WEST VIRGINIA CODE CHAPTER 47 ARTICLE 11F

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§47-11F-1. Short title.

This article shall be known and may be cited as the "West Virginia Farm Equipment Dealer Contract Act."

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§47-11F-2. Definitions.

(a) As used in this article, unless the context in which used clearly requires otherwise:

(1) "Agreement" or "contract" means a written or oral agreement or contract between a dealer and a supplier, by the terms of which the dealer is granted the right to sell the supplier's equipment and the dealer is required to order and maintain inventory from such supplier in excess of $10,000 at current net price.

(2) "Current net price" means the price listed in the supplier's price list in effect at the time an agreement is terminated, less any applicable discount allowed.

(3) "Dealer" means any person, firm, partnership, association, corporation or other business entity engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing and who maintains a total inventory of new equipment and repair parts having an aggregate value of not less than $25,000 at current net price and who provides repair service for such equipment.

(4) "Inventory" means the tractors, implements, attachments, equipment, and repair parts that the dealer purchased from the supplier, including, but not limited to, any data processing hardware and software, special service tools, and business signs the supplier has required the dealer to purchase and maintain.

(5) "Net cost" means the price paid by the dealer to 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 and the reasonable cost of assembly incurred or performed by the dealer.

(6) "Supplier" means a wholesaler, manufacturer or distributor who enters into an agreement with a dealer and who supplies inventory to such dealer.

(7) "Termination" means the termination, cancellation, nonrenewal or discontinuation of an agreement.

(b) The terms "farm," "construction," "industrial" or "outdoor power," when used to refer to tractors, implements, attachments or repair parts shall have the meaning commonly used and understood among dealers and suppliers subject to this article.

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§47-11F-3. Notice of termination of agreement or contract.

(a) The provisions of any agreement to the contrary notwithstanding, a supplier who terminates a contract or agreement with a dealer shall notify such dealer of the termination not less than six months prior to the effective date thereof: Provided, That the supplier may terminate the agreement at anytime after the occurrence of any of the following described events:

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

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

(3) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;

(4) The close out or sale or discontinuance of all or at least fifty percent of the dealer's business related to the handling of goods or products of the supplier;

(5) If the dealer is a partnership or corporation, the commencement of dissolution or liquidation, whether voluntary or involuntary of such dealer;

(6) 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;

(7) The 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 approval of the supplier. If the dealership is operated from more than one location, the involuntary termination of a manager at one or more branch locations without the prior written approval of the supplier shall not be grounds for termination of the dealership by the supplier;

(8) The revocation or discontinuance by a guarantor or of any guarantee of the dealer's present or future obligations to the supplier.

(b) The provisions of any agreement to the contrary notwithstanding, a dealer who terminates an agreement or contract with a supplier shall notify such supplier of the termination not less than six months prior to the effective date thereof.

(c) Any agreement or contract may also be terminated by the written mutual consent of the parties; and the effective date of such termination may be such as is mutually agreed upon by the parties.

(d) Notification under this section shall be in writing and shall be given by certified mail, return receipt requested, or by personal delivery to the recipient and the receipt thereof

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acknowledged in writing by such recipient. Any such notice of termination shall contain (i) a statement of intention to terminate the agreement; (ii) a statement of the reasons for such termination; and (iii) the date on which the termination is to take effect.

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§47-11F-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.

(a) The provisions of any agreement to the contrary notwithstanding, whenever an agreement or contract between a dealer and a supplier is terminated by either party, the supplier shall repurchase the dealer's inventory as provided in this article unless the dealer chooses to keep the inventory and so advises the supplier in writing.

(b) The supplier's obligation to repurchase the dealer's inventory shall apply to any successor in interest or assignee of that supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original supplier.

(c) If the dealer dies or becomes incompetent, the supplier shall, at the option of the heir, repurchase the inventory to the same extent as if the agreement had been terminated. The heir has one year from the date of the death of the dealer or from the date such dealer is determined to be incompetent to exercise the options of the dealer under this article.

(d) The supplier shall repurchase from the dealer within ninety days from the date of termination of the agreement or contract all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement or contract, including, but not limited to, all data processing hardware and software, special services tools, and business signs that the supplier required the dealer to purchase.

