

The Vermont Statutes Online

Title 9: Commerce And Trade

Chapter 107: Equipment And Machinery Dealerships

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- **§ 4071. Definitions**

As used in this chapter:

(1) "Current net price" means the price listed in the supplier's price list or catalogue in effect at the time the dealer agreement is terminated, less any applicable discounts allowed.

(2)(A) "Dealer" means a person primarily engaged in the business of retail sales of inventory.

(B) "Dealer" does not include a "single line dealer," a person primarily engaged in the retail sale and service of industrial, forestry, and construction equipment who:

(i) has purchased 75 percent or more of his or her new inventory from a single supplier; and

(ii) has a total annual average sales volume for the previous three years in excess of \$100 million for the entire territory for which the dealer is responsible.

(3) "Dealer agreement" means a written or oral agreement between a dealer and a supplier by which the supplier gives the dealer 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.

(4)(A) "Inventory" means:

(i) farm, utility, forestry, yard and garden, or industrial:

(I) tractors;

(II) equipment;

(III) implements;

(IV) machinery;

(V) attachments;

(VI) accessories; and

(VII) repair parts;

(ii) snowmobiles, as defined in 23 V.S.A. § 3201(5), and snowmobile implements, attachments, garments, accessories, and repair parts; and

(iii) all-terrain vehicles, as defined in 23 V.S.A. § 3801(1), and all-terrain vehicle implements, attachments, garments, accessories, and repair parts.

(B) "Inventory" does not include heavy construction equipment.

(5) "Net cost" means 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 or disassembly performed by a dealer.

(6) "Supplier" means a wholesaler, manufacturer, or distributor of inventory who enters into a dealer agreement with a dealer.

(7) "Termination" of a dealer agreement means the cancellation, nonrenewal, or noncontinuance of the agreement. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994; amended 2015, No. 142 (Adj. Sess.), § 2.)

- **§ 4072. Termination of dealer agreement**

(a) Requirements for notice.

(1) A person shall provide a notice required in this section by certified mail or by personal delivery.

(2) A notice shall be in writing and shall include:

(A) a statement of intent to terminate the dealer agreement;

(B) a statement of the reasons for the termination, including specific reference to one or more requirements of the dealer agreement that serve as the basis for termination, if applicable; and

(C) the effective date of termination.

(b) Termination by a supplier for cause.

(1) In this subsection, "cause" means the failure of a dealer to meet one or more requirements of a dealer agreement, provided that the requirement is reasonable, justifiable, and substantially the same as requirements imposed on similarly situated dealers in this State.

(2) A supplier shall not terminate a dealer agreement except for cause.

(3) To terminate a dealer agreement for cause, a supplier shall deliver a notice of termination to the dealer at least 120 days before the effective date of termination.

(4) A dealer has 60 days from the date it receives a notice of termination to meet the requirements of the dealer agreement specified in the notice.

(5) If a dealer meets the requirements of the dealer agreement specified in the notice within the 60-day period, the dealer agreement does not terminate pursuant to the notice of termination.

(c) Termination by a supplier for failure to meet reasonable marketing or market penetration requirements.

(1) Notwithstanding subsection (b) of this section, a supplier shall not terminate a dealer agreement for failure to meet reasonable marketing or market penetration requirements except as provided in this subsection.

(2) A supplier shall deliver an initial notice of termination to the dealer at least 24 months before the effective date of termination.

(3) After providing an initial notice, the supplier shall work with the dealer in good faith to meet the reasonable marketing or market penetration requirements specified in the notice, including reasonable efforts to provide the dealer with adequate inventory and marketing programs that are substantially the same as those provided to dealers in this State or region, whichever is more appropriate under the circumstances.

(4) If the dealer fails to meet reasonable marketing or market penetration requirements specified in the notice by the end of the 24-month period, the supplier may terminate the dealer agreement by providing a final notice of termination not less than 90 days prior to the effective date of the termination.

(5) If a dealer meets the reasonable marketing or market penetration requirements within the 24-month period, the dealer agreement shall not terminate.

(d) Termination by a supplier upon a specified event. Notwithstanding subsection (b) of this section, a supplier may terminate immediately a dealer agreement if one of the following events occurs:

(1) A person files a petition for bankruptcy or for receivership on behalf of or against the dealer.

(2) The dealer makes an intentional and material misrepresentation regarding his or her financial status.

(3) The dealer defaults on a chattel mortgage or other security agreement between the dealer and the supplier.

