

FARM AND UTILITY EQUIPMENT ACT (EXCERPT)
Act 341 of 1984

445.1454 Repurchase amount; handling, packing, and loading; effect of payment; subtraction of debts; shipment; undeliverable or unaccepted goods; notice of intent to return; duties of supplier; duties of escrow agent; warranty claims.

Sec. 4. (1) The supplier shall pay 100% of the net cost of all undamaged and complete tractors, equipment, and attachments, which were purchased within 30 months of the termination of the agreement, less an allowance for usage for demonstration or usage for rental, provided the dealer's demonstration and rental programs are not in conflict with the supplier's agreement or written policies, and 90% of the current net price of all new, unused, and undamaged repair parts. The supplier shall pay the dealer 5% of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. The supplier may perform the handling, packing, and loading in lieu of paying the 5% for services.

(2) The supplier shall purchase or repurchase, at the dealer's book value net of depreciation on the date of termination, all dealer supplies, except that:

(a) No electronic device more than 5 years old is required to be purchased.

(b) The supplier shall assume the dealer's lease obligations with respect to any dealer supplies that are leased.

(c) The supplier shall pay the dealer at least 75% of the supplier's net price last published for any new dealer supplies purchased from the supplier.

(d) No specialized repair tool that is not complete and in usage condition is required to be purchased.

(3) Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier.

(4) The supplier may subtract from the sums due under subsection (1) or (2) the amount of debts owed by the dealer to the supplier.

(5) With or without the prior consent or authorization of a supplier, a dealer may ship all inventory suitable for repurchase to the supplier, not less than 60 days after the supplier has notified the dealer, or the dealer has notified the supplier by certified mail, that the agreement between them has been terminated. The supplier shall inspect a dealer's inventory within 30 days of termination of the agreement and designate portions of that inventory to be not returnable under this act. However, such a designation received by the dealer more than 30 days after the termination is not effective.

(6) Not more than 90 days from the termination of the agreement, the dealer may ship inventory to any location from which inventory of like kind has been shipped to the dealer in the 12 months preceding the shipment, or if no shipment of such type of inventory has occurred in that time period, to any place of business maintained by the supplier. Freight to such destination shall be paid by the dealer. The supplier shall accept a shipment made pursuant to this subsection.

(7) If a properly shipped shipment is undeliverable, or not accepted by the supplier, the dealer may order the inventory returned, may order it stored for the supplier's account, or may order it liquidated or abandoned by the carrier. All risk of loss to properly shipped but undeliverable or unaccepted goods is the supplier's, including, but not limited to, losses from exposure, liquidation, abandonment, or theft. A supplier's acceptance of a shipment does not constitute an admission that the inventory inspected by the supplier before shipment pursuant to subsection (5) and declared not returnable must be repurchased, but that all properly shipped inventory that is not deliverable or not accepted is considered to have been properly submitted for repurchase, and the supplier is liable to pay the repurchase amount for that inventory.

(8) Instead of the return of the inventory to the supplier under the terms of subsection (7), a dealer may notify a supplier by certified mail that the dealer has inventory that the dealer intends to return. The notice of the dealer's intention to return shall be in writing, sworn to before a notary public as to the accuracy of the listing of inventory and the suitability of the items for repurchase. The notice shall include the name and business address of the person or business who has possession and custody of the inventory and the location where the inventory may be inspected and the list of inventory may be verified. 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 machinery and parts to the supplier. The notice constitutes the appointment of the escrow agent to act on the dealer's behalf regarding the activities described in this subsection. The escrow agent shall be a person or business that is independent of the dealership, dealer principal, or any employees of the dealership or supplier.

(9) The supplier has 30 days from the date of the mailing of the notice described in subsection (8) in which to inspect the inventory and verify the accuracy of the dealer's list. The supplier shall, within 10 days after inspection, do 1 of the following:

- (a) Pay the escrow agent.
- (b) Give evidence that a credit to the account of the dealer has been made if the dealer has outstanding sums due the supplier.
- (c) Send to the escrow agent a credit list and shipping labels for the return of the inventory to the supplier that are acceptable as returns.

(10) If the supplier sends a credit list to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with subsection (9) for the acceptable returns shall accompany the credit list. Upon receipt of the payment, evidence of a credit to the account of the dealer, or the credit list with payment, the title to the inventory acceptable as returns passes to the supplier making the payment or allowing the credit and the supplier is entitled to keep the inventory. The escrow agent shall ship or cause to be shipped the inventory acceptable as returns to the supplier unless the supplier elects to personally perform the inventorying, packing, and loading.

(11) When the inventory has been received by the supplier, notice of the receipt of the inventory shall be sent by certified mail to the escrow agent who shall then disburse 90% of the payment he or she has received, less its actual expenses and a reasonable fee for his or her services, to the dealer. The escrow agent shall keep the balance of the funds in the dealer's escrow account until he or she is notified that an agreement has been reached as to the nonreturnables, after which the escrow agent shall disburse the remaining funds and dispose of any remaining inventory as provided in the settlement.

(12) Whenever an agreement provides for a dealer to service consumer warranties by repairing, returning, or replacing inventory, the supplier shall pay any warranty claim made by or through the dealer for warranty parts or service within 90 days after the notice of termination of the agreement. If a claim is not specifically disapproved in writing during the 90-day period after notice of termination of an agreement, stating in detail the reasons for the disapproval, the claim shall be considered approved and the supplier shall pay the dealer for all parts and service applied to the servicing of the warranty claim.

(13) If a warranty claim is approved or considered approved under subsection (12) but repairs are not made, the supplier is not obligated to pay the dealer. However, the supplier shall accept for return by the dealer any inventory purchased, received, or set aside by the dealer for servicing of the claim unless, while in the possession of the dealer, the inventory has ceased to be in appropriate condition for return.

(14) Inventory in possession of a supplier and identified to a warranty claim made by or through a dealer on the date of the notice of termination of the agreement may be shipped by the supplier, at the dealer's option, provided that if the dealer directs the supplier to ship the inventory after notice of termination of the agreement, that inventory shall not be returnable.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.