Article 26.

Farm Machinery Agreements.

§ 66-180. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Agreement" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which the dealer is granted one or more of the following rights:
   a. To sell or distribute goods or services.
   b. To use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

(2) "Current model" means a model listed in the wholesaler's, manufacturer's, or distributor's current sales manual or any supplements.

(3) "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the agreement is terminated, less any applicable discounts allowed.

(4) "Dealer" means a person engaged in the business of selling at retail farm, construction, utility or industrial, equipment, implements, machinery, attachments, outdoor power equipment, or repair parts.

(5) "Family member" means a spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, or a lineal descendant of the dealer or principal owner of the dealership.

(6) "Good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the agreement if the requirements are not different from those imposed on other dealers similarly situated in this State. In addition, good cause exists in any of the following circumstances:
   a. A petition under bankruptcy or receivership law has been filed against the dealer.
   b. The dealer has made an intentional misrepresentation with the intent to defraud supplier.
   c. Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier or a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier.
   d. Closeout or sale of a substantial part of the dealer's business related to the handling of goods; the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation; or a change, without the prior written approval of the supplier, which shall not be unreasonably withheld, in the location of the dealer's principal place of business or additional locations set forth in the agreement.
   e. Withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.
   f. Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

g. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned the business.
h. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier.
i. The dealer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership.

(7) "Inventory" means farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments, or repair parts.

(8) "Net cost" means the price the dealer paid 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, plus reasonable cost of assembly or disassembly performed by the dealer.

(9) "Supplier" means a wholesaler, manufacturer, distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler, or distributor who enters into an agreement with a dealer.

(10) "Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation.

(11) "Termination" of an agreement means the termination, cancellation, nonrenewal, or noncontinuance of the agreement. (1985, c. 441, s. 1; 2001-343, s. 1.)

§ 66-181. Usage of trade.

The terms "utility" and "industrial," when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with G.S. 25-1-303(c). (1985, c. 441, s. 1; 2006-112, s. 22.)

§ 66-182. Notice of termination of agreements.

(a) Notwithstanding any agreement to the contrary, a supplier who terminates or otherwise fails to renew or substantially changes the competitive circumstances of an agreement with a dealer without good cause shall notify the dealer of the termination not less than 90 days prior to the effective date of the termination and shall provide a 60-day right-to-cure the deficiency. If the deficiency is cured within the allotted time, the notice is void. In the case where cancellation is enacted due to market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. If there is any reason constituting good cause for action, the notice shall state that reason.

(a1) Notwithstanding any agreement to the contrary, a supplier who terminates or otherwise fails to renew or substantially changes the competitive circumstances of an agreement with a dealer for good cause is not required to notify the dealer of the termination or to provide a right-to-cure the deficiency.

(b) Notwithstanding any agreement to the contrary, a dealer who terminates an agreement with a supplier shall notify the supplier of the termination not less than 90 days prior to the effective date of the termination.

(b1) Repealed by Session Laws 2003-195, s. 1, effective October 1, 2003.

(c) Notification under this section shall be in writing and shall be by certified mail or personally delivered to the recipient. It shall contain all of the following:

(1) A statement of intention to terminate the dealership.

(2) A statement of the reasons for the termination.

(3) The date on which the termination takes effect. (1985, c. 441, s. 1; 2001-343, s. 1; 2003-195, s. 1.)

§ 66-183. Supplier's duty to repurchase.

(a) Whenever a dealer enters into an agreement evidenced by a written or oral contract in which the dealer agrees to maintain an inventory, and the agreement 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. If the dealer has any outstanding debts to the supplier, then the repurchase amount may be set off or credited to the retailer's account.

(b) Whenever a dealer enters into an agreement in which the dealer agrees to maintain an inventory, and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person who succeeds to the stock of the majority stockholder, repurchase the inventory as if the agreement had been terminated. The heir, personal representative, guardian, or succeeding stockholder has one year from the date of the death of the dealer or majority stockholder to exercise the option under this Article. (1985, c. 441, s. 1; 2001-343, s. 1.)

§ 66-184. Repurchase terms.

(a) The supplier shall repurchase from the dealer within 90 days after termination of the agreement all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement.

