



## Midwest Business Exchange, Ltd.

# Trading Rules

### AGREEMENT:

**CONTRACT:** The following Trading Rules constitute the contract between Client and MIDWEST BUSINESS EXCHANGE, LTD., (MBE), and are part of the Membership Application. Any Trade purchase or sale by an MBE member (Client), constitutes acceptance of all terms and conditions of the MBE Trading Rules as most recently furnished by MBE. Trading Rules apply to all MBE Clients.

**CHANGES IN RULES:** At its sole discretion, MBE may change, delete, or add to Trading Rules thirty (30) days after giving Client written notice, or publication in MBE newsletter or Membership Directory. Any trade purchase or sale after thirty (30) days notice constitutes acceptance by Client of the changes to the Trading Rules.

### PARTICIPATION IN THE MBE RETAIL TRADE EXCHANGE:

#### NATURE OF PARTIES:

- (a) The Exchange is an association of businesses and professional organization members who have joined together to barter their goods and services among themselves through an organized system which is regulated by the recordkeeping and administrative services of MBE. The Exchange functions as a clearinghouse for the barter transactions of its members.
- (b) MBE is a trading company that manages the Exchange. MBE also acts as a third party record keeper and administers the clearinghouse function of the Exchange for members of the association who subscribe to MBE's recordkeeping and related barter services.
- (c) Client is a legitimate business that wants to exchange its goods and/or services with other members of the Exchange and subscribes to MBE recordkeeping and barter services.

Client acknowledges that the sole principals in any trade are the buying and selling Clients involved, that trades are entered into voluntarily, and that MBE or the Exchange is not the guarantor of any transaction or Trade Dollar. MBE will use its best efforts to record trade transactions accurately, to administer the Trading Rules in accordance with their terms, and to assist in the sale of Client's goods and services to other MBE Clients. However, the initiative for using MBE services for economic benefit is exclusively that of the Client.

**BROKERAGE FUNCTION:** MBE serves in a brokerage capacity in organizing and facilitating trades among members. Initiative for utilizing the services of MBE in order to derive economic benefit is exclusively that of the Client. Responsibility for the conduct of a trade is exclusively that of the Client. For buyers, MBE indicates (through trade brokers, catalogs, directories, newsletters, etc.) potential sellers who may provide the desired product or service. In the case of vendors or professional services, MBE lists for the potential buyer all such persons capable of providing the desired service. MBE will use its best efforts to broker the trade units of members into goods or services, to accurately record trades, and to administer the Rules of Membership in accordance with their terms. However, the sole principals in any trade are the buying and selling members involved and therefore trades are entered into voluntarily and MBE is not the guarantor of any trade or trade unit.

**NATURE OF TRADE UNITS:** A "Trade" is a barter purchase or sale of goods and/or services whereby payment is made in trade units posted to the account pursuant to the Rules of Membership. A trade unit denotes the right to receive goods or services available within MBE in the amount of those trade units. Trade units may be used only in the manner and for the purposes set forth in the Rules of Membership. They will not be considered legal tender, securities, or commodities. Trade units may not be redeemed for cash. MBE disclaims responsibility for the negotiability of trade units or for the availability of goods or services from any source.

**LIABILITY FOR TRADE UNITS:** Trade units in the barter system (positive balances) are liabilities of persons who have spent more than their earnings (negative balances). There is a creditor/debtor relationship between such members and therefore trade transactions incur the normal business risks associated with any credit transaction. As a general rule, trade units are the liabilities of members who owe the barter system and not of MBE which is solely responsible for administering the system. Any positive balances abandoned or surrendered by former members in accordance with the Rules of Membership may be used as MBE shall determine.

**TRADE UNIT LOANS:** MBE may make trade unit loans to any Client on terms and conditions consistent with Client's credit worthiness and ability to repay. Loans may be made in the sole discretion of MBE management with regard to principal, interest, terms and conditions, lending policy, and other particulars. A Client wishing to apply for a loan may be required to submit a loan application, financial statement, credit agreement, promissory note or collateral prior to approval. Client is required to pre-pay cash commission on loan amount and must pay all cash fees owed MBE prior to execution of loan agreement. MBE is under no obligation to extend credit at any time. The proper exercise of the lending power by MBE results in benefits to the members at large and therefore all interest, fees, charges and other proceeds for such loans are the sole and exclusive property of MBE. Any member with an existing trade account deficit is required to accept all requests to trade goods and services normally traded by that member. Upon refusal to trade, MBE may issue a written request for the member to resume trade within 30 days. If trading is not resumed, the trade deficit becomes immediately due and payable in cash dollars.

