

## TERMS AND CONDITIONS

### 1 ABOUT THESE TERMS

1.1 Nature of Terms: These Terms set out:

- (a) the basis on which each Member is entitled to participate in the Exchange; and
- (b) the obligations that each Member has to YOUR EXCHANGE and to other Members.

1.2 Alteration of Terms: YOUR EXCHANGE may alter any of these terms (including the charges payable) by giving notice to each Member. Any alteration will be effective from the date specified by YOUR EXCHANGE. However the effective date must not be earlier than 30 days from the date on which notice of the alteration is given.

1.3 No partnership: Nothing in these Terms creates any partnership, agency or joint venture relationship between YOUR EXCHANGE and any Member or between any two or more Members.

1.4 Definitions: Some words which are used often in these Terms are defined in clause 23.

### 2 YOUR EXCHANGE'S ROLE

2.1 YOUR EXCHANGE has established the Exchange to allow Members to trade amongst each other on a non-cash basis. Except as stated in clause 2.3, YOUR EXCHANGE's role is that of a facilitator. The parties to any Transaction made through the Exchange are entirely responsible for that sale or supply and YOUR EXCHANGE has no liability to either party in relation to that Transaction.

2.2 Any disputes in relation to a Transaction are to be resolved between the parties to that Transaction. YOUR EXCHANGE has no responsibility in relation to any such dispute but it will provide for appropriate adjustments to be made to Members' YOUR EXCHANGE Dollar accounts where a request is made in accordance with the Operating Procedures.

2.3 YOUR EXCHANGE is a Member and can enter into Transactions as a principal. Where YOUR EXCHANGE sells goods through the Exchange it does so on the basis that it makes no warranty regarding those goods, except that it owns them. YOUR EXCHANGE excludes any warranties implied by law in respect of any such sale.

### 3 YOUR EXCHANGE DOLLAR ACCOUNTS

3.1 YOUR EXCHANGE will maintain an account for each Member. The form of currency used in the Exchange is the YOUR EXCHANGE Dollar. YOUR EXCHANGE Dollars are not legal tender and have no value other than to enable Members to make purchases from other Members on a non-cash basis in accordance with these Terms. In no circumstances is YOUR EXCHANGE (or any other person) obliged to redeem YOUR EXCHANGE Dollars for cash.

3.2 YOUR EXCHANGE will credit to a Member's YOUR EXCHANGE Dollar account:

- (a) the value of each sale or supply made by that Member through the Exchange in accordance with these Terms; and
- (b) any other amounts as may be provided for in these Terms or agreed between the Member and YOUR EXCHANGE.

3.3 YOUR EXCHANGE will debit from a Member's YOUR EXCHANGE Dollar account:

- (a) the cost of each purchase made by that Member through the Exchange;
- (b) the YOUR EXCHANGE Dollar component of the fees payable by the Member in accordance with clause 7;
- (c) any other amounts as may be provided for in these Terms or agreed between the Member and YOUR EXCHANGE.

#### 4 AUTHORISATION OF TRANSACTIONS

4.1 YOUR EXCHANGE will credit a selling or supplying Member's YOUR EXCHANGE Dollar Account only where the Transaction is authorised by YOUR EXCHANGE. Any request by a Member for authorisation of a Transaction must be made in accordance with the Operating Procedures.

4.2 YOUR EXCHANGE will not authorise a Transaction if:

- (a) at the time of the Transaction either party's right to engage in Transactions was suspended, in accordance with clause 14;
- (b) the Transaction would result in the purchasing Member's credit limit being exceeded.

4.3 While YOUR EXCHANGE will use all reasonable endeavours to ensure that its approval system is functioning properly at all times, it is unable to guarantee that that will occur. YOUR EXCHANGE excludes all liability to Members arising out of:

- (a) any Transaction being improperly declined or improperly approved by YOUR EXCHANGE; or
- (b) any failure of YOUR EXCHANGE to provide a prompt response to any request for authorisation of a Transaction.

