

# TRADING RULES: TERMS AND CONDITIONS

## PROVISION OF SERVICES

Barter West will provide online and broker managed Trade Services to you (the "Account Holder" or "Trader" or "Member") in exchange for payment of transaction and monthly account fees pursuant to compliance with the terms and conditions of this Agreement. Barter West will act as a third-party record keeper of transactions between Traders, and as a clearinghouse to direct Traders to each other. Trader grants Barter West the exclusive right to regulate the exchange and make decisions in its judgment deems necessary.

The Trade Service is defined as the use by the Account Holder of exclusive website access, software access, and information services provided by Barter West's brokers and trade consultants. The Service may also include access to information services provided through the Internet or by third party providers (collectively, "Non-Barter West Content").

The Account Holder recognizes that Barter West has no control over the availability, content and performance of its website. Barter West does not warrant or support any Non-Barter West content. The Account Holder recognizes that Barter West content cannot be screened, censored or safeguarded by Barter West with regard to copyright, obscenity, integrity, safety or reliability. The Account Holder assumes all risk and liability when accessing the Barter West website and agrees to indemnify Barter West in accordance with additional terms below.

**Contact Permission.** Member gives Barter West permission to send trade offerings, member updates, newsletters, statements and related advertisements via email, fax, USPS on a regular basis.

**Proprietary Information.** Members agree that all Member directories, address lists, email lists, offerings and communications by email, fax, mail or any other form of communication are proprietary to Barter West and its members only. Unauthorized distribution to any non-member of Barter West or to any competing trade group is a breach of this agreement. Access to the client portion of the Barter West website is for Barter West members only. Members agree to not share their log in with anyone. Such violation will result in termination of membership. Further, any unauthorized use of a Barter West membership list by a member for purposes of soliciting sales, donations or contributions of any kind is a breach of this agreement.

## USE OF SERVICES

The Account Holder agrees to maintain and keep account log-in information including but not limited to the account name, federal ID and password secure and private.

The Account Holder agrees not to use, via the Internet, any process, program, or tool designed to discover the access information of account holders on Barter West. The Account Holder agrees not to use the Service to make unauthorized attempts to access the accounts of others.

The Account Holder agrees to use the Service only as permitted by applicable local, state, and federal law. The Account Holder agrees, therefore, not to use the service to plan, incite, promote, facilitate, solicit or conduct any business or activity that is prohibited by law.

The Account Holder acknowledges that Barter West is a commercial entity and that Barter West is connected to one or several Internet Service Providers ("ISPs"). The ISPs may only be used by Account Holders to conduct legal business. This business should, however, not impinge upon the use of the Service by other account holders. The Service may not be used to send unsolicited advertising or promotional materials to other Account Holders. Other prohibited activities include, but are not limited to, propagation of computer worms and viruses, and using the network to make unauthorized entry to any other machine accessible via the network.

**Monthly Accounting.** Cash and trade fees are due and payable upon trade transaction activity and are billed monthly for convenience. Statements will be sent via email by the 5<sup>th</sup> of each month. Cash fees are due and payable on the 15<sup>th</sup> of each month. Cash fees that remain unpaid after 30 days will result in a member's account being suspended and all trades will be refused until payment is made. After 90 days in suspension a member's account may be closed without notice and any trade balance forfeited. Trader must notify Barter West in writing of any contested charges or discrepancies in monthly statements within ten days of the receipt thereof. Failure to give such timely notification shall constitute a waiver by the Trader of any right to contest the accuracy of the statement.

