

325E.0681 TERMINATIONS OR CANCELLATIONS.

Subdivision 1. **Good cause required.** No equipment manufacturer, directly or through an officer, agent, or employee may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms. In addition, good cause exists whenever:

(a) Without the consent of the equipment manufacturer who shall not withhold consent unreasonably, (1) the equipment dealer has transferred an interest in the equipment dealership, (2) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (3) there has been a substantial reduction in interest of a partner or major stockholder.

(b) The equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it that has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business, or there has been a commencement of dissolution or liquidation of the dealer.

(c) There has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement.

(d) The equipment dealer has defaulted under a security agreement between the dealer and the equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the equipment manufacturer.

(e) The equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business.

(f) The equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer.

(g) The dealer has engaged in conduct that is injurious or detrimental to the dealer's customers or to the public welfare.

(h) The equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Subd. 2. **Notice.** Except as otherwise provided in this subdivision, an equipment manufacturer shall provide an equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice must state all reasons constituting good cause for the action and must provide that the dealer has until expiration of the notice period in which to cure a claimed deficiency. If the deficiency is rectified within the notice period, the notice is void. The notice and right to cure provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (a) to (g).

Subd. 3. **Obligation to repurchase.** If a dealership agreement is terminated, canceled, or discontinued, the equipment manufacturer shall pay to the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, an amount equal to 100 percent

of the net cost of all unused heavy and utility equipment in new condition that has been purchased by the dealer from the manufacturer within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the agreement. This amount must include transportation and reasonable assembly charges that have been paid by the dealer, or invoiced to the dealer's account by the manufacturer. The dealer may elect to keep the merchandise instead of receiving payment, if the contract gives the dealer this right.

Subd. 4. **Repair parts.** (a) The manufacturer shall pay the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, the following:

(1) 95 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the manufacturer on the date of the termination, cancellation, or discontinuance of the agreement;

(2) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the dealer has an invoice if the parts had previously been purchased by the dealer from the manufacturer and are held by the dealer on the date of the termination, cancellation, or discontinuance of the agreement or received by the dealer from the manufacturer after that date;

(3) 50 percent of the most recently published price of all other parts if the price list or catalog is not more than ten years old as of the date of the termination, cancellation, or discontinuance of the agreement;

(4) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the retailer purchased from the wholesaler, manufacturer, or distributor, or an approved vendor of the wholesaler, manufacturer, or distributor, to meet the minimum requirements for the hardware and software as set forth by the wholesaler, manufacturer, or distributor; and

(5) an amount equal to 75 percent of the net cost to the retailer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the retailer pursuant to the requirements of the wholesaler, manufacturer, or distributor. Specialized repair tools or signage that have never been used must be repurchased at 100 percent of the retailer's cost. Specialized repair tools must be unique to the wholesaler's, manufacturer's, or distributor's product line, specifically required by the wholesaler, manufacturer, or distributor, and must be in complete and usable condition. The wholesaler, manufacturer, or distributor may require by contract or agreement that the retailer resell to the wholesaler, manufacturer, or distributor such specialized repair tools and signage for the amounts established in this section or the amount specified in the dealer agreement or contract or fair market value, whichever is greater.

(b) The manufacturer shall pay the dealer, or credit to the dealer's account, if the dealer has an outstanding amount owed to the manufacturer, an amount equal to five percent of the prices required to be paid or credited by this subdivision for all parts, data processing and communications hardware and software, and specialized repair tools and signage returned for the handling, packing, and loading of the parts, data processing and communications hardware and software, and specialized repair tools and signage back to the manufacturer unless the manufacturer elects to perform inventorying, packing, and loading of the parts itself. Upon the payment or allowance of credit to the dealer's account of the sum required by this subdivision, the title to and right to possess the heavy and utility equipment passes to the manufacturer.

However, this section does not affect any security interest that the manufacturer may have in the inventory of the dealer.

Subd. 5. Payment; interest. Payment required to be made under this section must be made not later than 60 days from the date the heavy and utility equipment is received by the manufacturer, and if not by then paid, the amount payable by the manufacturer bears interest at the maximum rate allowed by law from the date the agreement was terminated, canceled, or discontinued until the date payment is received by the dealer.

