



RULES OF THE TRADING PROGRAM **(RTP)**

BBX MANAGEMENT LIMITED
ACN 059 341 758

BBX INTERNATIONAL LIMITED (HK)
HK #1031854

BBX Management Limited (ACN 059 341 758) is a fully owned subsidiary of BBX Holdings Limited, a public company listed on the Australian Stock Exchange (ASX Code – BBX).

BBX International Limited (HK #1031854) is incorporated in Hong Kong and is fully owned by BBX Holdings Limited.

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PART I – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1 Definitions. Unless the context requires otherwise:

- “**Buying Member**” means a Member purchasing goods and services in accordance with these Rules;
- “**Selling Member**” means a Member selling goods or services in accordance with these Rules;
- “**Directory**” means a directory of members published and distributed by the Manager in accordance with Rule 14;
- “**Direct Trade**” has the meaning given to it in Rule 11.5;
- “**Debt Reserve Fund**” has the meaning given to it in Rule 22;
- “**Fee**” includes any transaction/service fee, administration fee, directory fee, or any other fee payable to the Manager in accordance with these Rules;
- “**Gift Certificate**” means a Gift Certificate issued by the Manager in accordance with Rule 8.7;
- “**Manager**” in relation to the Trading Program operating in Australia means BBX Management Limited ACN 059 341 758, or in relation to the Trading Program operating outside Australia, the Company to whom a Master Franchise has been granted by BBX International Limited (HK#1031854).
- “**Member**” means a corporation, individual or other legal entity that has applied to join the Trading Program and whose application has been accepted by the Manager;
- “**Member in Good Standing**” means a Member who is current in any fees and charges owing to the Manager, is trading within its Credit Limit and otherwise conducts itself in accordance with these Rules;
- “**Member’s Card**” means the plastic cards, embossed with the Member’s name and account number, provided by the Manager to identify Members and facilitate Trade transactions between Members;
- “**Monetary Unit**” means the monetary unit or unit of currency or money as prescribed by the national Government or Parliament of the country in which the Trading Program is operating;
- “**Rules**” means these Rules of the Trading Program;
- “**Special Authorisation**” has the meaning given to it in Rule 9.2(d);
- “**Special Trade**” means a Trade of the type or nature as set out in Rule 9.1;
- “**Special Job or Order**” has the meaning given to it in Rule 9.1;
- “**Trade**”, “**Trades**” or “**Traded**” means a transaction conducted in the manner set out in these Rules, between Members or between the Manager and any Member, involving the sale and purchase of goods (which expression includes, for the purposes of these Rules, real property or any right or title to or interest in any thing) or services, which is recorded by those Members in accordance with these Rules;
- “**Trade Account**” means an account established by the Manager in relation to each Member in accordance with Rule 6.1;
- “**Trade Dollars**” has the meaning set out in Rule 4.1;
- “**Trading Program**” means the system operated by the Manager to facilitate reciprocal trade amongst the Members.

2 Interpretation. In these Rules, unless the context otherwise requires, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) any gender includes every gender;
- (c) a person includes a corporation, trust, association, partnership, a Government Authority or other legal entity and where necessary, includes successor bodies;
- (d) writing includes printing, typing, facsimile, electronic mail and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) a signature and signing includes the due execution of a document by a corporation or other relevant entity;
- (f) a month means a calendar month;
- (g) statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of these Rules;
- (j) a word or phrase that has been given a defined meaning includes other grammatical forms of that word or phrase that has a corresponding meaning;
- (k) an agreement or document is to that agreement or document as amended, notated, supplemented or replaced from time to time;
- (l) a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. THE TRADING PROGRAM AND THE PARTIES INVOLVED

- 1 **Trading Program in Australia.** In Australia, the Trading Program is owned and operated by BBX Management Limited ACN 059 341 758.
- 2 **Trading Program outside Australia.** Where the Trading Program operates outside Australia, the Trading Program is operated by the Manager, under a Master Franchise granted to the Manager by BBX International Limited (HK#1031854).
- 3 **Rules.** The Manager shall operate the Trading Program in accordance with these Rules.
- 4 **Role of the Manager.** The Manager acts as a third-party record keeper of trade transactions amongst Members and directs Members to each other for the purpose of facilitating trade transactions.

3. THESE RULES

- 1 **Purpose.** The purpose of these Rules is to regulate the Trading Program by setting out the terms upon which Members may Trade.
- 2 **Legally Binding.** The Manager and each Member agrees to be bound by these Rules, which, by force of the Membership Agreement signed by each Member, forms a contract between the Manager and all of the Members jointly, between the Manager and each of the Members severally and between each Member and each other Member.
- 3 **Survival of Obligations.** These Rules shall at all times be binding on the Members and obligations imposed upon Members by these Rules shall survive suspension or termination of the right of a Member to participate in the Trading Program.
- 4 **Binding on Personal Representatives.** These Rules shall be binding upon the Members, their heirs, successors, personal representatives or administrators.

4. NATURE OF TRADE DOLLARS

- 1 **Nature.** A Trade Dollar is an accounting unit (notionally equivalent to one Monetary Unit) used to record the value of goods and services Traded. Trade Dollars are not legal tender, securities, debentures or commodities. In these Rules, the cash equivalent of one Trade Dollar is one Monetary Unit.
- 2 **Credit Balance an Asset of Member.** The Trade Dollars recorded in a Trade Account of a Member which has a credit balance represents an asset of that Member. Such a Member is entitled to obtain goods or services from another Member to a value equivalent to that credit balance, in accordance with these Rules but not otherwise.
- 3 **Not a Liability of the Manager.** The Trade Dollars recorded in a Trade Account of a Member having a credit balance do not constitute a liability of, or a debt payable by, the Manager to any Member.
- 4 **Debit Balance a Liability of Member.** A Member whose Trade Account has a debit balance is liable, in accordance with these Rules, either:
 - (a) to supply goods or services to an equivalent value to another Member in accordance with these Rules but not otherwise; or
 - (b) if the Member has not discharged its liability in accordance with Rule 4(a) hereof, to pay to the Manager an amount in the Monetary Unit (cash) equivalent to the amount of the Trade Dollar debit balance of the Trade Account, together with any fees and costs payable in accordance with these Rules.
- 5 **No Obligation to Redeem or Convert.** The Manager shall not, under any circumstances, be under an obligation to any Member to redeem or convert to cash or pay any amount for, or in respect of, Trade Dollars.
- 6 **No warranty.** The Manager makes no warranty in relation to the negotiability of Trade Dollars.
- 7 **Restriction on Use.** Trade Dollars may only be used in the manner and for the purposes set out in these Rules.