(4) A person commences the voluntary or involuntary dissolution or liquidation of a dealer organized as a business entity.

(5) Without the prior written consent of the supplier:

(A) The dealer changes the business location specified in the dealer agreement or adds an additional dealership of the supplier's same brand.

(B) An individual proprietor, partner, or major shareholder withdraws from, or substantially reduces his or her interest in, the dealer.

(6) The dealer fails to operate in the normal course of business for eight consecutive business days, unless the failure to operate is caused by an emergency or other circumstances beyond the dealer's control.

(7) The dealer abandons the business.

(8) The dealer pleads guilty to or is convicted of a felony that is substantially related to the qualifications, function, or duties of the dealer.

(e) Termination by a dealer. Unless a provision of a dealer agreement provides otherwise, a dealer may terminate the dealer agreement by providing a notice of termination to the supplier at least 120 days before the effective date of termination. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994; amended 2015, No. 142 (Adj. Sess.), § 2.)

- **§ 4073. Supplier's duty to repurchase inventory**

(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 30 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 had been terminated. The heir, personal representative, guardian, or succeeding stockholder has 180 days from the date of the death of the dealer or majority stockholder to exercise the option under this chapter. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994.)

- **§ 4074. Repurchase terms**

(a)(1) Within 90 days from receipt of the written request of the dealer, a supplier under the duty to repurchase inventory pursuant to section 4073 of this title may examine any books or records of the dealer to verify the eligibility of any item for repurchase.

(2) Except as otherwise provided in this chapter, the supplier shall repurchase from the dealer the following items that the dealer previously purchased from the supplier, or other qualified vendor approved by the supplier, that are in the possession of the dealer on the date of termination of the dealer agreement:

(A) inventory; and

(B) required signage, special tools, books, manuals, supplies, data processing equipment, and software.

(b) The supplier shall pay the dealer:

(1) 100 percent of the net cost of all new, undamaged, and complete inventory, other than repair parts, purchased from the supplier within the 30-month period preceding the date of termination, less a reasonable allowance for deterioration attributable to weather exposure at the dealer's location.

(2) 100 percent of the current net prices of all new and undamaged repair parts.

(3) 95 percent of the current net prices of all new and undamaged superseded repair parts.

(4) 95 percent of the latest available published net price of all new and undamaged noncurrent repair parts.

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

(6) 75 percent of the net cost of specialized repair tools, signage, books, and supplies previously purchased, pursuant to requirements of the supplier and held by the dealer on the date of termination.

(7) Average as-is value shown in current industry guides for dealer-owned rental fleet financed by the supplier or its finance subsidiary, provided the equipment was purchased from the supplier within 30 months of the date of termination.

(c) The party that initiates the termination of the dealer agreement shall pay the cost of the return, handling, packing, and loading of the inventory. If the termination is initiated by the supplier, the supplier shall reimburse the dealer five percent of the net parts return credited to the dealer as compensation for picking, handling, packing, and shipping the parts returned to the supplier.

(d) Payment to the dealer required under this section shall be made by the supplier not later than 45 days after receipt of the inventory by the supplier. A penalty shall be assessed in the amount of daily interest at the current New York prime rate plus three percent of any outstanding balance over the required 45 days. The supplier shall be entitled to apply any payment required under this section to be made to the dealer as a setoff against any amount owed by the dealer to the supplier. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994; amended 2015, No. 142 (Adj. Sess.), § 2.)

- **§ 4075. Exceptions to repurchase requirement**

The provisions of this chapter shall not require a supplier to repurchase from a dealer:

(1) a repair part with a limited storage life or otherwise subject to physical or structural deterioration, including 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 unless the source was approved by the supplier;

(7) a specialized repair tool that is not unique to the supplier's product line, or that is over 10 years old, incomplete, or in unusable condition;

(8) a part identified by the supplier as nonreturnable at the time of the dealer's order; or

(9) supplies that are not unique to the supplier's product line, or that are over three years old, incomplete, or in unusable condition. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994; amended 2015, No. 142 (Adj. Sess.), § 2.)

- **§ 4076. Transfer of business**

(a) No supplier shall unreasonably withhold consent to the transfer of the interest of any dealer, officer, member, or partner to any other party or parties. However, no dealer, officer, member, or partner shall have the right to sell, transfer, or assign the equipment dealership or power of management or control of the dealership without the written consent of the supplier. Should a supplier determine that the designated transferee does not meet its reasonable business ability, business experience, character standards, and capitalization requirements, the supplier shall provide the dealer with written notice of the supplier's objection and specific reasons for withholding consent. A supplier shall have 90 days to consider a dealer's written request to make such a transfer.