**AVAILABILITY OF PRODUCTS OR SERVICES:** MBE uses its best efforts to solicit new businesses having products or services to satisfy the needs of the membership. MBE is committed to providing only those products or services actually available in the Exchange system. MBE is not responsible if a member cannot find specific products or services to buy from other members.

**PAYMENT OF FEES:** All fees and charges, including initial set-up fees, service charges, and other charges to members by MBE are in payment for services rendered in processing member into the exchange system, operating the clearinghouse and brokerage function, administering the Rules of Membership, maintaining records, and facilitating members' use of the exchange system. In the event that Client is in arrears for any cash fees beyond thirty (30) days, MBE may suspend the member's right to use any positive trade balance in his account or take such further action as is permitted under the Rules of Membership.

**TRADE AUTHORIZATION:** All purchases in excess of \$50.00 per transaction must be approved by MBE prior to sale. Upon approval, MBE will issue an authorization number which is to be recorded on the transmittal form (voucher). If no authorization is not obtained at the time of the sale, MBE reserves the right to refuse to issue an authorization number approving a transaction under any of the following conditions:

- (a) If the buying member does not have sufficient trade units or line of credit to make such a purchase;
- (b) If either party is not a member in good standing.

Authorizations remain in effect for a period of ten (10) days from the date the authorization number is issued. In the event a transaction involves special order merchandise or contracted services which will not allow the transaction to be completed within ten (10) days, the member obtaining the authorization must notify MBE of the approximate date of completion of the transaction at the time the authorization is issued and the authorization will remain in effect for ten (10) days after completion of the transaction.

**RECORD KEEPING AND ERRORS:** Client agrees that bank checks from Client to MBE with notation "PAID IN FULL" may not include charges for transactions posted after the last statement received by Client, or transactions which are disputed by Client. ACCEPTANCE OF CHECKS WITH A NOTATION OF THIS TYPE DOES NOT NECESSARILY ACKNOWLEDGE FULL PAYMENT OF ALL MONIES OWED TO MBE. NSF cash check returns will result in a cash

charge of \$25.00 per incident to the account of the Client issuing the check. NSF Trade Drafts will be charged \$25.00 Trade Dollars per incident and will be waived at the sole discretion of MBE. Maintaining written documentation of transaction is the sole responsibility of the Seller. If no signed authorization from the buyer is kept, the transaction may be reversed at the buyer's request. MBE three part vouchers may be used to record the transaction and buyer's signature. MBE has the right, but not the obligation, to reverse transactions due to non-compliance with these Rules or failure to provide goods or services as represented, in which event it will be the seller's responsibility to collect from the buyer. Transactions are subject to final audit and verification by MBE and, in case of inaccuracies, or non-compliance, MBE may debit or credit Client's account without notice. Any cash payments, e.g. shipping or booking fees, are the sole responsibility of the buyer and seller. MBE's only responsibility is to record transactions according to the guidelines outlined in the Trading Rules. MBE is not responsible for the interpretation or fulfillment of any of the obligations of the buyer and seller. A selling member must submit to MBE a copy of the transmittal form (voucher or other proof of sale) within ten (10) days of each sale. MBE is not responsible for posting transactions reported on any type of transmittal form more than ten (10) days after the date of sale. MBE will issue monthly statements to Clients reflecting account activity and amounts due and owing MBE. Monthly statements are deemed accurate as printed unless Client notifies MBE in writing of any discrepancy within thirty (30) days of the statement date.

**LAW AND REGULATIONS:** Members shall abide by all applicable federal, state and local laws and regulations pertaining to any transaction and MBE shall not be responsible for any failure on the part of a member to so comply. MBE will be held harmless by the member for any action MBE takes to comply with applicable laws or regulations.