(b) The supplier shall pay the dealer:

(1) One hundred percent (100%) of the current net price of all new, unused, unsold, undamaged, and complete farm, construction, utility, and industrial equipment, implements, machinery, outdoor power equipment, and attachments.

(2) Ninety percent (90%) of the current net price of all new, unused, and undamaged repair and superseded parts.

(3) Seventy-five percent (75%) of the net cost of all specialized repair tools purchased in the previous three years and fifty percent (50%) of the net cost of all specialized repair tools purchased in the previous four through six years pursuant to the requirements of the supplier and held by the dealer on the date of termination. Such specialized repair tools shall be unique to the supplier's product line and shall be in complete and resalable condition. Farm implements, machinery, utility and industrial equipment, and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, shall also be subject to repurchase under this section at its agreed

depreciated value, provided the equipment is in new condition and has not been damaged.

(4) At its amortized value, the price of any specific data processing hardware and software and telecommunications equipment that the supplier required the dealer to purchase within the past five years.

(c) Repealed by Session Laws 2001-343, s. 1.

(d) The supplier shall pay the cost of shipping the inventory from the dealer's location and shall pay the dealer ten percent (10%) of the current net price of all new, unused, undamaged repair parts returned, to cover the cost of handling, packing, and loading. The supplier may perform the handling, packing, and loading instead of paying the ten percent (10%) for the services. The dealer and the supplier may each furnish a representative to inspect all parts and certify their acceptability when packed for shipment.

(e) The supplier shall pay the full repurchase amount to the dealer not later than 30 days after receipt of the inventory. If the dealer has any outstanding debts to the supplier, then the repurchase amount may be credited to the dealer's account.

(f) Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier. Annually, at the end of each calendar year, or after termination or cancellation of the agreement, the dealer's reserve account for recourse, retail sale, or lease contracts shall not be debited by a supplier or lender for any deficiency unless the dealer or the heirs of the dealer have been given at least seven business days' notice by certified or registered United States mail, return receipt requested, of any proposed sale of the equipment financed and an opportunity to purchase the equipment. The former dealer or the heirs of the dealer shall be given quarterly status reports on any remaining outstanding recourse contracts. As the recourse contracts are reduced, any reserve account funds shall be returned to the dealer or the heirs of the dealer in direct proportion to the liabilities outstanding.

(g) In the event of the death of the dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heir, repurchase the inventory from the heir of the dealer or majority stockholder as if the supplier had terminated the agreement. The heir shall have one year from the date of the death of the dealer or majority stockholder to exercise the heir's options under this section. Nothing in this section shall require the repurchase of any inventory if the heir and the supplier enter into a new agreement to operate the retail dealership.

(h) A supplier shall have 90 days in which to consider and make a determination upon a request by a family member to enter into a new agreement to operate the dealership. In the event the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance. This section does not entitle an heir, personal representative, or family member to operate a dealership without the specific written consent of the supplier.

(i) Notwithstanding the provisions of this section, in the event that a supplier and a dealer have executed an agreement concerning succession rights prior to the dealer's death, and if the agreement has not been revoked, that agreement shall be enforced even if it designates someone other than the surviving spouse or heir of the decedent as the successor. (1985, c. 441, s. 1; 2001-343, s. 1.)

§ 66-185. Exceptions to repurchase requirement.

This Article does not require the repurchase from a dealer of:

(1) A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, except for industrial "press on" or industrial pneumatic tires.
(2) A single repair part that is priced as a set of two or more items.
(3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning.
(3a) Any repair part that is not in new, unused, undamaged condition.
(4) An item of inventory for which the dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier.
(5) Any inventory that the dealer chooses to keep.
(6) Any inventory that was ordered by the dealer after either party's receipt of notice of termination of the agreement.
(6a) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased, as provided in G.S. 66-184, shall be considered new and unused.
(6b) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that were purchased more than 36 months prior to notice of termination of the agreement.
(7) Any inventory that was acquired by the dealer from a source other than the supplier. (1985, c. 441, s. 1; 2001-343, s. 1.)

§ 66-186. Uniform commercial practice.

(a) This Article does not affect a security interest of the supplier in the inventory of the dealer.

(b) Repealed by Session Laws 2004-190, s. 4, effective January 1, 2005.

(c) The dealer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment. Failure of the supplier to provide a representative within 60 days shall result in automatic acceptance by the supplier of all returned items. (1985, c. 441, s. 1; 2001-343, s. 1; 2004-190, s. 4.)

§ 66-187. Warranty obligations.

(a) Whenever a supplier and a dealer enter into an agreement, the supplier shall pay any warranty claim made by the dealer for warranty parts or service within 30 days after its approval. The supplier shall approve or disapprove a warranty claim within 30 days after its receipt. If a claim is disapproved, the manufacturer, wholesaler, or distributor shall notify the dealer within 30 days stating the specific grounds upon which the disapproval is based. If a claim is not specifically disapproved in writing within 30 days after its receipt it is approved and payment must follow within 30 days.

(b) Whenever a supplier and a dealer enter into an agreement, the supplier shall indemnify and hold harmless the dealer against any judgment for damages or any settlement agreed to by the supplier, including court costs and a reasonable attorney's fee, arising out of a complaint, claim, or lawsuit including negligence, strict liability, misrepresentation, breach of warranty, or rescission of the sale, to the extent the judgment or settlement relates to the manufacture, assembly, or design of inventory, or other conduct of the supplier beyond the dealer's control.

(c) If, after termination of an agreement, the dealer submits a claim to the manufacturer, wholesaler, or distributor for warranty work performed prior to the effective date of the termination, the manufacturer, wholesaler, or distributor shall accept or reject the claim within 30 days of receipt.

(d) If a claim is not paid within the time allowed under this section, interest shall accrue at the maximum lawful interest rate.

(e) Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof. The cost of the work shall be computed by multiplying the time required to complete the work by the dealer's established customer hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or distributor for whom the dealer is performing warranty work of the dealer's established customer hourly retail labor rate before the dealer performs any work.

(f) Expenses expressly excluded under the warranty of the manufacturer, wholesaler, or distributor to the customer shall neither be included nor required to be paid for warranty work performed, even if the dealer requests compensation for the work performed.

(g) The dealer shall be paid for all parts used by the dealer in performing warranty work. Payment shall be in an amount equal to the dealer's net price for the parts, plus a minimum of fifteen percent (15%).

(h) The manufacturer, wholesaler, or distributor has a right to adjust compensation for errors discovered during an audit and, if necessary, to adjust claims paid in error.

(i) The dealer shall have the right to accept the reimbursement terms and conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and conditions of this section. (1985, c. 441, s. 1; 2001-343, s. 1.)

§ 66-187.1. Prohibited acts.

No supplier shall do any of the following:

(1) Coerce any dealer to accept delivery of equipment, parts, or accessories which the dealer has not ordered voluntarily, except as required by any applicable law, or unless the parts or accessories are safety parts or accessories required by the supplier.

(2) Condition the sale of additional equipment to a dealer upon a requirement that the dealer also purchase other goods or services, except that a supplier may require the dealer to purchase those parts reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area.

(3) Coerce a dealer into refusing to purchase equipment manufactured by another supplier.

(4) Terminate, cancel, or fail to renew or substantially change the competitive circumstances of the retail agreement based on the results of any circumstance beyond the dealer's control, including a natural disaster such as a sustained drought, high unemployment in the dealership market area, or a labor dispute. (2001-343, s. 1.)

§ 66-188. Failure to repurchase; civil remedy.

(a) If a supplier fails or refuses to repurchase any inventory covered under the provisions of this Article within the time periods established in G.S. 66-184, the supplier is civilly liable for one

hundred percent (100%) of the current net price of the inventory, any freight charges paid by the dealer, the dealer's reasonable attorney's fee and court costs, and interest on the current net price of the inventory computed at the legal rate of interest from the 91st day after termination of the agreement.

(b) Notwithstanding any agreement to the contrary, and in addition to any other legal remedies available, any person who suffers monetary loss due to a violation of this Article or because he refuses to accede to a proposal for an arrangement that, if consummated, is in violation of this Article, may bring a civil action to enjoin further violations and to recover damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.

(b1) The provisions of G.S. 66-182 through G.S. 66-187.1 shall not be waivable in any contract or agreement, and any such attempted waiver shall be null and void.

(c) A civil action commenced under the provisions of this Article shall be brought within four years after the violation complained of is or reasonably should have been discovered, whichever occurs first. (1985, c. 441, s. 1; 2001-343, s. 1.)

§ 66-189. Reserved for future codification purposes.