PART II - TRADING IN THE PROGRAM

5. ENTITLEMENT TO PARTICIPATE

Member in Good Standing. Unless otherwise approved by the Manager, only a Member in "Good Standing" shall be entitled to participate in the Trading Program.

6. TRADE TRANSACTIONS

- 1 Trade Accounts.** In its books of account, the Manager shall establish for each Member and for the Manager, an account ("Trade Account") for recording Trades entered into by them and other transactions in Trade Dollars which relate to them.
- 2 Recording of Trades.** Subject to these Rules, the Manager shall cause any Trade, which has been duly entered into, to be recorded in the Trade Accounts of the participants in the Trade, by:
 - (a) crediting the Trade Account of the Selling Member with the Trade Dollar amount of the Trade (if necessary, offsetting that amount against any debit balance in that Trade Account); and
 - (b) debiting the Trade Account of the Buying Member with the Trade Dollar amount of the Trade (if necessary, offsetting that amount against any credit balance in that Trade Account).
- 3 No Agency.** Members conduct all Trades as principals and not as agents of the Manager. The Manager is not a party to any Trade, unless it is the Buying Member or the Selling Member to a Trade. Trades shall be entered into voluntarily by the Buying Member and the Selling Member. The Manager is not the guarantor of any Trade or Trade Dollar or otherwise liable therefore.

7. TRADE PROCEDURE

- 1 Ordinary Trades.** The procedure for conducting an ordinary Trade is:
 - (a) **(Produce Card)** A Member in Good Standing who intends to buy goods or services (the Buying Member) produces its Member's Card to the Member who intends to sell the goods or services (the Selling Member).
 - (b) **(Obtain Authorisation)** The Selling Member obtains authorisation for the proposed or completed Trade from the Manager (see Rules 8.4 to 8.6 for the various procedures for obtaining authorisation).
 - (c) **(Effect of Authorisation)** Except for Special Trade Procedures (see Rule 9.1), all transactions will be deemed to have been accepted by the Buying Member and the Selling Member upon the issue of the authorisation by the Manager.
 - (d) **(Tax Invoice)** If required by the Buying Member to do so, the Selling Member shall issue a Tax Invoice or similar documentation as receipt for or proof of the completed Trade.
 - (e) **(Not a Pending Transactions)** Once Authorisation has been given by the Manager, the Trade shall be deemed to be completed and shall not be considered to be a pending Trade.
 - (f) **(Other Procedure)** The Manager may, in its absolute discretion, set down an Authorisation procedure that differs to the procedures set down in Rule 8.

8. AUTHORISATION PROCEDURE

- 1 Authorisation to be Sought.** The Selling Member shall obtain the Manager's authorisation for each and every Trade as a pre-requisite to the Manager recording the Trade in accordance with Rule 6.2.
- 2 Authorisation Granted.** The Manager shall upon granting authorisation, issue an authorisation number in respect of the authorisation.
- 3 Refusal of Authorisation.** The Manager may refuse to authorise a Trade for any reason, including but not limited to:
 - (a) that the Buying Member does not have sufficient Trade Dollars or available credit in its account;

- (b) that either the Buying Member or the Selling Member is not a Member in Good Standing; or
- (c) that the Selling Member failed to seek or obtain the Manager's authorisation before the transaction was entered into, in accordance with Rule 7.1 or Rule 8.1.

4 (EFTPOS/MPOS) Authorisations. The procedure for conducting an EFTPOS/MPOS Trade is:

- (a) **(Produce card)** A Member in Good Standing who intends to buy goods or services (the Buying Member) produces its Member's Card to the Member who intends to sell the goods or services (the Selling Member).
- (b) **(Obtain Authorisation)** The Selling Member obtains authorisation for the proposed Trade from the Manager by swiping the Membership Card of the Buying Member through an approved EFTPOS/MPOS machine, entering the value of the proposed Trade and obtaining electronic approval for the proposed Trade.
- (c) **(Sign EFTPOS/MPOS Receipt)** The Buying Member signs a copy of the EFTPOS/MPOS receipt. The Selling Member must verify that the signature on the EFTPOS/MPOS receipt is the same as that on the Buying Member's Card.
- (d) **(Receipt Retention)** The Selling Member should retain the signed Authorised EFTPOS/MPOS receipt for sale validation and their own records. The Buying Member should retain the unsigned copy of the EFTPOS/MPOS receipt as proof of purchase and their own records. Copies should not be forwarded to the Manager.
- (e) **(Refund/Reversal)** Authorised transactions can only be refunded, adjusted or cancelled by swiping the Buying Member's Membership Card through the Selling Member's EFTPOS/MPOS machine and transacting the required adjustment.
- (f) **(GST Compliance).** The Selling Member shall ensure that any receipt issued by it complies with the requirements of any applicable goods and services tax (GST), sales tax or consumption tax.
- (g) **(Onus of Record)** The onus is on the Selling and Buying Members to retain the receipts of EFTPOS/MPOS Trades. The Manager may request copies of receipts from either member if a dispute arises from any EFTPOS/MPOS Trade.
- (h) **(Failure to Obtain Signed Receipt)** If a Member claims that their Trade Account has been debited with a Trade without their agreement (otherwise than by the Manager in accordance with these Rules) the Manager shall reverse the Trade, provided that:
 - (i) the request to reverse the transaction is made by the Member, in writing ("the Request"); and
 - (ii) the Request is made within three (3) months of the alleged Trade having been entered into; and
 - (iii) the Manager has notified the Member responsible for processing the Trade (the Selling Member) of the Request, in writing; and
 - (iv) the Selling Member has failed (within 14 days of being given notice of the Request by the Manager) to provide to the Manager a copy of the receipt, or other documentation, signed by the Member in accordance with Rule 4(c) above.

5 iPOS/WEB POS Authorisations. These methods of obtaining authorisations are developed internally by the Manager and are accessed on-line via the Internet in accordance with guidelines issued by the Manager. A paper copy of the transaction can be printed for signing and record purposes. The procedure for conducting an iPOS/Web iPOS Trade is:

- (a) **(Produce card)** A Member in Good Standing who intends to buy goods or services (the Buying Member) produces its Member's Card to the Member who intends to sell the goods or services (the Selling Member).
- (b) **(Obtain Authorisation)** The Selling Member obtains authorisation for the proposed Trade from the Manager electronically by entering details (such as the Buying Member's details, Selling Member's details, amount) of the proposed Trade in accordance with the guidelines issued by the Manager in its programs for iPOS/Web iPOS authorisations.
- (c) **(Sign Receipt)** The Buying Member signs a copy of the system-generated receipt. The Selling Member must verify that the signature on the iPOS/WEB iPOS receipt is the same as that on the Buying Member's Card.
- (d) **(Receipt Retention)** The Selling Member should retain the signed Authorised iPOS/WEB iPOS receipt for sale validation and their own records. The Buying Member is required to retain a copy of the iPOS/WEB iPOS receipt as proof of purchase and their own records. Copies should not be forwarded to the Manager.

- (e) **(Refund/Reversal)** Authorised transactions can only be refunded, adjusted or cancelled by the Selling Member' transacting the required adjustment in terms of instructions provided in its systems or as otherwise advised by Manager.
- (f) **(GST Compliance).** The Selling Member shall ensure that any receipt issued by it complies with the requirements of any applicable goods and services tax (GST), sales or consumption tax.
- (g) **(Onus of Record)** The onus is on the Selling and Buying Members to retain records and receipts for any iPOS/WEB iPOS Trades. The Manager may request copies of receipts from either member if a dispute arises from any iPOS/WEB iPOS Trade.

6 Telephone Authorisations. Where a Selling Member does not have access to an automated or electronic means of obtaining authorisations, authorisations may be obtained by telephone, either by the Selling Member:

- (a) telephoning the Manager's dedicated toll free voice-activated authorisation service provided for this purpose; or
- (b) telephoning the Manager's head office for operator-assisted authorisations.

In either case the Trades are paperless transactions and no paper proof is required by the Manager (but see Rule 8.5(g) above).

7 Trade by Gift Certificate or Other Voucher. The procedure for conducting a Trade by way of Gift Certificate or Other Voucher is:

- (a) **(Issue of Certificate)** At the request of any Member, the Manager may issue to that Member a certificate (Gift Certificate) or other voucher (Other Voucher) entitling the bearer to participate in the Trading Program. The Gift Certificate or Other Voucher must be forwarded to the Manager at the first point of presentation. Vouchers are not transferable.
- (b) **(Trade Account Entries Upon Issue)** If the Manager issues a Gift Certificate or Other Voucher to any Member, the Manager shall:
 - (i) debit the Trade Account of the Member to whom the Gift Certificate or Other Voucher is issued with the Trade Dollar amount of the Gift Certificate or Other Voucher;
 - (ii) credit the Manager's Trade Account with that Trade Dollar amount;
- (c) **(Selling Member's obligation)** A Selling Member shall Trade with the bearer of a Gift Certificate or Other Voucher as if it was a transaction duly completed by the Manager and shall otherwise treat the Gift Certificate or Other Voucher as such, but shall not be required to obtain authorisation from the Manager.
- (d) **(Trade Account Entries Upon Use)** Upon receiving a Gift Certificate or Other Voucher from a Member who has entered into a Trade as a Selling Member with the bearer of a Gift Certificate or Other Voucher, the Manager shall credit the Trade Account of the Selling Member with the amount of the Gift Certificate or Other Voucher as if it was a Trade and debit the Manager's Trade Account for a corresponding Trade Dollar amount.
- (e) **(Payment of Balance in Cash)** If the Trade Dollar amount of the Gift Certificate or Other Voucher is insufficient to meet the purchase price of the goods or services to be sold or provided by the Selling Member, the bearer of a Gift Certificate or Other Voucher may pay the balance of the purchase price to the Selling Member in Cash.
- (f) **(No Change Payable)** If the Trade Dollar amount of the Gift Certificate or Other Voucher exceeds the purchase price of the goods or services to be sold or provided by the Selling Member, the Selling Member shall not be obliged to pay any change or give any credit in favour of the bearer of the Gift Certificate or Other Voucher.
- (g) **(Supplementary or Amended Rules)** The Manager may, from time to time, issue supplementary or amended rules for the use of Gift Certificates or Other Vouchers, which shall be endorsed thereon and Members using or accepting Gift Certificates or Other Vouchers shall be bound thereby.

8 Acknowledgment of Liability. The signing of any record or receipt issued in the course of an authorised transaction, by or on behalf of the Buying Member constitutes:

- (a) an acknowledgment by the Buying Member that the Trade to which the record or receipt relates has been conducted in accordance with these Rules;

- (b) an agreement on the part of the Buying Member that the Buying Member's Trade Account is to be debited in accordance with Rule 6.2 with the amount referred to in the record or receipt of the respective Trade; and
- (c) if the effect of debiting the Trade Account of the Buying Member with the Trade Dollar amount of the Trade after offsetting that amount against any credit balance in that Trade Account is to produce a debit balance in that Trade Account, an acknowledgment and evidence of the Buying Member's liability as provided in Rule 4.4.

9 Non Compliance with Procedure. Where the Buying Member or the Selling Member do not comply with any part of the trade procedure set out in these Rules, the Trade shall be deemed to be valid unless the Manager refuses to process it or after it is processed, reverses, cancels or alters the entries in the Trade Accounts of the Members involved.

9 SPECIAL TRADE PROCEDURE

1 Special Trade Procedure. A special procedure shall apply to Trades involving the sale or provision of goods or services in the form of special orders, construction jobs, provision of services over time or work-in-progress which must be paid for when work is completed or in stages and such other transactions as the Manager may from time to time determine. In this Rule, such a transaction is referred to as a Special Trade and the goods or services so sold or provided are referred to as a Special Job or Order.