Subd. 6. Notice of intent to return. In lieu of returning the heavy and utility equipment to the manufacturer, the dealer may advise the manufacturer that the dealer has heavy and utility equipment that the dealer intends to return. The notice of the dealer's intention to return must be in writing, sworn to before a notary public as to the accuracy of the listing of heavy and utility equipment and that all of the items are in usable condition. The notice must include the name and business address of the person or business who has possession and custody of them and where they may be inspected. The list may be verified by the manufacturer. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the dealer, to accept payment or a credit to the dealer's account on behalf of the dealer, and to release the heavy and utility equipment to the manufacturer. The notice constitutes the appointment of the escrow agent to act on the dealer's behalf.

Subd. 7. Manufacturer inspection. (a) The manufacturer has 30 days from the date of the mailing of the notice under subdivision 6, which must be by certified mail, in which to inspect the heavy and utility equipment and verify the accuracy of the dealer's list.

(b) The manufacturer shall, within ten days after inspection:

(1) pay the escrow agent;

(2) give evidence that a credit to the account of the dealer has been made if the dealer has an outstanding amount due the manufacturer; or

(3) send to the escrow agent a "dummy credit list" and shipping labels for the return of the heavy and utility equipment to the manufacturer that are acceptable as returns.

Subd. 8. Payment or credit requirements. If the manufacturer sends a credit list as provided under subdivision 7 to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns must accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the dealer, or the credit list with payment, the title to and the right to possess the heavy and utility equipment acceptable as returns passes to the manufacturer. The escrow agent shall ship or cause to be shipped the heavy and utility equipment acceptable as returns to the manufacturer unless the manufacturer elects to personally perform the inventorying, packing, and loading of the heavy and utility equipment. When they have been received by the manufacturer, notice of their receipt shall be sent by certified mail to the escrow agent who shall then disburse 90 percent of the payment it has received, less its actual expenses and a reasonable fee for its services, to the dealer. The escrow agent shall keep the balance of the funds in the dealer's escrow account until it is notified that an agreement has been reached as to the nonreturnables. After being notified of the agreement, the escrow agent shall disburse the remaining funds and dispose of any remaining heavy and utility equipment as provided in the agreement. If no agreement is reached in a reasonable time, the escrow agent may refer the matter to an arbitrator who has authority to resolve all unsettled issues in the dispute.

Subd. 9. **Provisions of contract supplemented.** This section is supplemental to an agreement between the dealer and the manufacturer covering the return of heavy and utility equipment. The dealer may elect to pursue either the dealer's contract remedy or the remedy provided in this section. An election by the dealer to pursue the contract remedy does not bar the dealer's right to the remedy provided in this section as to the heavy and utility equipment not affected by the contract remedy. Notwithstanding anything contained in this section, the rights of a manufacturer to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods is not affected.

Subd. 10. **Death of dealer; repurchase from heirs.** In the event of the death of the dealer or majority stockholder in a corporation operating a dealership, the manufacturer shall, unless the heir or heirs of the deceased agree to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this section. In the event the heir or heirs do not agree to continue to operate the dealership, it shall be deemed a cancellation or discontinuance of the contract by the dealer under subdivision 1.

Subd. 11. **Failure to pay sums specified on cancellation of contracts; liability.** In the event that a manufacturer, upon the cancellation of a dealership agreement, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer is liable in a civil action to be brought by the dealer or the dealer's heir or heirs for: (1) 100 percent of the net cost of the heavy or utility equipment; (2) transportation and reasonable assembly charges which have been paid by the dealer; (3) 95 percent of the current net price of repair parts, 100 percent of invoiced prices, and 50 percent of the price of all other parts as provided in subdivision 1; (4) payment for data processing and communication hardware and software, or specialized repair tools or signage as outlined in subdivision 1, paragraph (d); and (5) five percent for handling, packing, and loading, if applicable.

Subd. 12. **Exceptions.** Unless a dealer has delivered parts to an escrow agent pursuant to subdivision 1, this section does not require the repurchase from a dealer of a repair part where the dealer previously has failed to return the repair part to the manufacturer after being offered a reasonable opportunity to return the repair part at a price not less than: (1) 100 percent of the net price of the repair part as listed in the then current price list or catalog; (2) 100 percent of the invoiced price; and (3) 50 percent of the most recent published price as provided in subdivision 1.

This section does not require the repurchase from a dealer of repair parts that have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets, and batteries, unless those items have been purchased from the wholesaler, manufacturer, or distributor within the past two years; repair parts which because of their condition are not resalable as new parts without reconditioning; repair parts which have lost required traceability for quality assurance requirements; and repair parts that were marked nonreturnable or future nonreturnable when the retailer ordered them.

History: 1989 c 267 s 2; 1991 c 71 s 1-10; 1993 c 13 art 2 s 10; 2001 c 72 s 5-9