



DEALER/MANUFACTURER RELATIONSHIP Key Principles

1. Termination of Dealer Agreement

- a. Good cause must be required (i.e., a substantial violation of an essential and reasonable term that the manufacturer consistently enforces)
- b. The dealer must be given notice and a reasonable opportunity to correct the problem subject to very few exceptions where the issue cannot be corrected.
- c. Market share defaults must provide for a significantly longer cure period and market share standards must be reasonable and accurate.

2. Substantial Change in a Dealer's Competitive Circumstances

- a. Same principles on good cause, cure period and market share apply to substantial changes in a dealer's competitive circumstances
- b. The terms of the dealer agreement do not impact the determination of whether a dealer's competitive circumstances have been changed
- c. Primary focus of restriction is on activities that adversely change the ability of a dealer to compete with other dealers supplied by the same or affiliated manufacturer
- d. Significant events, such as termination of a single store (without terminating dealer agreement), may be specifically defined to be substantial changes in competitive circumstances

3. Inventory Repurchase Requirements

- a. Repurchase required upon any termination or store closure
- b. Repurchase prices must be based on a dealer's investment in wholegoods and attachments and the current net price for parts
- c. Repurchase requirements apply to unused/undamaged inventory with additional requirements to purchase demo/rental units with appropriate adjustments
- d. Repurchase obligations relating to other significant dealer purchases from manufacturers may be appropriate (e.g., special tools, business systems and signage)

4. Ownership Transfers

- a. Transfers of non-controlling ownership interests should be permitted without consent
- b. Transfers of controlling ownership interests to trusts or family members for estate planning purposes should be permitted without consent as long as the CEO (or equivalent) does not change as part of the transfer without manufacturer consent
- c. Transfers of controlling ownership interests (or of dealerships and related interests in dealer agreements) to non-family members subject to manufacturer consent, but (1) consent cannot be unreasonably withheld, (2) reasons for withholding consent must be communicated in writing in a timely manner and reflect consistent

standards and (3) the manufacturer has the burden of proof to establish that consent was reasonably withheld

5. Management Changes

- a. Manufacturer consent to a management change is limited to a change in the CEO (or equivalent)
- b. Manufacturer consent to management change subject to same limitations as in 4(c) above relating to transfers of ownership interests
- c. Manufacturer must provide a reasonable period for dealer to hire replacement CEO

6. Amendments/New Dealer Agreements

- a. A dealer agreement cannot be amended without the dealer's specific written consent to that amendment
- b. A new dealer agreement will not be applicable to a dealer without the dealer's specific written consent to that agreement
- c. No adverse action may be taken against a dealer if the dealer does not consent to an amendment or new dealer agreement and the dealer's refusal to consent will not constitute good cause for termination of the dealer agreement or a substantial change in the dealer's competitive circumstances

7. Purity

- a. A manufacturer may not restrict a dealer from purchasing products from other manufacturers, including requirements relating to separate facilities, personnel, financial statements or capital structure
- b. A manufacturer may not condition the approval of the sale of a dealership or transfer of controlling interest based on the dealer's agreement to a restriction prohibited by 7(a)
- c. Exception from restrictions may be acceptable if narrowly construed and the dealer is given an exclusive territory in exchange for agreeing to the restriction

8. Warranty Procedures

- a. Dealers must receive fair compensation for work performed based on dealership's normal practices for non-warranty work
- b. Payment must be paid within a reasonable period of time
- c. Warranty procedures to be satisfied for payment must be reasonable and allow dealers an opportunity to correct deficient applications for payment
- d. Audit periods for warranty claims must be limited to reasonable periods of time

9. Inventory Ordering

- a. Inventory ordering requirements should not be permitted, but manufacturers may measure performance through appropriate market share standards
- b. Appropriate limits on discrimination in pricing and filling orders are important