(e) The supplier shall pay the dealer:

(1) One hundred percent of the net cost of all new, unused, undamaged and complete inventory, except repair parts, special service tools, business signs and data processing equipment, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location; and

(2) Ninety percent of the current net price of all new, unused, and undamaged repair parts that are currently listed in the supplier's price book as of the effective date of such termination; and

(3) Seventy-five percent of the net cost of all undamaged special service tools and business signs in the possession of the dealer which are currently available; and

(4) Net cost less twenty percent per year depreciation of all data processing hardware and software that the supplier required the dealer to purchase or the supplier shall assume all data processing hardware and software lease responsibilities of the dealer if the supplier required the dealer to lease the data processing hardware and software from a specific supplier of such hardware and/or software.

(f) The inventory shall be returned F.O.B. (which means "free on board") to the dealership and the dealer shall bear the expenses and risk of putting them into the possession of the

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carrier. The supplier may perform the handling, packing, and loading of repair parts returned and withhold, as a charge for these services, five percent of the current net price of the returned repair parts. The dealer and the supplier may each furnish a representative to inspect all inventory and certify as to its acceptability before being returned.

(g) The supplier shall pay the full repurchase amount as required by subsection (d) of this section not later than ninety days after receipt of the inventory by the supplier.

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§47-11F-5. Exceptions to repurchase requirement.

Any other provisions of this article to the contrary notwithstanding, a supplier shall not be required to repurchase from the dealer (i) a repair part of or with a limited storage life or which is otherwise subject to deterioration; that is to say by way of example and not in limitation thereof, such items as gaskets or batteries; (ii) multiple packaged repair parts when the package has been broken; (iii) a repair part that because of its condition is not resalable as a new part without repackaging or reconditioning; (iv) any portion of the inventory that the dealer chooses to retain; or (v) any inventory that was acquired by the dealer from a source other than the supplier, except for data processing hardware and software, special service tools, and business signs that the supplier required the dealer to purchase; and (vi) any tractor, implement, attachment or equipment that the dealer purchased from the supplier more than thirty-six months before the date of the termination notice.

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§47-11F-6. Applicability of uniform commercial practices.

(a) The provisions of this article do not affect a security interest of the supplier in the inventory of the dealer.

(b) A repurchase of inventory pursuant to this article shall not be subject to the bulk transfer provisions of article six, chapter forty-six of this code.

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§47-11F-7. Warranty claims.

If after the termination of a contract or agreement, the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination of such contract or agreement, the supplier shall accept or reject such claim within a minimum of forty-five days from the day the supplier received the warranty claim. A warranty claim not rejected before the expiration of such forty-five-day period shall be deemed to be accepted by the supplier. In the event a warranty claim is accepted by the supplier as prescribed in this section, such claim shall be paid by such supplier not later than sixty days from the date the supplier received the claim.

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§47-11F-8. Civil remedies applicable.

(a) The provisions of any agreement to the contrary notwithstanding, if a supplier fails or refuses without just cause to repurchase any inventory or portion thereof when required to do so under the provisions of this article within the time periods prescribed thereby, such supplier shall be civilly liable for: (1) 100 percent of the current net price of the inventory or portion thereof not repurchased; (2) the amount the dealer paid for freight costs from the supplier's location to the dealer's location; (3) the reasonable cost of assembly performed by the dealer; (4) reasonable attorney's fees and court costs incurred by the dealer in requiring the supplier to comply with this article of the code; and (5) interest on the current net price of the inventory or portion thereof not repurchased, computed at the prime rate of interest commencing the 91st day after termination of the contract agreement, and recomputed quarterly thereafter.

(b) Any person who suffers monetary loss due to a violation of this article or because he or she refuses to accede to a proposal for an arrangement that, if consummated, is in violation of this article, may bring civil action to enjoin further violation and to recover damages sustained by him or her together with the costs of the suit, including reasonable attorney's fees and court costs.

(c) If there is a failure to provide the required notice of termination or otherwise comply with provisions of this article, the supplier shall be civilly liable for the dealer's loss of business for the time period the supplier is in violation of the notice of termination provisions of the article, plus reasonable attorney's fees and court costs.

(d) The provisions of this section are in addition to all legal or equitable remedies available at law, as well as any remedies available pursuant to any agreement between the supplier and dealer.

(e) A civil action commenced under the provisions of this article may be brought until the expiration of five years after the violation complained of is or reasonably should have been discovered, whichever occurs first.

(f) Subsection (e) of this section applies if a supplier fails or refuses to repurchase a self-propelled vehicle designed for farm use, which is the subject of the contract, with a horse power unit of 20 or greater, and which vehicle is defined in §46A-6A-2 of this code as a "motor vehicle" for purposes the Consumer Protection – New Motor Vehicle Warranties, that has an issue which is not corrected after being returned to the supplier three times.

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