**Nature of the Trade Dollar.** Trade dollars shall not be considered as legal tender, a commodity or a security by either Barter West or its Traders. Trade credits are not negotiable as cash. For tax purposes, bartering is equivalent to a cash sale and subject to IRS 1099B reporting. Use of trade dollars is a taxable event and each member is solely responsible for reporting all applicable local, state and federal taxes resulting from trade transactions. Barter West must be informed of any change in a member's legal tax name/number status. It is understood and agreed that Members may not be considered a creditor of Barter West or the exchange in relation for a Member's ability or lack thereof to utilize or spend trade dollars in their account. Member acknowledges that trade dollars in the barter system (positive balances) are the liabilities of persons/companies who have spent more than their earnings (negative balances); that there is a creditor/debtor relationship between such persons, and that trade transactions incur the normal business risks associated with any credit transaction. As a general rule, trade dollars are the liabilities of Members who owe the barter system, and not of Barter West, which is solely liable for its own indebtedness. Barter West is authorized to establish a bad debt reserve fund by charging all accounts on a regular basis an amount in trade dollars to be paid into such a fund. Any positive balances abandoned or surrendered by former members in accordance with the Rules may also be paid into the reserve fund. Further, member grants Barter West and its officers and directors the authority to regulate and control the amount of outstanding trade dollars in the barter exchange and to borrow and spend trade dollars in accordance with best practices and recommendations established by the National Associations of Trade Exchanges.

**Trade Transactions.** Trade transactions between Traders are entered into on a voluntary basis. Traders will sell goods and/or services, for trade credit, at their prevailing market prices. Traders will sell at a minimum the first \$5000 worth of goods and or services, per transaction, for 100% trade at their prevailing price. Trader may collect cash for the difference between the purchase amount and the amount authorized (postage.) Barter West is due their normal service fee from the seller on any cash collected from a Barter West trader, excluding sales tax. All Traders are independent of Barter West. Barter West bears no responsibility for the quality of products or services, timely delivery, prices or warranties, or any disputes that arise from transactions. Barter West shall be held harmless on all transactions. Disputes between Traders will be arbitrated by Barter West upon request of either Trader in the dispute. The decision of Barter West shall be final in all cases. Upon written request of a Trader, Barter West may stop payment of trade funds payable to another Trader for a period of up to 30 days after a particular transaction. Barter West will place such funds in an escrow account with the buyer's account remaining debited until the dispute is resolved by Barter West. Member acknowledges that the sole principals in any trade are the buying and selling parties; and that Barter West is not the agent of any member nor the guarantor of any transaction or trade dollar.

**Trade Requests.** All trade requests for travel, goods and services that are fulfilled by Barter West but not purchased by the requesting member may be subject at Barter West's discretion to a research fee up to the value of the commission if such request was purchased.

**Overpricing.** All products and services are to be traded at fair market value or everyday selling prices. Barter West has the right to investigate claims of overpricing. Violations of overpricing subject the member to immediate termination. Barter West with advance documentation from the Member, may allow special pricing for low margin items.

**Direct Trades and Cash Deals.** Trader will not attempt to do a direct trade (outside of the system) with another Barter West member as long as either trader is a member of Barter West. Selling Trader will not request a cash deal from a Barter West member. Trader agrees that Barter West will charge their normal commission on any direct trade, cash purchase, or trade transaction, or that is diverted to another barter

company if either party is a member of Barter West. Barter West may also opt to terminate a Traders account or pursue civil liability in the event Trader does not adhere to this policy.

**Trade Dollar Loans.** Members grant Barter West the right and power to make trade dollar loans to any Member on terms and conditions consistent with Member's credit worthiness and ability to repay. The exercise of this power shall be at the sole discretion of management with regard to principal, interest, terms and conditions, lending policy, and other particulars. Barter West reserves the right to require exchange member's to complete a formal loan agreement, request financial statements, credit history and collateral prior to loan approval. Barter West is under no obligation to extend credit at any time. Barter West will use its best efforts to ensure timely repayments of principal and interest, appropriate collateralization, and perfection of security interest in all loans. Any account with a negative balance may be charged up to 1% per month in trade. While operating under a trade dollar loan, Member must accept all trade sales at 100% trade until such loan has been repaid. Trade dollar loans will not be authorized unless Member is paying their fees with a credit card.