#### 5 CREDIT LIMITS

5.1 Each Member agrees to YOUR EXCHANGE allowing Members a credit limit on their YOUR EXCHANGE Dollar Accounts of such amount as YOUR EXCHANGE in its discretion considers appropriate. YOUR EXCHANGE may at any time increase or reduce a Member's credit limit, although it will not increase a Member's credit limit beyond the level requested by the Member. YOUR EXCHANGE may at its discretion require a Member to provide a guarantee, cash deposit or other security acceptable to YOUR EXCHANGE as security for the performance by the Member of its obligations under these Terms.

#### 6 COMMITMENTS BY YOUR EXCHANGE

6.1 YOUR EXCHANGE agrees to use its best endeavours to:

- (a) encourage a wide range of businesses to become Members;
- (b) operate the Exchange in accordance with good industry practice;
- (c) respond to queries from Members in a timely manner;
- (d) authorise (or decline, where appropriate) Transactions between Members on a real-time basis;
- (e) maintain an accurate and up to date database of Members which can be accessed by Members during normal business hours.

6.2 YOUR EXCHANGE agrees to act in good faith towards each Member.

#### 7 CHARGES

7.1 Charges: In consideration of YOUR EXCHANGE performing services as specified in these Terms, each Member must pay YOUR EXCHANGE:

(a) transaction charges on the Transactions (sale or purchase) made by that Member through the Exchange (as a set percentage of the total transaction value, ranging from 2.5% to 5% and determined by the members joining date and fees paid as per YOUR EXCHANGE's joining packages); and

(b) joining charges and charges in respect of any increased credit limit requested by the Member at the rates applicable at the time of request.

7.2 Due date: YOUR EXCHANGE will send each member a monthly statement and GST invoice showing the amounts payable by the Member in respect of transactions occurring in the previous month. Any cash amount owing to YOUR EXCHANGE by the Member must be paid within 14 days of receipt of that statement. Any YOUR EXCHANGE Dollars which are owing will be deducted from the Member's YOUR EXCHANGE Dollar account by YOUR EXCHANGE 7 days after the date of the statement.

7.3 Direct debit: Each Member must provide YOUR EXCHANGE with a direct debit authority for the cash payments referred to in this clause if required by YOUR EXCHANGE.

7.4 Interest: If any sum owing to YOUR EXCHANGE by a Member is not paid on the due date the Member must pay YOUR EXCHANGE interest at the Default Rate on the outstanding sum from the due date for payment, until the date payment is made in full.

## 8 OBLIGATIONS OF MEMBERS

8.1 Each Member agrees:

(a) to pay the charges due to YOUR EXCHANGE in accordance with clause 7, by the due date for payment;

(b) to act in good faith towards YOUR EXCHANGE and each other Member;

(c) not do anything which is likely to diminish the good name or goodwill of YOUR EXCHANGE or the Exchange;

(d) to comply with all relevant laws when engaging in Transactions;

(e) to comply with all relevant taxation obligations (and each Member acknowledges that YOUR EXCHANGE has no responsibility to pay any tax on the Member's behalf); and

(f) not to use the name or any trade mark of YOUR EXCHANGE, except in a manner approved by YOUR EXCHANGE.

## 9 LIABILITY

9.1 All liability of any kind of YOUR EXCHANGE to any Member with respect to the services provided by it (whether arising under the Consumer Guarantees Act, or any other enactment, or otherwise) is excluded to the fullest extent permitted by law.

## 10 ENTIRE AGREEMENT

10.1 These Terms contain all of the terms relating to each Member's participation in the Exchange.

## 11 WAIVER

11.1 No exercise or failure to exercise or delay in exercising any right or remedy by YOUR EXCHANGE will constitute a waiver by YOUR EXCHANGE of that or any other right or remedy available to it.