**TAXES:** Members are advised that transactions involving trade units are generally treated as taxable events for federal, state and local tax purposes. The declaration and reporting of all applicable federal, state and local taxes resulting from trade transactions rests solely with the Client. MBE is required by federal law to obtain the correct taxpayer identification number and its associated full legal name, and treat each transaction in accordance with applicable federal law. Client is required to supply this information on IRS form W-9. MBE will not process any transaction for Client unless IRS form W-9 is complete, signed, and on file at MBE. MBE shall not be liable to any Client for actions taken against Client regarding compliance with federal, state or local tax laws.

**SALES-SURCHARGE:** Client will sell merchandise and/or services for Trade Dollars at its prevailing or normally advertised prices given cash customers, but may exclude "sale" items. MBE may authorize surcharges in Trade Dollars to be added to a Client's price in certain categories such as groceries, gasoline, appliances, electronics and others where the gross margin of profit is extremely low. Surcharges may only be authorized by MBE and must be clearly indicated to purchaser prior to making the sale.

**OVERPRICING:** MBE reserves the right to inquire into complaints of overpricing by Members and to take such actions, which, in MBE's sole discretion, are necessary to insure fair dealing. Overpricing violations may result in termination of Client's account and/or immediate adjustments to the transactions involved.

**DEFINITION OF MEMBER IN GOOD STANDING:** A Client who complies with the current Trading Rules and any other agreements in effect with MBE, who is current in any cash or Trade Dollars owing to MBE and who has a valid Client Account, is a "Client in Good Standing". Only Clients in Good Standing are entitled to the services of MBE.

**DIRECT TRADES:** Direct trades between members which avoid service fees are prohibited and if consummated are subject to cash service charge stipulated in each Client's Membership Agreement. This cash service charge will apply to both the buyer and seller and is payable on demand. Such direct trades may also result in suspension of member's privileges.

**BREACH OF AGREEMENT:** The failure of a member to honor or accept purchase from other card holding members pursuant to and in accordance with the Rules of Membership is a material breach of the rules. MBE may immediately terminate the account of an offending member or may freeze all activity in that member's account, without notice, until such time as MBE, in its sole discretion, determines to reinstate the member or terminate membership.

**DISCLAIMER OF LIABILITY:** MBE makes no representation or warranty, either express or implied, regarding the fitness, quality, delivery date, merchantability, price or any term of a trade transaction. Such warranties are solely that of the selling member and/or the manufacturer and the selling member shall hold MBE harmless with respect to any claim arising from any transaction.

**ADVERTISING:** For MBE and the barter system to be successful there must be advertising within the Exchange of the availability of goods and services by the members. Unless otherwise stipulated by the Client, MBE will advertise to other members in the general membership the availability of any members products and services. MBE is neither a party to these sales listings nor responsible for their accuracy.

**TIPS AND GRATUITIES:** As with sales tax, all tips and gratuities must be paid in cash at the point of purchase by the purchasing member.

**PRODUCTS SOLD BY MBE:** All products owned and sold by MBE are subject to the sole and exclusive warranty, if any, made by the manufacturer.

**SECURITY INTEREST/INSOLVENCY:** Client grants MBE a security interest in all Trade Dollars to be credited to Client's account for the amount of all unpaid cash fees. If Client becomes insolvent or bankrupt, all cash fees shall be due and payable in full. Upon filing of Petition under Chapters 7, 11 or 13 of the Bankruptcy Code, or an Assignment for the Benefit of Creditors, no trading shall be allowed until all cash fees due MBE have been paid in full. If the petition under Chapter 7 of the Bankruptcy Code is filed by or against the Client, or if the plan filed pursuant to either Chapters 11 or 13 does not provide for the full payment of all cash fees due MBE, MBE shall have the option, in lieu of filing as a creditor, of treating the Trade Dollar balance as equal in value to the amount of cash fees owing, and terminating the account; provided, however, that if MBE DOES receive all of its cash fees in full, MBE shall reinstate the Trade Dollars to the Client's account.

**PERSONAL GUARANTEE:** By signing the Membership Application, Client personally guarantees all cash and trade liability of the account, any and all sub-accounts and/or business accounts established at Client's request. Client agrees that his or her business account, any other business accounts, and any any personal sub-account in Client's own name, established by MBE at the request of the Client have a financial relationship within the Exchange. Each and every account bears cash and trade liability for each and every related account. If any of these accounts should become insolvent, bankrupt, or should discontinue business operations, MBE, at its sole discretion, may transfer cash and/or trade balances owed by Client to MBE, or by MBE to Client, to any other related account owned by Client.