2 Procedure. The special procedure applicable to a Special Trade is as follows:

- (a) **(Estimate of Cost)** Before authorising the Selling Member to commence the Special Job or Order, the Buying Member should obtain a written estimate from the Selling Member clearly stating the terms of trade and indicating that Trade Dollars are the accepted method of payment.
- (b) **(Deposit in Trade Dollars)** Before commencing the Special Job or Order, the Selling Member should, if appropriate, obtain a deposit or down payment in Trade Dollars. Payment of the deposit or down payment can be made by obtaining the Manager's authorisation. (The Manager may, in certain circumstances, provide transaction forms to facilitate Special Trades and part-payments).
- (c) **(Shortfall Payable in Cash)** The Selling Member should include in its contract a provision that if the Buying Member does not have sufficient Trade Dollars in its Trade Account when the Manager's authorisation is requested, then the difference will be paid by the Buying Member by way of cash payment to the Selling Member.
- (d) **(Special Authorisation)** In order to "reserve" an amount of Trade Dollars from the Buying Member's Trade Account until a particular Special Job or Order is completed, the Selling Member must forward to the Manager a written request, signed by the Selling Member and countersigned by the Buying Member, for "Special Authorisation" for the estimated amount less any deposits or down payments. If the Manager grants Special Authorisation, it shall give a Special Authorisation Number and the amount so authorised will then be frozen in the Buying Member's Trade Account, which shall be treated by the Manager as if that amount had been debited from it.
- (e) **(When Complete)** When the Special Job has been completed or partially completed, both the Selling Member and Buying Member shall advise the Manager in writing so that the amount reserved by Special Authorisation can be processed. In the event of partial payment, the Special Authorisation shall be reduced by that amount.
- (f) **(Manager to Credit Selling Member)** Subject to these Rules, the Manager shall, upon receiving confirmation signed by the Selling Member and Buying Member, credit the Selling Member's Trade Account.

10. PROCESSING OF TRADE TRANSACTIONS

1 Posting of Authorised Trade. Where the Manager has granted its authorisation, the Manager shall, subject to these Rules, post the Trade to the Trade Accounts of the Selling Member and the Buying Member.

2 Posting of Trade by Gift Certificate. The Trade Account of a Selling Member receiving a Gift Certificate or Other Vouchers shall, subject to these Rules, be credited by the Manager for the amount of Trade Dollars specified in that Gift Certificate or Other Voucher.

3 Where Manager Suspects Fraud etc. The Manager shall not be obliged to process a Transaction, Gift Certificate or Other Voucher where it reasonably suspects fraud or misleading or deceptive conduct by any party to the Trade. The Manager shall not be obliged to process any individual transaction under such circumstances.

- 4 **Late Receipt by Manager.** The Manager may decline to process any Gift Certificate or Other Voucher, which is received later than fourteen days after the date of the Trade.
- 5 **Audit and Verification.** All Trades are subject to final audit and verification by the Manager and in the case of errors or inaccuracies, the Manager may at its sole discretion debit or credit a Member's Trade Account so as to correct any error without giving notice to the Member whose Trade Account is affected.

11. TRADE CONDUCT

- 1 **100% Barter.** All Trades are to be conducted on a one hundred percent (100%) barter basis unless the Selling Member has, before entering the Trade, obtained the consent of the Manager to trade in cash or partly in cash and partly by way of Trade, which consent may be withheld at the sole discretion of the Manager.
- 2 **Refusal to Trade.** Where a Member has been requested to enter into a Trade with a Member in Good Standing and the first Member declines to enter into that Trade, but would have entered into a transaction if the second Member was willing to pay cash, then the first Member will be deemed to have breached these Rules unless an Authorisation Number has been sought and refused or the Member is on Standby in accordance with Rule **11.3**.
- 3 **Standby.**
 - (a) **(Pre-requisite Conditions)** Where the credit balance of the Trade Account of a Member exceeds \$50,000 Trade Dollars that Member may give notice to the Manager, in writing, of its intention to temporarily suspend its participation as a Selling Member in the Trading Program ("on Standby").
 - (b) **(Expiry of Notice Period)** Upon the giving of such notice the Member will be deemed to be on Standby and shall be entitled to refuse to Trade notwithstanding Rule **11.2**.
 - (c) **(Reverting to Normal)** As soon as the credit balance of the Member's Trade Account decreases below the amount referred to in Rule **11.3(a)**, the Member shall be deemed to no longer be on Standby.
- 4 **Taxes.** All tax or duty applicable on the Trade shall be paid in Trade Dollars (including any GST or other consumption tax) at the point of purchase by the Buying Member, or as otherwise required by law.
- 5 **Direct Trade.** This Rule **11.5** shall apply to transactions between two or more Members, which is conducted otherwise than in accordance with the provisions of these Rules:
 - (a) Members acknowledge and agree that all transactions taking place between them arise as a consequence of their being introduced to one another as a result of their membership of the Trading Program.
 - (b) In the event that a Member engages in Direct Trade with another Member then each Member involved in that Direct Trade shall pay a transaction fee equal to the Transaction Fee of the value of that Trade which shall fall due and payable to the Manager upon completion of that Direct Trade.
 - (c) The provisions of Rule **11.5(b)** shall not apply where the Manager, in its absolute discretion, is satisfied that the Members entered into Direct Trade for legitimate reasons other than the avoidance of paying Transaction/Service Fees.
 - (d) Without derogating from the other provisions of this Rule, the Manager may suspend or terminate the right of a Member to participate in the Trading Program, if the Manager considers that the Member has entered into a Direct Trade in contravention of the spirit of these Rules.

Where the Direct Trade involves both cash and Trade Dollars, the Manager may, at its discretion, charge fees on both the cash and Trade Dollar portions.

6 Overpricing.

- (a) A Member shall not charge more for any goods or services in Trade Dollars than it would have charged if the Trade was a cash transaction, provided that a Member shall not be obliged to give to a Buying Member any discount in price that would have been applicable in the case of a cash sale. The practice of charging Trade Dollar prices in breach of this Rule is referred to as "Overpricing".
- (b) The Manager may investigate or inquire into complaints of Overpricing by a Member.