## 12 CONFIDENTIALITY AND PUBLICITY

12.1 Confidentiality: Each Member undertakes to keep these Terms and any information that Member learns about YOUR EXCHANGE or its business or the business of any other Member confidential, except that this undertaking will not apply to disclosures made:

- (a) as required by law or the YOUR COUNTRY Stock Exchange Listing Rules; or
- (b) in good faith and in proper furtherance of arrangements connected with the YOUR EXCHANGE Exchange; or
- (c) to the Member's professional advisers; or
- (d) of information already in the public domain.

12.2 Membership Directory: Each Member acknowledges the confidentiality of (and undertakes not to disclose the contents of) YOUR EXCHANGE's membership directory.

12.3 Publicity: Each Member acknowledges that its contact details will be included in the online directory published by YOUR EXCHANGE.

## 13 PRIVACY

13.1 YOUR EXCHANGE will treat information regarding Members in accordance with YOUR EXCHANGE's Privacy Policy and, where applicable, in accordance with the Privacy Act.

## 14 SUSPENSION

14.1 YOUR EXCHANGE may suspend a Member's ability to engage in Transactions if:

- (a) the Member has failed to pay any charges or other sum due under these Terms within 10 days of the due date; or
- (b) YOUR EXCHANGE reasonably believes that the Member has breached any of its obligations under these Terms.

14.2 Any suspension under clause 14.1(a) will be lifted when all arrears are paid. Any suspension under clause 14.1(b) will be lifted when YOUR EXCHANGE is reasonably satisfied that no breach has occurred, or that any breach which did occur has been rectified.

## 15 TERMINATION OF MEMBERSHIP

15.1 Termination on notice: A Member may cease to be a Member by giving 5 working days written notice to YOUR EXCHANGE. YOUR EXCHANGE may terminate a Member's membership by giving 5 working days written notice to the Member.

15.2 Termination by YOUR EXCHANGE on default: YOUR EXCHANGE may terminate a Member's membership with immediate effect by giving written notice to the Member:

- (a) if the Member committing any material breach of these Terms; or

(b) if the Member becomes insolvent, or a receiver or manager of any asset of the Member is appointed, or an order made or resolution passed for the liquidation of the Member.

## 16 CONSEQUENCES OF TERMINATION

16.1 Upon termination of a Member's membership for any reason the Member must immediately pay to YOUR EXCHANGE:

(a) the cash equivalent of any debit balance in the Member's YOUR EXCHANGE Dollar account; and

(b) all charges which have accrued in accordance with clause 7.

16.2 If YOUR EXCHANGE reasonably believes that the Member is unable to pay their cash fees and/or that the Member may be insolvent YOUR EXCHANGE reserves the right to seize stock, goods, fittings and fixtures to the value of all fees PLUS the YOUR EXCHANGE Member's YOUR EXCHANGE Dollar account. YOUR EXCHANGE can seize these goods immediately upon termination of the members account. For the purpose of seizing goods these shall be:

(a) Valued at wholesale price.

(b) YOUR EXCHANGE shall return said goods only on the condition that the member meets their obligations as defined in 16.1 (a) and 16.1 (b)

16.3 YOUR EXCHANGE may add the reasonable cost of recovery of any debts that require the assistance of a 3rd party debt collection agency to collect, to the total amount payable to YOUR EXCHANGE.

## 17 TERMINATION OF THE EXCHANGE

17.1 If for any reason the Exchange ceases to operate each Member which has a debit balance in its YOUR EXCHANGE Dollar account must immediately pay to YOUR EXCHANGE the cash equivalent of that debit balance. Any payments made pursuant to this clause will be held in trust by YOUR EXCHANGE and will be distributed pro-rata among the Members with credit balances in their YOUR EXCHANGE Dollar accounts.

17.2 Cessation of the Exchange's operations does not release any Member from liability to make any payment due to YOUR EXCHANGE at the time the Exchange's operations cease.

