

# SUPPLIER AGREEMENT CHECKLIST

## Individualized Terms

- The only party(ies) contracting with the supplier should be the dealership(s) receiving the benefits of the agreement.
- The pricing of the transaction should be as agreed in negotiations. Beware of hidden fees and charges in the body and the boilerplate of the agreement.
- The duration of the agreement should be as limited as possible, preferably month-to-month.
- Beware of an automatic rollover term at the end of the base term. Never agree to a rollover duration longer than month-to-month.
- Consider a provision for a termination of the agreement during the base term if the dealership is sold or otherwise closes.

## Performance Standards

- What are the performance standards applicable to the agreement? Does the supplier agree in writing that the goods or services will perform as represented?
- What warranty applies to the goods or services the supplier is providing? Typically, a supplier will choose to disclaim all express and implied warranties. There should be specific written warranties applicable to the goods or services.

## Signatories

- The only signatories to the agreement should be the supplier and dealership(s) benefitting from the goods or services.
- Unless affiliated companies or the individual in control have agreed to guarantee the performance by the dealership(s) of the agreement, affiliated companies should not sign the agreement and a dealership executive should only sign on behalf of the dealership(s).
- Beware of hidden terms making the signatory for the dealership(s) personally liable for the obligations of the dealership(s), either in the body or boilerplate of the agreement or in language above the signature line.

## Disputes

- In the event of a dispute, the state law applicable to the agreement should be that of the state where the dealership is located.
- Any jurisdiction to which the parties agree should be in tribunals of the state in which the dealership is located. Do not agree that suits may be brought in another state.
- Venue for a proceeding to determine a dispute should be the city or county in which the dealership is located.
- If there is an arbitration provision, make sure the place of arbitration will be the city or county in which the dealership is located, that the terms of the arbitration are fair, and that expenses do not fall inappropriately on the dealership.
- Attorneys' fees should go to the prevailing party, and not just to the supplier.

## Data Protection

- The agreement should provide the supplier has a process for protecting the nonpublic, personal information of consumers and customers of the dealership(s) as required by the FTC Information Safeguards Rule.
- Any data provided to the supplier should remain the property of the dealership(s).
- The agreement should require that the supplier may use information or data provided by the dealership(s) only in connection with services under the agreement and that the supplier cannot use it for its own purposes or for the benefit of other clients or customers of the supplier.

## Indemnification

- Beware of unilateral indemnification provisions in which the dealer indemnifies the supplier against all liabilities, including liabilities resulting from the supplier's own actions.
- Any indemnification provision should be bilateral, meaning that the party breaching the obligations of the agreement should indemnify the other party for losses, including attorneys; fees and costs.