12. MANAGER TRADES

- 1 **Manager Trades.** The Manager may participate in the Trading Program as if it were a Member and the Manager may debit or credit the Manager's Trade Account as the case may be and correspondingly credit or debit the Trade Account of the other Member participating in the Trade.
- 2 **Warranty as to Title.** Where the Manager participates in the Trading Program as a Selling Member, the Manager warrants to the Buying Member that the Manager has title to the goods to be traded free from any charge, lien or encumbrance.
- 3 **"As is where is".** Such goods are sold on an "as is where is" basis and the Buying Member shall acquire those goods on the understanding that the goods are manufactured or produced by someone else and not the Manager.
- 4 **No Warranty as to Fitness for Purpose** The Manager makes no warranty, whether express or implied by operation of law or otherwise, as to the merchantability, fitness for purpose or otherwise of those goods.
- 5 **Benefit of Warranty.** A Member shall look solely to the manufacturer, distributor or retailer of any such goods to obtain the benefit of any warranty that may apply.
- 6 **Assignment of Warranty.** Upon the completion of any Trade in which the Manager participates as a Selling Member, the Manager assigns the benefit of any warranty attaching to the goods to the extent that the benefit of any warranty attaching to the goods is lawfully capable of assignment.
- 7 **Reservation of Title.** Where the Manager participates in the Trading Program as a Selling Member, the following provisions shall apply to the exclusion of the provisions of the *Sale of Goods Act 1923* (NSW) or any other equivalent Act or law in the jurisdiction relating to the passing of title between a Selling Member and a Buying Member:
 - (a) Title to goods traded between the Manager and the Buying Member shall remain with and vest in the Manager at all times until:
 - (i) the full purchase price has been discharged by a debit entry in the Trade Account of the Buying Member; and
 - (ii) in the event that such a debit entry results in the Trade Account of the Buying Member having a debit balance, that debit balance has been discharged either by payment from the Buying Member to the Manager, or by credits subsequently made to the Buying Member's Trade Account as a result of transactions carried out in accordance with these Rules.
 - (b) Whilst title to goods traded between the Manager and the Buying Member remains with and is vested in the Manager, the Manager may re-take possession of such goods (or any part thereof) unless, within thirty days after the completion of the transaction (for which purpose the date on which the transaction is entered in the Buying Member's Trade Account shall be conclusive evidence of the date of the transaction), title to the goods has transferred to and become vested in the Buying Member in accordance with the provisions of Rule **12.7(a)**.
 - (c) For the purposes of Rule **12.7(b)**, the Manager is hereby irrevocably authorised by the Buying Member to do all or any of the following things in re-taking or attempting to re-take possession of the goods (or any part thereof) and may exercise any of the following powers through any of the Manager's directors, officers, servants, agents or sub-contractors:
 - (i) to enter upon any land, buildings or property owned, leased or occupied by the Buying Member;
 - (ii) to use reasonable force in order to obtain entry to any such land, buildings or property;
 - (iii) to sever, remove and disconnect the goods (or any part thereof) from any land, building or other property to which the same have been attached or affixed, without liability for any damage or injury thereby caused to such land, buildings or other property;
 - (iv) to appoint a receiver to take possession of the goods or any part of them; and
 - (v) in the event that the goods (or any part of them) have been inter-mingled with goods of the same or a similar character or description, to appropriate out of the goods so inter-mingled such quantity or amount as in the opinion of the Manager fairly represents the quantity or amount and the value of the goods sold by the Manager to the Buying Member.
 - (d) Whilst title to any goods sold by the Manager to the Buying Member remains vested in the Manager:
 - (i) the Buying Member shall not sell, lease, encumber, or otherwise deal with or part with possession of the goods or any part thereof until title has been transferred to and becomes vested in the Buying Member; and

- (ii) in the event that the Buying Member does, in breach of Rule **12.7(d)(i)**, sell, lease, encumber, deal with or part with possession of the goods or any part thereof, all proceeds of such sale, lease, encumbrance, dealing or parting with possession of the goods shall be placed by the Buying Member in a separate account and shall be held by the Buying Member in trust for the Manager until such time as title to the goods has passed to and become vested in the Buying Member in accordance with the provisions of Rule **12.7(a)**.

- 8 Trade Practices Act.** These Rules are subject to the provisions of the *Trade Practices Act 1974 (Cth)* or any other equivalent Act or law, in the jurisdiction, which is inconsistent with these Rules and to the extent that the same cannot lawfully be contracted out of and to that extent only, the provisions of those Rules shall be of no force or effect.

PART III - ADMINISTRATION OF THE PROGRAM

13. MANAGER'S ROLE

- 1 Provision of Services.** The Manager shall use its best efforts to provide to Members in Good Standing the following services (the Services):
 - (a) The maintenance of current lists of all Members and Members in Good Standing.
 - (b) The provision to Members of non-confidential authorised and current details of Members in Good Standing and the goods or services available from them under the Trading Program. The publication, for a fee, of news bulletins and the making available of advertising space in such news bulletins to Members in Good Standing for goods or services they may offer through the Trading Program.
 - (c) The operation and maintenance of a procedure by which Members may obtain Authorisation Numbers in accordance with these Rules.
 - (d) The administration and enforcement of these Rules.
 - (e) The ongoing review and where necessary, amendment of these Rules.
 - (f) The processing of properly authorised Trades and properly completed Gift Certificates and Other Vouchers.
 - (g) The carrying out of the duties and functions of the Manager as contained in these Rules.
- 2 No Liability.** The Manager shall not be liable to any Member for any failure to provide, or the manner of providing, the Services.
- 3 Monitor and Recover Debit Balances.** The Manager shall take all reasonable steps to:
 - (a) monitor all Trade Accounts which have a debit balance and ensure that the Members holding those accounts maintain them in accordance with these Rules; and
 - (b) pursue recovery of debit balances where the Rules provide that they are recoverable.
- 4 Regulate and Control.** The Manager shall have the right and power to regulate and control the number of Trade Dollars within the Trading Program.
- 5 Issue of Transaction Vouchers.** Where necessary, the Manager may make available to Members in Good Standing, blank Transaction Vouchers and any other recognised vouchers or certificates that may be prescribed from time to time by the Manager for use in connection with any Trade.
- 6 Gift Certificate.** The Manager may upon request or in accordance with Rule **8.7**, issue a Gift Certificate to a Member for amounts in Trade Dollars as specified therein, which can be used by that Member to participate in a Trade in accordance with Rule **8.7**.
- 7 Member's Card.** The Manager shall, from time to time, issue to Members in Good Standing, a Member's Card which shall, upon its production by the Member named on the card to another Member and subject to any notification to Members that the Member is not a Member in Good Standing, be *prima facie* evidence that the Member is a Member in Good Standing, provided that any expiry date endorsed thereon has not passed.
- 8 Periodic Statements.** The Manager shall issue monthly statements to Members reflecting activity in their Trade Account and amounts that are due and owing to the Manager.

- 9 **Deemed Accurate.** Statements issued by the Manager shall be deemed to be accurate unless a Member notifies the Manager in writing of any discrepancy within fourteen days of the statement date.
- 10 **Interim Statement.** A Member who requests an interim statement particularising activity in that Member's Trade Account will be provided with it by the Manager subject to payment by the Member of a reasonable fee which may be prescribed from time to time by the Manager.

