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QUESTIONS TO ASK BEFORE ACQUIRING A NEW MANUFACTURER

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SECTION I

10 DESIRABLE 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.

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 and should not require unconditional personal guarantees.

4. PRODUCT STOCKING AND PERFORMANCE STANDARDS

The contract or separate document 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 separate document 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 the contract be terminated; including the causes, a cure provision/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 ACQUIRING A NEW MANUFACTURER

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.

1. TERM OF CONTRACT AND LEGAL AUTHORITY

A. CONTRACT CONSIDERATIONS

Is the dealer-manufacturer contract written or oral? (Oral agreements are difficult to enforce.) Is the arrangement to sell equipment on a consignment basis? What is the time period of the contract? Must the contract be renewed periodically or is it an ongoing contract?

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? Do you include my trade area in the contract? Will you offer a protected trade territory? How many dealers do you have in my trade area? Who are they? How long have they been selling your products? If I decide to sign, do you plan to add any other dealer in my trade area? Do you provide a pass-through service charge fee to me for sales made by another dealer within my trade area? How will I be informed of new dealership opportunities in my area? Will I be given the chance to operate these dealerships?

B. MARKET PENETRATION

Will you help me with a marketing plan for the next 12 months? As a new dealer, what special price considerations will I receive? As a new dealer, am I entitled to any special delivery of new equipment and/or parts? What market penetration am I expected to achieve? Over what period of time must this be achieved? What ramifications will occur if these expectations are not met? Are manufacturer personnel available for demonstrations/open houses? Is there any cost? What co-op advertising programs do you offer? What percentage do you pay? Do you 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 (i.e. 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 do you require? What do you require as collateral for the security agreement? (i.e. parts and rolling stock, in addition to floor-planned equipment)

B. PERSONAL GUARANTEES

Do you 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 is 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? Do you 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? Do you 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 your last price increase? Do you offer a cash discount on parts purchases? Are there price incentives to utilize automated services?

6. PARTS RETURN POLICY

A. PARTS RETURN

What is your 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? Do you 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 business system? 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?

B. PERSONNEL TRAINING

What employee training or schools do you 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 your equipment and parts warranties? Do your warranties include the power train, body, chassis? For how long? Do you 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?

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 your reimbursement policy on parts (retail, cost or cost plus)? What is your reimbursement policy for labor (retail, cost, a schedule, or flat rate)? What is your 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, computer systems? Is there a cure provision for non-performance under the contract? Are these terms included in the 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? Do you require that I have a computer system? Do you require that I have a communication system? Is there any charge for parts and service manuals?

B. For dealers on a computer system, do you charge for price updates? For dealers with computers, do you offer on-line 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

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

B. DEALER-MANUFACTURER RELATIONS

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

C. PRODUCT DISTRIBUTION CHANNELS

Do you sell via distributors, or manufacturer representatives, or dealer direct? Do you distribute your product(s) via mass merchandisers? Do you distribute your product(s) via merchants that do not provide parts and service departments? Do you 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?