**PREFERENTIAL TREATMENT:** MBE warrants that it will not engage in preferential treatment of owners, employees, their families and associates or any other person as it discharges its management responsibilities. Regulation of purchases, control of credit extension, and allocation of goods and services in short supply are inherent in MBE's sole discretion. Such managerial responsibilities do not constitute preferential treatment.

**MBE SCRIP:** MBE may make SCRIP available for purchase with trade units, subject to service fees in the Rules of Membership. MBE SCRIP may be used for one transaction only. The selling member, after accepting MBE SCRIP in exchange for goods and services, shall return the MBE SCRIP to MBE within seven (7) days of the date of the transaction. Upon receipt of unexpired MBE SCRIP, MBE will credit the SCRIP to the selling member's account. Reuse of MBE SCRIP by the selling member, avoiding service fees constitutes a direct trade and is prohibited by the Rules of Membership.

**OTHER EXCHANGES:** MBE is a member of an association of bartering exchanges and because of this membership MBE can frequently arrange barter transactions for Clients with members of the other exchanges. Service charges for such transactions will be determined by MBE on an individual transaction basis.

**FEES:** Each Client shall pay the Exchange upon acceptance of the Membership Application an initial fee and annual fee for the first year and yearly thereafter. Client fees are non-refundable and are subject to adjustment by the Exchange for ensuing years.

**TRADE CREDIT CARDS:** The Exchange shall issue a trade credit card to the Member for the use of the Member or its authorized agent and the Exchange shall create a trade account in the Exchange for the Client. Trade credit cards remain the property of the Exchange, and are not transferable or assignable, and are subject to cancellation or recall by the Exchange.

**TRADE ACCOUNT:** Trade purchases and sales of goods and services between members will be registered by offsetting entries on the respective Client's trade accounts in the Exchange by the issuance of credits to the selling members trade account and debits to the buying Client's trade account in the amount of the trade price of the goods or services sold.

**THE TRADE TRANSACTION:** Members must agree upon all aspects of the trade transaction and comply with the following procedures. Concurrent with the sale of goods or services, the SELLING Client must:

- (a) Telephone the Exchange to obtain a sales authorization number and to inform the Exchange of the account number of the buying Client and the trade price of the goods or services being sold. All transactions over \$50.00 MUST have an authorization number;
- (b) Place the sales authorization number on the transmittal form provided by the Exchange;
- (c) Place the date of the transaction, a brief description and the trade price of the goods or services sold on the transmittal form;
- (d) Obtain the signature of the buying Client on the transmittal form, verify such signature against the Client's identification;
- (e) Collect and pay to the appropriate agency all sales taxes and other taxes associated with the transaction.
- (f) Forward the original of the transmittal form to the Exchange in such manner that the Transmittal form is received by the Exchange within seven (7) days of the date of the delivery of the goods or completion of the services. Trade units will not be credited to the seller's account until the transmittal form is received by the Exchange.

**CANCELLED TRANSACTIONS:** Clients may cancel transactions if permitted by their agreement. In the event of cancellation the selling member shall promptly notify the Exchange by telephone and, if a transmittal form has been submitted to the Exchange, submit a second transmittal form indicating the cancellation.

**NEGATIVE BALANCE:** No Client may create a negative trade unit balance without the prior approval of the Exchange obtained pursuant to the procedures in the paragraph above for sales authorizations. The Exchange may at that time or later require the member to furnish a promissory note and/or security for the negative balance owed. While the negative balance exists, Client MUST make its goods and services available to full trade to all Exchange Members.

**SERVICE CHARGES:** Client shall pay a service charge to the Exchange as agreed upon in the Membership Application. Service charges are due upon receipt of the Exchange's statement each month. A late payment penalty of the highest legal rate of interest may be assessed if the service fees are not paid within thirty (30) days of the postmarked statement date. The Exchange reserves the right to suspend all trading of Clients whose accounts are not timely paid. Additionally, the Exchange reserves the right to charge a Trade Unit fee of three times the cash due for all cash charges past due for sixty (60) days. Client can, by payment of the cash balance due within thirty (30) days of the charge, restore its trade units so taken. In aggravated situations the Exchange may, in its sole discretion, terminate its agreement with Client and all remaining trade units shall become the property of the Exchange.

