



NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION

Dealer-Supplier Agreements

Mutual Terms and Principles of a Business Relationship

What dealers, distributors, manufacturers, and suppliers
need to know before entering into a dealer agreement.

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The North American Equipment Dealers Association (NAEDA) is an international organization that represents nearly 5,500 retail agricultural, construction, large property/rural lifestyle, and outdoor power equipment dealers in the United States and Canada. NAEDA is an association with 17 affiliate regional and provincial associations throughout North America.

One of the primary purposes of equipment dealer associations is to assist dealers in building relationships with manufacturers, distributors and suppliers. Dealers encourage the development of this supply chain through industry association events and communication tools such as dealer meetings, conferences, trade shows, and association publications. NAEDA and its affiliates are uniquely positioned to assist in development and support of the supply chain that brings products and services to the ultimate producer market.

The mission of NAEDA is to build the best business environment for North American equipment dealers. NAEDA was established in 1900 and continues today to provide services and benefits to equipment dealers.

This document may be evaluated periodically by NAEDA and modified when and where appropriate. Responses to questions regarding clarification or interpretation of the materials in this brochure can be submitted to NAEDA or its affiliate associations listed in this brochure.

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Preface

The North American Equipment Dealers Association (NAEDA) has prepared this brochure as a quick reference guide to cover topics of interest to dealers, manufacturers, distributors, and suppliers when dealing with their product lines. The intent of this brochure is to provide the foundation for understanding the dealer/supplier relationship, the potential for positive growth and the duties and responsibilities expected in the relationship. For purposes of this brochure, the mention of “distributor,” “manufacturer,” and “supplier” are considered to mean one and the same.

Suppliers are also encouraged to become familiar with the different provincial or state laws when negotiating with a dealer on any contract to assess the legal impacts now and in the future. This brochure does not attempt to cover or provide legal interpretation of each and every provincial or state law. NAEDA's affiliate associations are the best contact concerning each respective provincial or state law and their regulations (See Appendix on page 8 for a list of affiliate associations or visit www.naeda.com for a map showing affiliates and pertinent contact information).

Business Profile

Dealers should be provided with a comprehensive overall business profile that includes, but is not limited to, the supplier's company profile, background, structure, and references. Essential information should include: legal entity name, address, registered agent in the U.S., contact information for contractual and warranty representatives, telephone and facsimile numbers, along with a Web site address.

A company's background and structure should include: year founded, ownership (public or private), industries served, equipment listings and products, available finance programs to dealers and to customers, and a record of past financial performance. In addition, a list of officers, field staff, and manufacturing, distribution and marketing facilities would be helpful.

In regards to company references, a listing of professional, distribution and affinity partnerships help a dealer decide on whether to offer a supplier's products.

Important Contract Provisions for Dealers

1. Term of Contract and Legal Authority

Before signing any agreement with a distributor, manufacturer or supplier, a dealer should consult with an attorney and consider the following:

- A. Contract Considerations
 - Is the dealer contract written or oral? [Note: Oral agreements may be difficult to enforce.]
 - What is the initial term of the contract?
 - Will the contract automatically renew at the end of the initial term or be reviewed by both parties prior to renewal?

- Will there be supplier certification requirements to maintain a contract?
 - B. Modifications to Contract
 - Do company-assigned field representatives have the authority to make “binding” contract modifications? If yes, do they have to be in writing?
 - If a field representative does not have authority to make contract modifications, who within the company has authority to secure binding agreements and modifications?
 - C. Power of Attorney
 - Does the contract or separate document related to the contract give a manufacturer/distributor/supplier a power of attorney?
 - If yes, what does it mean and what is authorized under this power of attorney?

2. Trade Area and Market Penetration

Dealers want to know about the specifics of the dealer's trade area or area of responsibility. The contract should define the supplier's minimum market penetration requirements for the first year and later expectations. Other issues that may need to be addressed with a dealer include:

- A. Trade Area
 - Is the trade area(s) exclusive?
 - Is the trade area(s) clearly defined in the dealer contract? How was the trade area(s) determined? Is there a limit on how many dealers will be in a trade area?
 - How many dealers are currently located in the trade area? Who are they? How long have they been selling the manufacturer's product?
 - Is dealer expansion planned in specific trade areas? If not, is this expressly provided for or prohibited in the contract?
 - Does the contract provide for a pass-through service fee for sales made by another dealer within another dealer's defined trade area?
 - How are dealers informed about expansion opportunities in designated trade areas? Are existing dealers within a trade area given first priority when expansion opportunities are available?
 - How will your alignment of trade areas be evaluated and dealers located accordingly?
- B. Market Penetration
 - Are dealers provided with assistance in developing a marketing plan?
 - Do new dealers receive special price considerations?
 - Do new dealers receive special consideration on the delivery of new equipment and/or parts?
 - Does the contract impose market penetration requirements? If so, how are they measured and accounted for?
 - Over what period must market penetration requirements be achieved?
 - What ramifications will occur if market penetration requirements are not met by a dealer?
 - Are company personnel available for product demonstrations/open houses? Is there any dealer cost for company personnel assistance?
 - Is co-op advertising available and what is the percentage paid by the supplier?

- Is retail and/or wholesale financing available? What equipment is eligible? Does it include recourse or reserve holdbacks? Is there an opportunity for dealer income via origination or document preparation fees?
- What sales literature and promotional materials, e.g. in-store signs, are available? What is the cost for such in-store materials?
- How far in advance are dealers notified of model changes to allow for adjustments in inventory of new equipment, parts and other supplies?
- What supplier sales incentive programs have been offered in the last 12 months? Are any planned for the next 12 months?

3. Financial Requirements

A dealer contract should specify the required financial information that will need to be provided to the supplier. Dealers normally resist personal guarantees; however, any requirement for personal guarantees of the dealership's obligations should be noted. In addition to the items below, in some cases, dealers may ask that a supplier also provide them with a financial statement or guarantee regarding their solvency. Additional items that need to be discussed and included in the contract are:

- Specify what financial information from dealers is required.
- Specify what collateral is required from dealers for security agreement(s), e.g., parts and rolling stock, in addition to floor planned equipment.
- Will dealer personal guarantees be required? If so, to what extent?
- Will dealer personal guarantees be limited to floor planned items? Can they be waived or issued for a limited period of time?
- What is the minimum initial wholegoods and parts order required at contract signing and what are the initial payment terms?
- Outline pre-season or quantity discounts on inventory purchases and how financing is different, if any.
- Provide a financial statement for dealers.

4. Product Stocking and Performance Standards

The contract or a separate document incorporated into the contract should specify the minimum stocking requirements and minimum annual purchasing requirements for wholegoods and parts. Discussion and agreement should be reached on how far in advance must annual and/or seasonal wholegoods, parts or supply orders be placed.

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.

A. Wholegoods

- What is the pricing structure for wholegoods?
- Will the dealer price be based on volume, quantity ordered, geographical area, or other considerations?
- What are the company's provisions for floor planning a dealer's equipment?
- Is a cash discount available on wholegoods purchases?

- What are the rights/responsibilities of a dealer regarding transfer of equipment between dealers?

B. Parts

- What is the dealer's discount on parts?
- Are dealers provided suggested retail and/or cost prices?
- Are additional discounts available for annual and/or seasonal parts orders?
- What additional discounts are available on stock orders vs. supplemental and emergency orders?
- Who pays the freight on stock orders? Backorders? Supplemental orders? Emergency orders?
- How often do prices increase on parts? When was the company's last price increase?
- Are cash discounts available on parts purchases?
- Do dealers receive price incentives when automated (computerized) order services are used?

C. Prepayments

- Prepayment arrangements should not violate the dealership's loan commitments. Floor plan lenders and those providing operating lines of credit often prohibit dealers from making such substantial unsecured loans. If the dealer violates such agreements, the lender could call the loan, increase the interest rate, require more collateral, etc.
- Will a dealer be allowed to evaluate the risk of making prepayments by completing due diligence on the supplier via credit checks or other means under the contract?
- Will a dealer be allowed to limit the amount of the initial prepayment and make other optional prepayments as certain benchmarks in manufacturing and delivery are met?
- Given the risk of prepayments to dealers, will the supplier limit dealer risk by:
 - Providing an irrevocable letter of credit from the supplier's bank?
 - Placing the prepayment in an escrow account for the prepayment amount that releases the payment after the equipment is delivered?
 - Providing personal guarantees from the owners of the company?
 - Providing a subordination agreement with other lenders who have a priority under the Uniform Commercial Code (UCC) that would give priority to the dealer on certain assets if the supplier does not deliver the equipment where prepayment has been received from a dealer?

6. Parts Ordering and Return Policy

The contract or separate document should fully explain the supplier's parts ordering and return policy, including frequency, restocking charges and any limitations. Other items to be considered in a contract are:

- Are there any parts or classifications of parts that are not returnable?
- Does the supplier offer an annual (or other) parts return program? Are there any limitations by type of parts or percentage of annual sales?
- How are parts ordered – by mail, telephone, facsimile, e-mail, Internet, or dedicated company electronic dealer site?
- Where does the company stock its parts? How are parts usually shipped? Can parts be drop shipped?

- What is the lag time between a price change and receiving the pricing update?
- Who pays for shipping parts – both receiving and returning?

7. Service Tools and Personnel Training

The contract or a separate document incorporated into the contract should specify the minimum requirements for service shop tools and equipment as well as training requirements for parts and service personnel.

- A. Service Tools
 - What, if any, special service shop tools or equipment are required?
 - What are the costs and who pays for specialty tools and equipment?
 - Can specialty tools and equipment be returned for credit to the manufacturer?
- B. Personnel Training
 - What training does the supplier offer for dealership sales, parts and service personnel?
 - How often is training offered?
 - What are the requirements or costs to attend?
 - What access will dealership service technicians have to the supplier's technical support representatives?

8. Supplier Warranty Policies

The warranty policy should specify the supplier's equipment and parts warranty policies, including what is covered, filing procedures and the basis for dealer reimbursement – i.e., cost vs. retail. Dealers will want to know how experienced the supplier's representative is on warranty.

- A. Covered Items
 - What are the supplier's equipment and parts warranties?
 - Do the supplier's warranties include the powertrain, body and chassis? If so, for how long?
 - Does the supplier offer an extended warranty? What is covered and what is the term of the extension? What is not covered?
 - Are pickup and/or delivery charges included under the warranty?
 - Is a dealer required to accept warranty work for equipment not sold by his/her dealership?
 - Will the supplier pay a dealer for labor on Product Improvement Programs in accordance with its warranty policy?
 - What is the supplier's policy on travel reimbursement for warranty repairs?
 - How is diagnostic time handled by the supplier? If reimbursed, how is the reimbursement rate calculated?
- B. Filing Procedures
 - What is the procedure for filing warranty claims?
 - Can warranty claims be filed over a secure Internet site?
 - What supporting data and documentation are required for warranty claims?
 - How are warranty payments reimbursed – by check, credit, automatic deposit, or applied to an open account?
- C. Basis for Dealer Reimbursement
 - What is the supplier's reimbursement policy on parts – retail, cost or cost plus?

- What is the supplier's reimbursement policy for labor – retail, cost, a schedule or flat rate?
- What is the supplier's reimbursement policy for pickup and/or delivery charges or handling fees?

9. Dealer Agreement/Contract Termination

The contract should fully explain the rights and responsibilities of both parties should one party desire to terminate the contract, including the grounds, if any, upon which a right to terminate can be invoked, any cure provisions/appeal process (in case of dispute), terms of settlement, and provisions for return of wholegoods and parts.

- A. Termination of a Dealer Contract
 - What are the causes for which a supplier may terminate the contract?
 - How much advance notice is required if a contract is terminated?
 - What are the terms of settlement for return of wholegoods, parts, all signage, special shop tools, service manuals, and computer systems and software?
 - Is there a cure provision for nonperformance under the contract?
 - Is there a longer cure period if the supplier intends to terminate a dealer for lack of market share or market penetration? What are these terms and are they included in the contract?
 - Dealers, manufacturers, distributors, and suppliers should be familiar with the different provincial and state laws on dealer terminations and dealer buy-backs.

10. Other Requirements

The contract should clearly list any other requirements, such as signage, computer and communication systems, and parts and service manuals.

- A. Physical Requirements
 - What supplier-branded signs are required? What are the dealer costs?
 - What supplier required computer system and/or software will be needed by the dealer? What are the costs? Are they shared and who is responsible for hardware and software upgrades?
 - Does the supplier require a dealer to make capital improvements to his/her dealership? These items should be outlined in the initial contract.
 - Will a dealer be required to have a dedicated communication system with a computer company, outside vendor or the manufacturer/supplier?
 - Will dealers be charged for parts and service manuals?
- B. Other Services Available
 - Will the supplier charge for electronic price updates?
 - Will the supplier offer online parts and/or equipment availability? Will these be available to only the dealer or to the general public via the Internet?
- C. Competitive Lines
 - Does the dealer agreement prevent selling of competitive lines of equipment and/or other equipment brands?

Company and Product Information

- A. Company Information
 - Does the supplier have an organizational chart and a list of company officers?
 - What change of ownership/management has occurred at the supplier or its distribution channel within the last 12 to 24 months?
 - Is the supplier aware of any information regarding pending ownership/management changes?
 - What financial information can a dealer obtain about the supplier?
 - How available is financial information about foreign-based companies irrespective of whether they have a U.S. office?
 - How financially sound is the company/supplier? Can a recent credit report be made available?
 - What is the supplier's current debt?
- B. Dealer-Supplier Relations
 - Does the supplier have a dealer council? If yes, who are the representatives on the council and how are they chosen?
 - What is the process to settle dealer-supplier disputes?
 - Does the supplier support arbitration to settle disputes?
- C. Product Distribution Channels
 - Does the supplier sell via distributors, independent representatives, mass merchandisers, Internet, or dealer direct?
 - Does the supplier distribute dealer product(s) via hardware stores, department stores or mass merchandisers?
 - Does the supplier distribute product(s) to merchants that do not offer parts and service?
 - Does the supplier sell direct to consumers?
 - Does the supplier have an Internet policy on sales of equipment and parts?
 - Do all levels in the supplier's distribution channel have product liability insurance?
 - What proof of continuing product liability insurance do dealers receive?
- D. Product Information
 - What major model changes have occurred within the last 12 months?
 - Are major model changes planned for the next 12 months?
 - What recall/modifications have occurred within the last 12 months?
 - Have there been any adverse product liability settlements against the supplier?
 - Has the supplier/manufacture experienced any prolonged strikes, work slowdowns or work interruptions in the past that have curtailed or stopped production of equipment or the supply of parts?

Dealer Transfers and Succession Plans

- A. Dealership Transfers
 - What procedures does the supplier have in place for approving the transfer of a dealership?

- B. Succession Plans
 - What role does the supplier play in dealer succession planning?

Dealer Associations

One of the primary purposes of equipment dealer associations is to assist dealers in building relationships with manufacturers, distributors and suppliers. Dealers encourage the development of this supply chain through industry association events and communication tools such as dealer meetings, conferences, trade shows, and association publications. NAEDA and its affiliates are uniquely positioned to assist in development and support of the supply chain that brings products and services to the ultimate producer market.

Suppliers are encouraged to participate in association conventions, events and trade shows to build relationships with dealers and their respective associations. Most associations also offer opportunities for advertising in their publications that are effective communication tools with and for dealers.

Summary

This brochure suggests "Need to Know" guidelines for dealers and suppliers before entering into a mutual agreement. Use of the information contained in this brochure is not intended to limit the scope of questions or answers that a particular dealer or manufacturer/supplier may want to know, but rather to outline what NAEDA and affiliates believe are the most important issues to both dealers and manufacturers/suppliers as they decide on a mutually beneficial relationship.

Any new relationship between a supplier and a dealer is only valuable when both are candid, realistic and assess all aspects of the partnership and agreement. This brochure was designed to assist in the process of critical thinking, planning, development, and implementation of mutual agreements between dealers and suppliers.

To obtain additional brochures or seek further assistance, please feel free to contact NAEDA directly or one of the affiliate associations listed on page 8.



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Appendix: Affiliate Associations

1. TBD

2. Canada West Equipment Dealers Association 'CWEDA'

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3. Deep South Equipment Dealers Association 'DSEDA'

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4. Far West Equipment Dealers Association 'FWEDA'

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5. Iowa/Nebraska Equipment Dealers Association 'INEDA'

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6. Mid-America Equipment Retailers Association 'MAERA'

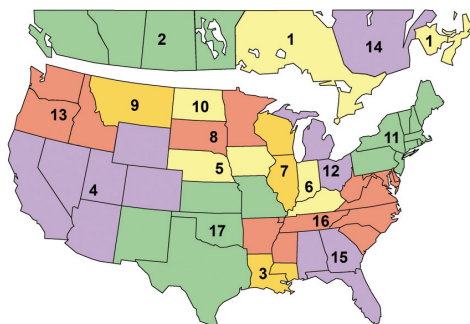
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7. Midwest Equipment Dealers Association 'MEDA'

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8. Minnesota/South Dakota Equipment Dealers Association 'MSDEDA'

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9. Montana Equipment Dealers Association 'MEDA'

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10. North Dakota Implement Dealers Association 'NDIDA'

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13. Pacific Northwest Association 'PNWA'

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14. Association des Marchands de Machines Aratoires de la Province de Québec 'AMMAQ'

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15. Southern Equipment Dealers Association 'SEDA'

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17. SouthWestern Association 'SWA'

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