14. DIRECTORY AND ADVERTISING

- 1 **Authorisation.** Unless otherwise notified to the Manager in writing, each member authorises and requests the Manager to notify and advertise to other Members the availability in the Trading Program of that Member's goods or services.
- 2 **Directory - Publication & Distribution.** The Manager shall, from time to time, publish and distribute a Directory that contains the names and such other information concerning Members that the Manager from time to time determines.
- 3 **Directory.** A Member in Good Standing shall be entitled to have its name published in the Directory. A Member in Good Standing shall (unless the Manager otherwise determines) be entitled to place a brief description of its business, goods or services in the next published Directory after payment by the Member of any Directory Fee.
- 4 **Member's Listing.** A Member's listing in the Directory shall be classified according to the classification system determined by the Manager.
- 5 **No Warranty as to Accuracy of Directory.** The Manager gives no warranty as to and shall not be responsible for, the accuracy of the information in relation to any Member contained in the Directory or any promotional or other material provided to Members by the Manager or any Franchisee or servant or agent, and shall not be liable for any error or omission therein.

15. TRANSACTION/SERVICE, ADMINISTRATION AND DIRECTORY FEES

- 1 **Transaction/Service Fee.** Each Member shall pay to the Manager a fee in respect of each and every Trade in which it participates (a Transaction/Service Fee) which shall be equal in amount to such percentage of the value of the Trade as the Manager determines, which shall, at the election of the Manager, be payable either in cash or partly in cash and partly in Trade Dollars, or entirely in Trade Dollars. The amount of any Transaction/Service Fee shall be debited to the Trade Account of the Member.
- 2 **Administration Fee.** Each Member shall pay to the Manager an annual fee, or monthly fee, in advance (the "Administration Fee"), which, in the discretion of the Manager, will be payable entirely in cash or partly in cash and partly in Trade Dollars, or entirely in Trade Dollars.
- 3 **Directory Fees.** The Manager shall be entitled to charge each Member a fee (the "Directory Fee") either in cash or in Trade Dollars or partly in cash and partly in Trade Dollars, or entirely in Trade Dollars, which shall be paid by each Member whose details appear in the Directory, in the manner prescribed by the Manager.
- 4 **Payment.** Each Member shall pay to the Manager the full amount of all Fee and charges owing by it within seven days of the date of receiving its monthly statement or within such other period as may be notified in that statement unless the Member has agreed with the Manager in writing that payment of Transaction/Service Fees are to be paid to the Manager at the time the Trade is entered into.
- 5 **Direct Debit.** A member may provide the Manager with an authority to directly debit the Member's nominated bank account or credit card in payment of any fees payable by the Member.

16. OVERDUE FEES OR OTHER MONEYS

- 1 **Interest.** In the event that a Member fails to pay:
 - (a) any fees or charges within the period referred to in Rule 15.4;
 - (b) any other money which becomes payable under these Rules, by the date upon which it became payable;

then the Member shall pay to the Manager interest on the cash amount outstanding at the rate of 2% per calendar month (or such other rate as the Manager may prescribe from time to time) until the outstanding fees, charges and/or other monies and interest thereon are paid in full.

- 2 **Arrears.** If a Member is in arrears of payment of any Fees or charges as provided for by Rule 15.4, then the Manager may freeze the Trade Dollar balance and prevent that Member from participating as a Buying Member in any Trade until satisfactory arrangements are made with the Manager for payment of any monies in arrears.
- 3 **Manager's Election to take Trade Dollars.**
 - (a) **(Manager may Elect)** Where any fees payable by a Member in cash remain outstanding for longer than sixty days after falling due, the Manager may, in its sole discretion and upon giving notice in writing to the Member, elect to convert the Member's cash indebtedness into a Trade Dollar obligation of three (3) times the Trade Dollar equivalent of the cash amount outstanding and thereupon debit the Member's Trade Account with the Trade Dollar amount and credit the Manager's Trade Account with that amount.
 - (b) **(Member may Pay Cash)** A Member whose liability in cash for outstanding Fees has been converted to Trade Dollars in accordance with Rule 16.3(a) may, at any time within thirty days after receiving a notice under Rule 16.3(a), satisfy its newly converted obligation in Trade Dollars by paying to the Manager the amount of the cash fees that were payable immediately before the conversion, whereupon the Manager shall reverse the Trade Dollar debit referred to in Rule 16.3(a).
 - (c) **(Retention of Trade Dollars)** Notwithstanding Rules 16.3(a) & 16.3(b), where any Fees payable by a Member in cash remain outstanding for longer than sixty days after falling due, the Manager may, in its sole discretion and upon giving notice in writing to the Member, elect to suspend the Member's account and hold all Trade Dollars in credit, as security, until such time as the defaulting member pays all outstanding cash fees in full.

17. BREACH OF RULES

- 1 **Investigate Complaints.** The Manager shall be entitled but not compelled to enquire into and investigate any complaint of a breach of these Rules by a Member.
- 2 **Fair Dealings.** The Manager may take such action as it is empowered to take by these Rules, in order to promote or ensure fair dealings between Members.
- 3 **Suspension and Show Cause.** If the Manager suspects that a Member has breached these Rules, the Manager may:
 - (a) give notice in writing to the Member of the alleged breach and request the Member to show cause in writing within seven days as to why its membership should not be terminated; and
 - (b) immediately and without notice, suspend the Member's right to participate in the Trading Program.
- 4 **Suspension.** If the Manager suspends a Member's right to participate in the Trading Program, all activity in the Member's Trade Account shall cease until such time as the Manager's decision to suspend is reconsidered, reversed or altered.
- 5 **Termination.** If, at any time after the expiry of seven days from the date upon which a notice under Rule 17.3(a) was sent to a Member, the Manager considers in its absolute discretion that the right of any Member to participate in the Trading Program should be terminated, then the Manager may terminate the Member's right to participate in the Trading Program immediately and shall notify the Member accordingly, which termination shall have immediate effect.
- 6 **Manager's Decision Conclusive.** A decision of the Manager to suspend or terminate a Member's Trade Account will be final and conclusive and can only be reconsidered, reversed, revoked or altered by the Manager in its absolute discretion.
- 7 **Payment of Costs.** In the event of a breach of the Rules by a Member, that Member shall pay to the Manager all reasonable legal costs of the Manager in enforcing these Rules on an indemnity basis together with interest at the rate of 2% per calendar month, from the date upon which such costs are paid by the Manager until the date on which the Member makes payment.
- 8 **Off Setting Accounts.**
 - (a) The Manager may, from time to time, at its absolute discretion, transfer Trade Dollars from an account of a Member to an associated account of the Member so as to ensure that the trading of that Member is within its trade limits.
 - (b) The Manager may, at its absolute discretion, determine what is an associated account for the purpose of each individual Member.

