

Questions to ask

BEFORE

**acquiring a new
Manufacturer Line**

INSIDE:

“10 Important Provisions In A Contract”
and

“Questions To Ask Before Signing
A New Contract”



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This booklet was researched and developed by the Ohio-Michigan Equipment Dealers Association. The industry owes a great deal of gratitude to this group for its dedicated efforts and for sharing this publication with the entire industry.

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Preface

HOW MANY TIMES have you heard a fellow dealer complain about the settlement of issues arising from the termination of a dealer-manufacturer contract? For the most part, a large majority of these complaints stem from misunderstandings of the terms of a contract or agreement. Had the dealer possessed more knowledge up front – at the time the contract is negotiated and signed – many of these problems could be avoided. It is just as important to understand the impact of terms the manufacturer is unwilling to change or modify through negotiations.

Questions to Ask Before Acquiring a New Manufacturer Line is published to reduce misunderstandings by providing the dealer a comprehensive list of important contract provisions and the questions that should be raised at the right time – before the contract is signed. Obviously, not every question can be covered in any one presentation. However, those included here should stimulate a dealer’s thought process to educate, to enlighten, and to enhance the dealer’s knowledge of the business relationship being considered.

Therefore, this booklet is divided into two sections. The first, entitled “*10 Important Provisions In A Contract*,” provides a quick reference guide covering the topics having the greatest potential impact on the dealer. The second section, entitled “*Questions To Ask Before Signing A New Contract*,” amplifies each topic by offering numerous questions to consider.

The goal of this booklet is to provide the foundation for understanding the dealer-manufacturer relationship, the potential for positive growth and, should it ever be necessary, the rights and duties of the dealer in the event the relationship is terminated.

NOTE: While the terminology addresses dealer-manufacturer relations, this booklet can also be used as a resource for dealer-supplier relations. It is also important to note that the terms of any dealership agreement could be modified by state statutes that make certain provisions unenforceable or impose additional obligations, such as a requirement that the manufacturer repurchase equipment or parts upon termination of the contract. Dealers should become familiar with such laws before negotiating any new contract and assess whether it is worth negotiating a provision if the state laws that already protect the dealer will simply override that provision.

SECTION I

10 Important Provisions In A Contract

1. **Term of Contract and Legal Authority**

The contract should define the time period of the contract and what representatives of the manufacturer have the legal authority to secure binding agreements. It is important to review and understand any clauses providing for automatic renewal upon expiration of the initial contract term.

2. **Trade Area and Market Penetration**

The contract should specify the dealer's trade area or area of responsibility and define the manufacturer's minimum market penetration requirements.

3. **Financial Requirements**

The contract should specify the required financial information to be provided to the manufacturer. The contract should not require personal guarantees, however, any requirement for personal guarantees of the dealership's obligations should be noted and carefully studied.

4. **Product Stocking and Performance Standards**

The contract or a separate document incorporated into the contract should specify the minimum stocking requirements and minimum annual purchasing requirements for wholegoods and parts.

5. **Terms of Payment**

The contract or separate document should specify the terms of payment for wholegoods and parts, including reserve holdback, recourse, freight, and floor planning.

6. **Parts Return Policy**

The contract or separate document should fully explain the manufacturer's parts return policy, including frequency, restocking charges, and any limitations.

7. **Service Tools and Personnel Training**

The contract or a separate document incorporated into the contract should specify the minimum requirements for service shop tools and equipment as well as training requirements for parts and service personnel.

8. Manufacturer Warranty Policies

The warranty policy should specify the manufacturer's equipment-and-parts warranty policies; including what is covered, filing procedures, and the basis for dealer reimbursement – i.e., cost vs. retail.

9. Contract Termination

The contract should fully explain the rights and responsibilities of both parties should one party desire to terminate the contract; including the grounds, if any, upon which a right to terminate can be invoked, any cure provisions/appeal process (in case of dispute), terms of settlement, and provisions for return of wholegoods and parts.

10. Other Requirements

The contract should clearly list any other requirements, such as signage, computer and communication systems, and parts and service manuals.

SECTION II

Questions To Ask Before Signing A New Contract

These are questions and concerns you should consider before signing a contract with a manufacturer. We strongly recommend that you consult with your attorney before entering into any contract. Obviously, some of these questions should be posed to the manufacturer while others should be answered by reference to the contract terms and raised in negotiation only if necessary.