**Suspension and Cancellation of Trading Privileges.** Barter West reserves the right to cancel membership, to freeze Trader's account without notice, and to terminate a Trader's trading privileges for non-fulfillment of any provisions of the Trade Agreement, or Trading Policies and Procedures. Trader agrees that Barter West's discretion in all such matters is final. If a member's fees become 30 days past due, Barter West has the right to require fees be paid in advance of spending. Member accounts may not be assigned, transferred or sold without prior consent of Barter West. Barter West trade dollars may not be sold without prior consent of Barter West.

**Termination.** Membership in Barter West may be canceled by a Trader upon written notice of cancellation. Membership shall be canceled when all fees have been paid in full. Trader shall not be entitled to a refund of any fees paid prior to cancellation.

**Cancellation.** In the event of a Trader's withdrawal or termination from Barter West, all past due and current fees must be paid within 10 days of withdrawal or termination. Members who have stopped selling their product or service permanently fall under this definition. Traders will have 90 days from the date of withdrawal or termination to spend their remaining balance, but only after payment of prepaid service fees and accounting fees. If fees are not paid within 10 days, Trader's balance shall be forfeited to Barter West. After 90 days, Trader may maintain a balance at a cost of \$15.00 cash per month payable in advance. Past due fees will be turned over for collection after 90 days. If a member has a negative trade balance, the member has 90 days to pay their account with acceptable products or services. After the 90 days, the Member must pay the barter exchange any remaining deficit balance with a payment having an equivalent value. The payment must be acceptable to Barter West and have easily determined value. In the event the member's account is terminated, the barter exchange retains complete reservation of rights to recover Member's deficit trade balance in law and equity.

**Member Insolvency/Bankruptcy.** If Member files bankruptcy, Member agrees that Barter West shall suspend trading until all cash fees are paid, and may either file a secured claim, terminate the account, or take other legal action without being required to move for relief from stay.

**Liability of Trade Dollars.** Member acknowledges that trade dollars in the exchange are the liabilities of members who have spent more than their earnings and that there is a creditor/debtor relationship. Trade dollars are the liabilities of members who owe the exchange. Negative trade balances in any other accounts, such as debt reserve, conversion accounts, member loan accounts, acquisition of deficit spent barter groups, or other situations that may occur are not the responsibility of Barter West. Barter West is liable solely for indebtedness of its own operating account.

## **NO WARRANTIES**

To the extent possible, Barter West will make every effort to provide accurate information through its proprietary services. The account holder acknowledges that information available through non-Barter West content may not be accurate. In any event, as to both Barter West and Non-Barter West Content, Barter West makes no warranty, express or implied, regarding the quality, accuracy, or validity of data and/or information available, that access to the service will be available at any particular time, that operation of the service will be uninterrupted or error free, or that any particular result or information will

be obtained. Member accounts are offered on an "as is" basis without warranties of any kind, other than warranties which are incapable of exclusion, waiver, or restriction under the law applicable hereto.

**PURCHASE OF PRODUCTS OR SERVICES FROM MEMBERS OR USE OF INFORMATION, PROGRAMS OR OTHER MATERIALS OBTAINED FROM OR THROUGH THE BARTER WEST SERVICE IS AT THE SOLE RISK OF THE ACCOUNT HOLDER.**

## **INDEMNIFICATION**

Operation of this service carries inherent risks to Barter West because Barter West literally cannot control all aspects of the Service at all times. Accordingly, by acknowledging this Agreement, you agree to indemnify Barter West for any damages, costs and expenses, including reasonable attorney's fees, that accrue to Barter West as a result of or arising out of your activities on the Service including, but not limited to, any claims for violation of any copyright, trademark, or protected material, any claim of defamation, slander, libel, disparagement or the like, any use of the Service for illegal purposes, or any use of the service to send or receive obscene materials.