- (c) The Manager may, at its absolute discretion, freeze or hold in trust, funds in any related party account or company or individuals account that may be related or have common directorships or ownership and/or transfer to any other account that may not be in good order or in breach of the Rules.
- (d) If any one of the related accounts is not in good order as described in these Rules, the Manager may off-set any balances in Cash or Trade Dollars in any account with any Trade Dollar credits that may be held in the related party's accounts.

18. TRADE OUT AND CESSATION OF PARTICIPATION

1 **Manager May Require Pre-Payment.** If:

- (a) the Manager reasonably believes that a Member is spending the credit balance in the Member's Trade Account or reducing the debit balance in the Member's Trade Account in anticipation of ceasing future participation in the Trading Program; or
- (b) a Member has given notice to the Manager or has, by its actions, in the opinion of the Manager indicated that it intends to cease participation in the Trading Program; or
- (c) a Member's right to participate in the Trading Program has been terminated but the Manager has allowed the Member to finalise its Trade Account by entering into Trades as a Selling Member only:

then the Manager shall be entitled to require immediate pre-payment in cash of the Transaction Fees and Service Fees which will become payable on the debit or credit balance of the Member's Trade Account.

2 **No Trading Unless Fees Pre-Paid.** Where the Manager requires a Member to pre-pay fees under Rule 18.1, that Member may not enter into any Trade until those fees are paid.

19. REVERSAL OF TRANSACTIONS

1 **Manager May Reverse Certain Transactions.** The Manager may reverse, alter or cancel an entry in any Member's Trade Account in relation to a Trade if either:

- (a) both the Buying Member and the Selling Member request the Manager in writing to do so; or
- (b) authorisation has not been obtained in accordance with the prescribed authorisation procedure; or
- (c) there was, in the Manager's opinion, a fraudulent act or a breach of these Rules in connection with the conduct of the Trade.

2 **Member May Show Cause.** Before reversing, altering or cancelling any entry by reason of any breach of these Rules in connection with any transaction, the Manager shall give the Buying Member and the Selling Member notice requiring them to show cause within seven days as to why the entries in the respective Members' Trade Accounts reflecting that Trade should not be reversed, altered or cancelled.

3 **Where Cause Not Shown.** If the Members do not, as required by Rule 19.2, show cause to the Manager's reasonable satisfaction, the Manager shall be entitled to reverse, alter or cancel the entry or entries in the Trade Account of the Buying Member and/or the Selling Member in respect of which the Manager considers there to have been non compliance with these Rules, in which event it shall be the responsibility of the Selling Member to seek payment of the consideration for the goods, services or other items of value from the Buying Member.

4 **Transaction Frozen Until Good Cause Shown.** At any time until the Manager has made a determination under Rule 19.2, the Manager may freeze the entry in question in the Trade Accounts of the Buying Member or the Selling Member or both, until such determination is made.

5 **Consequence of Reversal of Transaction.** If the reversal, alteration or cancellation of any entry in the Selling Member's Trade Account results in the deprivation of the consideration for the Trade (or purported Trade) or any part of that consideration, then the Selling Member will have, as against the Buying Member, the same rights as if the Buying Member had failed to pay the price or such part of it as is represented by the amount of the consideration of which the Selling Member was deprived, but shall have no rights against the Manager. The Buying Member and the Selling Member hereby indemnify the Manager in respect of any exercise or purported exercise of its powers under this Rule.

6 No Obligation to Reverse. Notwithstanding this Rule **19**, the Manager shall have no obligation to:

- (a) reverse, alter or cancel an entry;
- (b) call upon any Member to show cause why an entry should not be reversed, altered or cancelled;
- (c) freeze or unfreeze an entry; or
- (d) make any determination under this Rule.

20. TERMINATION

1 Termination by Member. A Member may give a minimum of five business days' notice in writing of its intention to cease participating in the Trading Program.

2 Termination by Manager. Notwithstanding Rule **20.1**, the Manager may in its absolute discretion suspend or terminate or suspend and then terminate a Member's right to participate in the Trading Program without notice if:

- (a) the Member has, on two or more occasions in the previous twelve months, been given a notice under Rule **19.2**;
- (b) the Member is in arrears of Transaction/Service Fees or any other charges for a period exceeding 14 days;
- (c) the Member has not traded within a three month period from the date of the last Trade to which it was a party;
- (d) the Manager considers that it is not in the interests of the Trading Program that the Member should continue to participate in it.

3 Member's Breach Causes Loss. Members acknowledge and agree that a breach of these Rules by a Member will cause loss and damage to the Manager in a number of ways, which are difficult to quantify and which may include, but are not limited to:

- (a) administrative costs in dealing with the breach; and
- (b) financial loss due to the loss of cash revenue in the form of Fees payable to the Manager; and
- (c) expenditure of funds in obtaining legal advice and in instituting and prosecuting recovery; and
- (d) loss of the goodwill of Members towards the Trading Program and the Manager; and
- (e) loss of trading volume; and
- (f) loss of Members.

4 Damages for Breach Payable on Termination. If a Member's right to participate in the Trading Program is terminated by the Manager for a breach of these Rules, that Member shall pay to the Manager as a genuine pre-estimate of damages and not as a penalty:

- (a) the sums referred to in Rule **20.5(c)** and/or Rule **20.5(d)**, as the case may be; and
- (b) an amount equal to 10% of the Members' total liability to the Manager under these Rules,

within twenty-eight (28) days of the date of the notice of termination of the Member's right to participate in the Trading Program.

The provisions of this Rule apply in addition to and not in derogation from the provisions of the Rules applicable in the event that a Member ceases to be a Member of the Trading Program, including Rule **20.1**.

5 Consequences of Termination. Upon the termination of a Member's right to participate in the Trading Program:

- (a) **(Return cards etc)** The Member shall immediately return to the Manager all Members' Cards and other documents and property of the Manager.
- (b) **(Fees debited)** All Cash and Trade Dollar Fees and other amounts payable by the Member under these Rules shall be immediately debited from the Member's Account.