## 18 RECEIPT OF CASH BY YOUR EXCHANGE

18.1 Where a Member pays cash to YOUR EXCHANGE in respect of any debit balance in that Member's YOUR EXCHANGE Dollar account YOUR EXCHANGE will debit an equivalent number of YOUR EXCHANGE Dollars from its own YOUR EXCHANGE Dollar account, so that the payment has a neutral effect on the Exchange.

## 19 GST

19.1 Payments to be made under this Agreement are exclusive of GST (if any) and any GST payable must be paid by the person to whom the goods or services are provided.

## 20 ASSIGNMENT

20.1 No Member may assign its rights under these Terms. YOUR EXCHANGE may by notice to the Members assign its rights under these Terms.

## 21 PARTIAL INVALIDITY

21.1 If any provision of these Terms or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of these Terms and their application will not be affected and will remain enforceable to the greatest extent permitted by law.

## 22 THIRD PARTIES

22.1 Nothing in these Terms is intended to confer a benefit upon anyone other than YOUR EXCHANGE and the Members.

## 23 NOTICES

23.1 Service of notices: Any notice given pursuant to these Terms will be deemed to be validly given if personally delivered, posted, or forwarded by facsimile transmission to:

(a) in the case of a notice to YOUR EXCHANGE, the address set out below or to such other address as YOUR EXCHANGE may advise:

YOUR EXCHANGE

YOUR ADDRESS

YOUR COUNTRY

Facsimile: Your Fax

(b) in the case of a notice to a Member, the address or facsimile number which is listed in YOUR EXCHANGE's records as the address or facsimile number of that Member.

23.2 Time of service: Any notice given pursuant to this Agreement will be deemed to be validly given:

(a) in the case of delivery, when received;

(b) in the case of facsimile transmission, when sent provided that the sender has a facsimile confirmation receipt recording successful transmission;

(c) in the case of posting, on the second working day following the date of posting; provided that any notice personally delivered or sent by facsimile either after 5pm on a working day or on any day that is not a working day will be deemed to have been received on the next working day.

## 24 INTERPRETATION

24.1 Definitions: In these Terms unless the context otherwise requires:

"Default Rate" means the standard overdraft interest rate charged (or chargeable) to YOUR EXCHANGE by its principal banker, plus a margin of 4% per annum;

"Exchange" means the bartering exchange known as YOUR EXCHANGE Trade Exchange, which was established by (and is operated by) YOUR EXCHANGE.

"GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985;

"Member" means a person who has applied to become a member of the exchange and whose application has been accepted by YOUR EXCHANGE;

"Operating Procedures" means the procedures applicable from time to time relating to the operation of the Exchange, which are set out on the YOUR EXCHANGE website at [www.YOUR\\_EXCHANGE.net.nz](http://www.YOUR_EXCHANGE.net.nz);

"YOUR EXCHANGE" means YOUR EXCHANGE Barter Limited at Auckland;  
"Terms" means these Terms and Conditions of Membership of the YOUR EXCHANGE Trade Exchange;

"Transaction" means the supply of goods and or services from one Member to another made through the Exchange in accordance with these Terms; and

"Working day" means a day (other than Saturday or Sunday) on which registered banks are normally open for business in Auckland.

24.2 General construction: In interpreting these Terms the following rules must be applied unless the context otherwise requires:

- (a) Headings to clauses are for reference only and are not an aid in interpretation.
- (b) References to statutory provisions will be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- (c) References to clauses are to clauses of these Terms.
- (d) References to currency are to YOUR COUNTRY currency.
- (e) Any date which is not a working day, upon or by which anything is due to be done by any party, will be deemed to be a reference to the next working day.
- (f) Words importing the plural include the singular and vice versa and words importing gender import all genders.
- (g) Any obligation not to do something will be deemed to include an obligation not to suffer, permit or cause that thing to be done.