## **MISUSE OF SERVICES**

Your access to the Service is a privilege, not a right, and access to the Service is not guaranteed by this Agreement. The act of signing the Member Application and your use of the Service constitutes your acceptance of and agreement to be bound by this Agreement. This Agreement will be strictly enforced and violators may, at the sole discretion of Barter West be suspended or terminated from access to the Service for any reason without prior notice or opportunity to be heard. Behavior in violation of the rules embodied in this Agreement carries potential risks to Barter West and cannot be tolerated. Barter West's failure to enforce a particular rule or policy on one occasion or against one person does not preclude the enforcement of the same rule or policy at a different time or against another person.

Any use of the Service that disrupts the normal use of the Service for other Barter West customers is considered to be misuse of Barter West services.

Modification, alteration, reverse engineering, decompilation, disassembly or creation of derived works based on Barter West proprietary software or published products are misuse of Barter West services.

Any violation of this Agreement is misuse of Barter West services.

Violations of this Agreement or any of the Barter West conditions of use are unethical and may be criminal offenses. You are expected to report to Barter West any information you may have concerning instances in which this Agreement or the conditions of use have been or are being violated. When Barter West becomes aware of possible violations, we will initiate an investigation. At the same time, in order to prevent further possible unauthorized activity, Barter West may, at its sole discretion, suspend any involved account(s) from access to the Service. Confirmation of violations may result in cancellation of the individual account(s) and/or criminal prosecution. The account suspension may be rescinded at the sole discretion of Barter West following payment of a re-connection charge.

Barter West reserves the right in its sole discretion to suspend or terminate access to the Service to any member at any time for any reason.

## **LIMITATION OF LIABILITY**

**YOU JOIN AND PARTICIPATE IN THE SERVICE AT YOUR OWN RISK. Barter West SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES WHICH RESULT TO YOU FROM YOUR USE OF OR PARTICIPATION IN THE SERVICE. Barter West DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Barter West shall not be liable for any damage that Account Holder may suffer arising out of use, or inability to use, the Service or products provided hereunder. Barter West shall not be liable for unauthorized access by third parties to your facilities or premise equipment or for unauthorized access to

or alteration, theft, loss or destruction of your data files, programs, procedures or information through accident, fraudulent means or devices, or any other method.

IN NO EVENT WILL BARTER WEST, ITS AGENTS, OR AFFILIATES BE LIABLE FOR ANY OTHER DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA, OR OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE, USE OR PERFORMANCE OF THE SERVICE.

#### **ACCESS**

Account Holder is responsible for and must provide all equipment and services necessary to access the Service.

#### **CHOICE OF LAW AND FORUM**

This Subscription Agreement is made and entered into in Colorado. By submitting the online application or signing an Account Application, you agree that any disputes between you and Barter West will be governed by the laws of Colorado and you further agree to the exclusive jurisdiction of the Supreme Court of Colorado, for all disputes arising out of or related to this Agreement or your participation in the Service.

Any cause of action of Account Holder with respect to the Service must be instituted within one year after the claim or cause of action has arisen or be barred.

**Attorney Fees and Costs.** In the event Barter West incurs any costs or legal fees to enforce any of the provisions of the Trade Membership Agreement or these Trading Policies and Procedures, the Trader agrees that reasonable costs or legal fees shall be assessed against them.

#### **ENTIRE AGREEMENT**

This Agreement and any operating rules published over the Service constitutes the complete agreement and understanding between Barter West and the Account Holder regarding the Service and supersedes any other written or oral agreement.

Upon notice published on-line by Barter West at its sole discretion, may modify this Agreement, and/or modify its pricing structure. Barter West may, in its sole discretion and without prior notice, discontinue or change the services offered. Only Barter West can modify this Agreement or change a rule or policy of this Service. Continued use of the Barter West system by Member is acceptance of new terms.

Please sign below that you have read and agree to all Barter West Trading Rules.

Name:

Signature: