

Article - Commercial Law

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§11-401.

(a) In this subtitle the following words have the meanings indicated.

(b) “Cost to the retailer” means the lesser of the invoice cost or the replacement cost of the merchandise to the retailer, minus any trade discount other than a customary discount for cash, plus:

(1) A freight charge otherwise not included in the invoice cost or the replacement cost of the merchandise;

(2) A cartage cost to the retail outlet if performed or paid for by the retailer, which, in the absence of proof of a lesser cost, is 0.75 percent of the cost to the retailer, after adding the freight charge but before adding the cartage cost and any markup;

(3) A markup to cover in part the cost of doing business, which, in the absence of proof of a lesser cost, is 5 percent of the cost to the retailer, after adding the freight charge and the cartage cost but before adding any markup; and

(4) An additional markup to cover in part the cost of doing business, which, in the absence of proof of a lesser cost, is 2 percent of the cost to the retailer, after adding the freight charge and the cartage cost but before adding any markup, if the retailer:

(i) Buys at wholesale or buys directly from the manufacturer or the agent or broker of the manufacturer; and

(ii) Receives a wholesale price or discount on merchandise for retail sale.

(c) “Cost to the wholesaler” means the lesser of the invoice cost or the replacement cost of the merchandise to the wholesaler, minus any discount other than a customary discount for cash, plus:

(1) A freight charge otherwise not included in the invoice cost or the replacement cost of the merchandise;

(2) A cartage cost to the retail outlet if performed or paid for by the wholesaler, which, in the absence of proof of a lesser cost, is 0.75 percent of the cost to the wholesaler, after adding the freight charge but before adding the cartage cost and any markup; and

(3) A markup to cover in part the cost of doing business, which, in the absence of proof of a lesser cost, is 2 percent of the cost to the wholesaler, after adding the freight charge and the cartage cost but before adding any markup.

(d) “Person” includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(e) “Replacement cost” means the cost per unit for which the merchandise sold or offered for sale could have been bought by the wholesaler or retailer at any time within 30 days before the date of sale or the date on which it is offered for sale by him if bought in the same quantity as his last purchase of the merchandise.

(f) (1) “Retail sale” means any transfer of title to tangible personal property for valuable consideration and in the ordinary course of trade or in the usual conduct of the seller’s business, to a purchaser for consumption or use other than resale, further processing, or manufacturing.

(2) “Retail sale” includes any such transfer of the property whereby title is retained by the seller as security for the payment of the purchase price.

(g) (1) “Retailer” means a person engaged in the business of making retail sales within the State.

(2) If the person is engaged in the business of making both retail sales and wholesale sales, the word applies only to the retail sales portion of the business.

(h) (1) “Wholesale sale” means any transfer of title to tangible personal property for valuable consideration and in the ordinary course of trade or the usual conduct of the seller’s business, to a purchaser for the purpose of resale, further processing, or manufacturing.

(2) “Wholesale sale” includes any such transfer of the property whereby title is retained by the seller as security for the payment of the purchase price.

(i) (1) “Wholesaler” means a person engaged in the business of making wholesale sales within the State.

(2) If a person is engaged in the business of making both wholesale sales and retail sales, the word applies only to the wholesale sales portion of the business.

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