1. Term of Contract and Legal Authority

A. CONTRACT CONSIDERATIONS

- Is the dealer-manufacturer contract written or oral? (Oral agreements are difficult to enforce.)
- What is the time period of the contract?
- Must the contract be renewed periodically or is it an ongoing contract with automatic renewals?

B. MODIFICATIONS TO CONTRACT

- Are any modifications, made by your traveling representatives, binding?
- Are written agreements, made by your traveling representatives, binding?
- If not, who has authority to secure binding agreements?

C. POWER OF ATTORNEY

- Does the contract or separate document give the manufacturer/supplier a power of attorney?
- If so, what does it mean? Also, what is the manufacturer/supplier allowed to do under this power of attorney?

2. Trade Area and Market Penetration

A. TRADE AREA

- Is a dealer's trade area clearly defined? How are trade areas determined? Will I be the only dealer in the trade area? Does the manufacturer include my trade area in the contract? How many dealers does the manufacturer have in my trade area? Who are they? How long have they been selling the manufacturer's product?
- If I decide to sign, does the manufacturer plan to add any other dealers in my trade area? If not, is this expressly provided in the contract?
- Is there a pass-through service fee for sales made by another dealer within my trade area? What does the contract provide?
- How will I be informed of new dealership opportunities in my area? Will I be given the chance to operate these dealerships?

SECTION II **Questions To Ask Before Signing A New Contract**

B. MARKET PENETRATION

- Will the manufacturer help me with a marketing plan?
- As a new dealer, will I receive any special price considerations?
- As a new dealer, am I entitled to any special delivery of new equipment and/or parts?
- Does the contract impose market penetration requirements? If so, how are they measured?
- Over what period of time must this be achieved?
- What ramifications will occur if these requirements are not met?
- Are manufacturer personnel available for demonstrations/open houses? Is there any cost?
- What co-op advertising programs does the manufacturer offer?
- What percentage does the manufacturer pay?
- Does the manufacturer offer a retail financing program? What equipment is eligible? Does it include recourse or reserve holdbacks? Is there an opportunity for dealer income via origination fees?
- What sales literature and promotional material (e.g. in-store signs) are available? What is the cost?
- How far in advance will I be notified of model changes, so I can adjust my inventory accordingly?

3. **Financial Requirements**

A. WHAT INFORMATION IS REQUIRED

- What financial information does the manufacturer require?
- What does the manufacturer require as collateral for the security agreement – e.g., parts and rolling stock, in addition to floor-planned equipment?

B. PERSONAL GUARANTEES

- Does the manufacturer require a personal guarantee? To what extent?
- Is it limited to floor-planned items? How can it be waived? Is it only for a limited time period?

C. OTHER CONSIDERATIONS

- What is the minimum initial wholegoods and parts order required?
- Do all levels in the distribution chain have product liability insurance?
- What proof of your continuing product liability insurance do I receive?

4. **Product Stocking and Performance Standards**

A. INVENTORY REQUIREMENTS

- What are the minimum annual stocking requirements on wholegoods and parts?

B. ANNUAL PERFORMANCE STANDARDS

- What are the required minimum annual purchasing requirements on wholegoods and parts?
- How far in advance must annual and/or seasonal wholegoods orders be placed?

5. Terms of Payment

A. WHOLEGOODS

- What is the manufacturer pricing structure?
- Is the dealer price based on volume, quantity ordered, geographical area, or other considerations?
- What are your company's provisions for floor planning my equipment?
- Does the manufacturer offer a cash discount on wholegoods purchases?
- What are my rights/responsibilities regarding transfer of equipment between dealers?

B. PARTS

- What is the dealer discount on parts?
- Does the manufacturer supply suggested retail and/or cost prices?
- What are the additional discounts for placing annual and/or seasonal parts orders?
- What additional discounts are available on stock orders versus supplemental and emergency orders?
- Who pays the freight on stock orders? Backorders? Supplemental orders? Emergency orders?
- How often are there price increases on parts? When was the manufacturer's last price increase?
- Does the manufacturer offer a cash discount on parts purchases?
- Are there price incentives to utilize automated services?

6. Parts Return Policy

A. PARTS RETURN

- What is the manufacturer's parts return policy? Is there a required frequency?
- Is there any restocking charge for returned parts?
- Are there any parts or classifications of parts that are not returnable?
- Does the manufacturer offer an annual (or other) parts return program? Are there any limitations by type of parts or percentage of annual sales?

B. OTHER CONSIDERATIONS

- How are parts orders entered – mail, phone, fax, or computer modem?
- Where are parts shipped from? How are they usually shipped? Can parts be drop shipped?
- What is the lag time between a price change and the receiving of a computerized price update?