(b) No supplier shall unreasonably withhold consent 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, 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. A supplier shall have 90 days to consider a dealer's written request to make a transfer to a family member. As used in this subsection, "family" means and includes the spouse, parent, siblings, children, stepchildren, and lineal descendants, including those by adoption of the dealer or principal owner of the dealer.

(c) Notwithstanding subsection (b) of this section, in the event that a supplier and dealer have duly executed an agreement concerning succession rights prior to the equipment dealer's death, and if the agreement has not been revoked or otherwise terminated by either party, the agreement shall be observed.

(d) In any dispute arising under this section, the supplier shall have the burden of proving a substantial and reasonable justification for the denial of consent. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994.)

- **§ 4077. Uniform commercial practice**

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. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994; amended 2001, No. 86 (Adj. Sess.), § 1, eff. May 2, 2002.)

- **§ 4077a. Prohibited acts**

(a)(1) A supplier shall not coerce or attempt to coerce a dealer to accept delivery of inventory that the dealer has not voluntarily ordered.

(2) A supplier may require a dealer to accept delivery of inventory that is:

(A) necessary to maintain inventory in a quantity, and of the model range, generally sold in the dealer's geographic area of responsibility; or

(B) safety-related and pertinent to inventory generally sold in the dealer's geographic area of responsibility.

(b) A supplier shall not condition the sale of inventory on a requirement that the dealer also purchase any other goods or services, provided that a supplier may require a dealer to purchase parts reasonably necessary to maintain inventory used in the dealer's geographic area of responsibility.

(c)(1) A supplier shall not prevent, coerce, or attempt to coerce a dealer from investing in, or entering into an agreement for the sale of, a competing product line or make of inventory.

(2) A supplier shall not require, coerce, or attempt to coerce a dealer to provide a separate facility or personnel for a competing product line or make of inventory.

(3) Subdivisions (1)-(2) of this subsection do not apply unless a dealer:

(A) maintains a reasonable line of credit for each product line or make of inventory;

(B) maintains the principal management of the dealer; and

(C) remains in substantial compliance with the supplier's reasonable facility requirements, which shall not include a requirement to provide a separate facility or personnel for a competing product line or make of inventory.

(d) A supplier shall not discriminate in the prices it charges for inventory of like grade and quality it sells to similarly situated dealers, provided that a supplier may use differentials that allow for a difference in the cost of manufacture, sale, or delivery

resulting from the differing methods or quantities in which the supplier sells or delivers the inventory.

(e) A supplier shall not change the geographic area of responsibility specified in a dealer agreement without good cause, which for purposes of this subsection includes the dealer's market penetration within the assigned geographic area of responsibility and changes in the inventory warranty registration pattern in the area surrounding the dealer's geographic area of responsibility. (Added 2001, No. 86 (Adj. Sess.), § 2, eff. May 2, 2002; amended 2015, No. 142 (Adj. Sess.), § 2.)

- **§ 4078. Warranty obligations**

(a) A supplier shall:

(1) specify in writing a dealer's reasonable obligation to perform warranty service on the supplier's inventory;

(2) provide the dealer a schedule of reasonable compensation for warranty service, including amounts for diagnostic work, parts, labor, and the time allowance for the performance of warranty service; and

(3) compensate the dealer pursuant to the schedule of compensation for the warranty service the supplier requires it to perform.

(b) Time allowances for the diagnosis and performance of warranty service shall be reasonable and adequate for the service to be performed by a dealer that is equipped to complete the requirements of the warranty service.

(c) The hourly rate paid to a dealer shall not be less than the rate the dealer charges to customers for nonwarranty service.

(d) A supplier shall compensate a dealer for parts used to fulfill warranty and recall obligations at a rate not less than the price the dealer actually paid the supplier for the parts plus 20 percent, plus freight and handling if charged by the supplier.

(e) The wholesale price on which a dealer's markup reimbursement is based for any parts used in a recall or campaign shall not be less than the highest wholesale price listed in the supplier's wholesale price catalogue within six months prior to the start of the recall or campaign.

(f)(1) 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 30 days after its receipt and approval.

