its consent. As used in this subsection, "family", means and includes spouse, parent, siblings, children, stepchildren and lineal descendants, including those by adoption of the dealer or principal owner of the dealership.

(c) In any dispute as to whether a supplier has denied consent in violation of this section, the supplier shall have the burden of proving a substantial and reasonable justification for the denial of consent.

**Supplier's security interests**

Section 7. Nothing contained in this chapter may be construed to release or terminate a perfected security interest of the supplier in the inventory of the dealer.

**Consumer warranties; claims**

Section 8. Whenever a supplier and a dealer enter into an agreement providing consumer warranties, the supplier shall pay any warranty claim made for warranty parts and service within thirty days after its receipt and approval. The supplier shall approve or disapprove a warranty claim within thirty days after its receipt. If a claim is not specifically disapproved in writing thirty days after its receipt, it shall be deemed to be approved and payment shall be made by the supplier within thirty days.

**Binding arbitration**

Section 9. Nothing contained in this chapter shall bar the right of a dealer agreement to provide for binding arbitration of disputes. Any arbitration shall be consistent with the provisions of this chapter and other applicable law. The place of any arbitration shall be in the city or county in which the dealer maintains the dealer's principal place of business in the commonwealth.

**Incorporation of chapter provisions; wavier**

Section 10. (a) The provisions of this subchapter shall be deemed to be incorporated in every dealer agreement made under the provisions of this chapter and shall supersede and control all other provisions of the agreement to the contrary. No supplier may require any dealer to waive compliance with any provision of this chapter, and any dealer agreement purporting to do so shall be void and unenforceable to the extent of such waiver or variance.

(b) Nothing in this chapter shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

**Assumption of obligation by successor**

Section 11. The obligation of any supplier or dealer shall be applied to and made an obligation of any successor in interest or assignee of such supplier or dealer. A successor in interest shall include, but not be limited to, any purchaser of the assets or stock, and surviving entity resulting from merger or liquidation, any receiver or any trustee of the original supplier or dealer.