7. Service Tools and Personnel Training

A. SERVICE TOOLS

- What special service shop tools/equipment are required?
- What is the cost?

SECTION II **Questions To Ask Before Signing A New Contract**

B. PERSONNEL TRAINING

- What employee training or schools does the manufacturer offer for sales, parts, and service personnel?
- How often are these schools offered?
- Are there any requirements or cost to attend?
- What access do my service technicians have to the manufacturer's technical experts?

8. **Manufacturer Warranty Policies**

A. COVERED ITEMS

- What are the manufacturer's equipment and parts warranties?
- Does the manufacturer's warranties include the power train, body, and chassis? For how long?
- Does the manufacturer offer an extended warranty? What is covered? For how long? What is not covered?
- Are pick-up/delivery charges included?
- Am I required to accept warranty work for equipment not sold by me?
- Will the manufacturer pay me for labor on Product Improvement Programs in accordance with its warranty policy?

B. FILING PROCEDURES

- What is the procedure for filing warranty claims?
- What supporting evidence/documentation is required for warranty claims?
- How are warranty payments handled? Check or credit on account?

C. BASIS FOR DEALER REIMBURSEMENT

- What is the manufacturer's reimbursement policy on parts – retail, cost or cost plus?
- What is the manufacturer's reimbursement policy for labor – retail, cost, a schedule or flat rate?
- What is the manufacturer's reimbursement policy for pick-up/delivery charges, handling fees?

9. **Contract Termination**

A. TERMINATION BY MANUFACTURER

- What are the causes for which the manufacturer can terminate the contract?
- How much notice is required?
- What are the terms of settlement for return of wholegoods, parts, signs, special shop tools, service manuals, and computer systems?
- Is there a cure provision for non-performance under the contract?
- Do I have a longer cure period if the manufacturer terminates me for lack of market share?
- Are these terms included in the contract?

SECTION II **Questions To Ask Before Signing A New Contract**

B. TERMINATION BY DEALERS

- How much notice is required?
- What are the terms of settlement if the dealer terminates the contract?
- Are these terms included in the contract?

10. **Other Requirements**

A. PHYSICAL REQUIREMENTS

- What signs with the manufacturer's logo are required? What is the cost?
- Does the manufacturer require that I have a specific computer system and/or specific software?
- Will the manufacturer require me to make capital improvements to my dealership?
- Does the manufacturer require that I have a dedicated system to communicate with your company?
- Is there any charge for parts and service manuals?

B. OTHER SERVICES AVAILABLE

- For dealers on a computer system, does the manufacturer charge for price updates?
- For dealers with computers, does the manufacturer offer online parts/equipment availability?
- What sales incentive programs have been offered in the last 12 months? Are any planned for the next 12 months?

11. **Company and Product Information**

A. COMPANY INFORMATION

- Does the manufacturer have an organizational chart and a list of company officers?
- What change of ownership/management has occurred at the manufacturer and distributor levels within the last 12 months, 24 months?
- Does the manufacturer have any information regarding pending or contemplated ownership/management changes?
- What financial information about the manufacturer will be provided to me?
- How financially sound is the manufacturer?
- What is the manufacturer's current debt load?

B. DEALER-MANUFACTURER RELATIONS

- What type of dealer council does the manufacturer have?
- Who are the representatives to the council?
- What is the process to settle dealer-manufacturer disputes?

SECTION II **Questions To Ask Before Signing A New Contract**

C. PRODUCT DISTRIBUTION CHANNELS

- Does the manufacturer sell via distributors, manufacturer representatives, mass merchants, Internet, or dealer direct?
- Does the manufacturer distribute dealer product(s) via hardware stores, department stores, or mass merchandisers?
- Does the manufacturer distribute dealer product(s) via merchants that do not provide parts and service departments?
- Does the manufacturer sell directly to the end-user?

D. PRODUCT INFORMATION

- What significant model changes have occurred within the last 12 months?
- What recall/modifications have occurred within the last 12 months?
- Are any significant model changes planned for the next 12 months?
- Has the manufacturer experienced any prolonged strikes, work slowdowns, or work interruptions in the past that have curtailed or stopped production of equipment and/or parts?
- Have there been any adverse product liability settlements against your company?

12. Dealer Transfers

- What procedures does the manufacturer have in place for approving transfers of my dealership?



North American Equipment Dealers Association

1195 Smizer Mill Road Fenton, MO 63026-3480

Phone: 636/349-5000 • Fax: 636/349-5443