(2) The supplier shall approve or disapprove a warranty claim within 30 days after its receipt.

(3) If a claim is not specifically disapproved in writing within 30 days after its receipt, it shall be deemed to be approved and payment shall be made by the supplier within 30 days after its receipt.

(g) A supplier violates this section if it:

(1) fails to perform its warranty obligations;

(2) fails to include in written notices of factory recalls to machinery owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects; or

(3) fails to compensate a dealer for repairs required by a recall.

(h) A supplier shall not:

(1) impose an unreasonable requirement in the process a dealer must follow to file a warranty claim; or

(2) impose a surcharge or fee to recover the additional costs the supplier incurs from complying with the provisions of this section. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994; amended 2015, No. 142 (Adj. Sess.), § 2.)

- **§ 4079. Remedies**

(a) A person damaged as a result of a violation of this chapter may bring an action against the violator in a Vermont court of competent jurisdiction for damages, together with the actual costs of the action, including reasonable attorney's fees, injunctive relief against unlawful termination or substantial change of competitive circumstances, and such other relief as the court deems appropriate.

(b) A provision in a dealer agreement that purports to deny access to the procedures, forums, or remedies provided by the laws of this State is void and unenforceable.

(c) Notwithstanding subsection (b) of this section, a dealer agreement may include a provision for binding arbitration of disputes. Any arbitration shall be consistent with the provisions of this chapter and 12 V.S.A. chapter 192, and the place of any arbitration shall be in the county in which the dealer's principal place of business is maintained in this State. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994; amended 2001, No. 86 (Adj. Sess.), § 3, eff. May 2, 2002; 2015, No. 142 (Adj. Sess.), § 2.)

- **§ 4080. Waiver of chapter void**

The provisions of this chapter shall be deemed to be incorporated in every agreement and shall supersede and control all other provisions of the agreement. No supplier may require any dealer to waive compliance with any provision of this chapter. Any contract

or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter may be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994.)

- **§ 4081. Obligation of successors in interest**

The obligation of any supplier or dealer is applied to and made an obligation of any successor in interest or assignee of the supplier or dealer. A successor in interest includes any purchaser of the assets or stock, any surviving entity resulting from merger or liquidation, any receiver, or any trustee of the original supplier or dealer. (Added 1993, No. 113 (Adj. Sess.), § 1, eff. March 4, 1994.)

- **§ 4082. Forestry and industrial equipment**

(a) The General Assembly finds that geographic restrictions imposed on trade of certain forestry and industrial equipment within the State is not in the public interest. Restrictions on dealers of large and expensive pieces of industrial and forestry equipment to smaller geographical areas within the State unreasonably restrains trade, precludes any meaningful competition among a small number of dealers, and denies to Vermonters purchasing such equipment the benefits of free and open competition. The General Assembly therefore enacts this law to promote the public welfare by providing for free and open trade of large forestry and industrial equipment within the State.

(b) As used in this section, "forestry or industrial equipment" means heavy vehicular equipment and associated implements designed and intended for forestry or industrial purposes, and shall include all mechanical parts for such equipment.

(c) A supplier of forestry or industrial equipment shall not limit the geographic area in which a dealer may sell or deliver inventory. A supplier shall not charge a fee or fine or otherwise penalize a dealer either directly or indirectly for selling, or having sold, inventory to a consumer located outside of the dealer's trade area or primary area of responsibility if the selling dealer agrees in writing to the purchaser that the dealer will provide service during the standard factory warranty period, or otherwise to discriminate in shipping products or filling orders placed by dealers of goods on the basis of the location of the consumer, however these terms might be defined in a dealership agreement. The provisions of this section shall be deemed to be incorporated in every agreement and shall supersede and control all other provisions of the agreement. Any term of a contract or agreement either expressed or implied, including a choice of law provision, which is inconsistent with the provisions of this section or purporting to waive compliance with this section is void and unenforceable to the extent of the waiver or variance.

(d) This section shall apply to all agreements and contracts in effect on June 1, 1997 related to forestry or industrial equipment between suppliers and dealers, and to all

amendments, renewals, or extensions of such agreements, and to all such agreements entered into thereafter.

(e) Repealed.] (Added 1997, No. 59, § 89d, eff. June 30, 1997; amended 1997, No. 144 (Adj. Sess.), § 30, eff. April 27, 1998; 2001, No. 86 (Adj. Sess.), § 4, eff. May 2, 2002.)