**MONTHLY STATEMENT VERIFICATION:** Client shall examine the monthly statement submitted by the Exchange upon receipt thereof and shall advise the Exchange in writing of any errors, overcharges, or other discrepancies (including tax identification numbers) in the statement. Client expressly agrees that the statement is correct and agrees to be bound thereby if Client fails to notify the Exchange in writing of any error within thirty (30) working days from the date the statement is postmarked. All statements not in error are due and payable within thirty (30) days of the postmarked date.

**TERMINATION OF MEMBERSHIP:** The Exchange may terminate the membership of a Client upon 30 days written notice due to violation of rules and/or the Membership Application. Membership may be terminated by Client upon 30 days written notice.

- (a) If Exchange reasonably believes that Client is spending its trade balance in anticipation of cancelling future participation

in the Exchange, or if Client has requested termination, or due to poor payment history, or in the event of a large purchase, then the Exchange shall require the prepayment of cash service fees on the remaining trade balance held in Client's account.

- (b) If Client has a negative trade unit balance, Client shall pay to the Exchange, CASH in an amount equal to the negative trade unit balance, plus all service charges and dues then owed to the Exchange.
- (c) Positive balances may be spent over a reasonable period of time, or the Exchange, at its sole discretion, may issue SCRIP, along with a directory of Exchange Members who generally accept SCRIP, less service charges (rounded to the nearest 5 trade units) in order to bring the Client account trade balance to zero. Updated SCRIP directories will be made available upon request, and unused SCRIP will be renewed within thirty (30) days prior to the SCRIP expiration date. Cash service fees on the remaining positive trade balance, as well as all current cash fees owed to the Exchange, shall be due within ten (10) days of notice of termination, and in advance of any expenditure of Client's trade balance.
- (d) Trade credit cards shall be surrendered by Client to the Exchange.

**CONVERSION:** Under no circumstances, including termination, shall Client be entitled to receive cash from Exchange for a Client's positive trade unit balance.

**TAX OBLIGATIONS:** Clients are solely responsible for reporting and paying sales, income and other taxes resulting from barter transactions. Client agrees to hold the Exchange harmless from any liability for nonpayment of such taxes or for reporting barter transactions to appropriate taxing authorities.

**UNETHICAL CONDUCT:**

- (a) Overpricing, direct trades between Clients, and refusal to honor other Clients' trade credit cards under the terms and conditions of Trading Rules and the Membership Application are unethical conduct which in the sole discretion of the Exchange may lead to adjustment of offending transaction and/or termination of membership.
- (b) Direct trades are subject to the Exchange imposing the service fee specified in the Client's Membership Application, on both the buying and selling Clients.
- (c) The Exchange is authorized to investigate any transactions between Clients.

**DISPUTES, LOSSES, AND INDEMNIFICATION:**

- (a) Trade transaction disputes are only between the buying and selling Clients and the Exchange has no responsibility for resolving such and the Exchange has no responsibility for resolving such disputes.
- (b) The selling Client shall indemnify and hold the Exchange harmless from and against all claims, liabilities, costs and expenses arising from or in any way relating to a transaction involving the Exchange, including but not limited to actual, reasonable attorney fees and costs.

**WARRANTIES:**

- (a) The Exchange makes no representation or warranty, express or implied, as to the quality, merchantability, fitness for purpose, delivery rate or any other term of a transaction between Clients.
- (b) Items sold between members or items owned by members and sold in the Exchange showroom are subject solely to the warranties, if any, of the manufacturers.
- (c) All products owned and sold by the Exchange are subject to the sole and exclusive warranties of the product manufacturer.

**NO WAIVER:** The Exchange's failure or delay in exercising any right shall not preclude any other or further exercise of any right. The remedies of the Exchange are cumulative and are not exclusive of any other remedies provided by law.

**ENTIRE AGREEMENT:** Each and every provision contained in the Membership Application and these Rules of Membership is severable from every other provision. If any one or more provisions shall be determined to be invalid, illegal, or otherwise unenforceable, the remaining provision shall remain in full force and effect.