- (c) **(Where credit balance)** If after debiting the amounts referred to in Rule **20.5(b)**, the balance in the Member's Trade Account is a credit balance:
 - (i) that Member shall immediately pay to the Manager the amount of Cash and Trade Dollar Transaction/Service Fees that would have become payable by it in the ordinary course of the Trading Program if that Member had entered into a Trade as a Buying Member in an amount sufficient to spend the amount of Trade Dollars standing to its credit;
 - (ii) if the Member fails to pay the Cash Transaction/Service Fees the Manager may debit the Member's Trade Account with an amount of Trade Dollars equivalent to three times the Cash Transaction/Service Fees so payable;
 - (iii) after receipt of the Cash Transaction/Service Fees, (or if the fees are not paid in cash, the debiting of the Member's account) the Manager shall issue to the Member Gift Certificates expiring one hundred and twenty days from the date of issue, having a Trade Dollar value equivalent to the remaining credit balance (if any) of the Member's Trade Account.
- (d) **(Where debit balance)** If after debiting the amounts referred to in Rule **20.5(b)**, the balance in the Member's Trade Account is a debit balance:
 - (i) the Member shall immediately pay to the Manager the amount of Cash and Trade Dollar Transaction/Service Fees that would have become payable by it in the ordinary course of the Trading Program if that Member had entered into a Trade as a Selling Member in an amount sufficient to bring its Trade Account to a nil balance; and
 - (ii) the Member shall have thirty days within which to Trade as a Selling Member and in so doing reduce, so far as it can, the debit balance of its Trade Account; and
 - (iii) at the expiration of the thirty day period, the Member shall immediately pay the Manager the amount of cash equivalent to the remaining debit balance in Trade Dollars of its Trade Account.
- (e) **(No refund of fees)** No Fees or charges paid to the Manager will under any circumstances be refunded.

6 Certificate as Evidence. A certificate signed by an officer of the Manager shall be prima facie evidence and in the absence of evidence to the contrary, shall be conclusive evidence:

- (a) that an amount stated in that certificate is due and payable by the Member to the Manager in accordance with these Rules;
- (b) of the amount of any interest payable by the Member to the Manager in accordance with these Rules; and
- (c) of any other fact, matter or circumstance whatsoever relevant to the dealings between the Member and the Manager, or between the Member and another Member, in relation to the provisions of these Rules.

PART IV - CREDIT LIMITS AND DEBT RESERVE FUND

21. TRADE DOLLAR CREDIT LINES

1 Initial Credit Limit

- (a) The Manager may, upon any person becoming a Member, or at any time thereafter, grant to the Member a line of credit in Trade Dollars (Initial Credit Limit) in an amount and on terms consistent with that Member's creditworthiness and ability to repay.
- (b) The amount of the Initial Credit Limit shall not exceed:
 - (i) in the case of a Black Member, \$100,000 BBX Trade Dollars;
 - (ii) in the case of a Gold Member, \$50,000 BBX Trade Dollars;
 - (iii) in the case of a Silver Member, \$25,000 BBX Trade Dollars;
 - (iv) in the case of a Bronze Member, \$5,000 BBX Trade Dollars.

At its discretion, the Manager may introduce categories of Membership additional to those shown above and which carry Initial Credit Limits consistent with the above.

2 Revised Credit Limit

The Manager may, upon application by a Member, grant to the Member a line of credit (Revised Credit Limit) exceeding the amounts set out in Rule 21.1, subject to any conditions advised by the Manager at the time.

3 Transfer of Membership Categories

The Manager may, upon application by a Member, change the membership category of a Member (as set out in Rule 21.1) and thereby change a Member's Credit Limit. Where a change to a Member's membership category will lead to an increase in the Member's Credit Limit, the Manager may require the Member to pay the difference in the marketing fee payable in relation to the higher membership category and the marketing fee paid by the Member upon becoming a member of the Trading Program.

4 Other Membership Categories

The Manager may, from time to time, introduce new membership categories, or alter the amount of the Credit Limit that applies to each membership category.

5 Special Credit Limit

- (a) A Member may apply to the Manager for a line of credit greater than the maximum Revised Credit Limit that is available to that Member (Special Credit Limit).
- (b) A Member may apply to the Manager for a temporary line of credit greater than the maximum Revised Credit Limit that is available to that Member (Temporary Special Credit Limit). Any such increase shall be for a maximum period of six months.
- (c) An application for a Special Credit Limit shall, if required by the Manager, be supported by an offer of a bill of sale or charge over a tangible asset or a bank guarantee or a registered mortgage over real property.
- (d) The grant of a Special Credit Limit shall be subject to the approval of the Manager.

6 Trade Balance Beyond Credit Limit. Where:

- (a) in the case of a Member to whom the Manager has not granted a line of credit, that Member's Trade Account is in debit, by any amount; or
- (b) in the case of a Member to whom the Manager has granted a line of credit, that Member's Trade Account exceeds that line of credit by any amount;

there shall be payable to the Manager by that Member:

- (c) the cash equivalent of that Trade Dollar amount; and
- (d) an additional monthly charge in cash equal to 2% of that amount.

22. DEBT RESERVE FUND

- 1 Purpose.** A fund (Debt Reserve Fund) shall be maintained and applied by the Manager for the purpose of injecting Trade Dollars into the Trading Program where Members are or may be unable to honour their obligations under the Trading Program.
- 2 Levy of Contribution.** The Manager may, in its absolute discretion, levy from each Member a contribution in Trade Dollars and/or cash to the Debt Reserve Fund.
- 3 Adequacy of Debt Reserve Fund.** The adequacy of the Debt Reserve Fund is not guaranteed. Large value transactions conducted by Members, who are later considered by the Manager to be delinquent, could impact upon the adequacy of the Debt Reserve Fund.

PART V - MISCELLANEOUS

23. FRANCHISEES OF MANAGER

- 1 **Grant of Franchises.** The Manager may grant Franchises to Members ("Franchisees") or other persons providing such Franchisees with rights to conduct a business involved in the facilitation of Trade transactions between Members in the Trading Program.
- 2 **Role of Franchisees.** The role of a Franchisee is to recruit new Members to the Trading Program and to stimulate and facilitate Trade between Members. In consideration for these services, the Franchisee may receive a commission from the Manager.
- 3 **Independent Contractors.** Franchisees are independent business people and in their capacity as Members in Good Standing may participate in Trades but do so solely on their own behalf, or on behalf of any Members who seek their services and do not represent or act as agent for or otherwise on behalf of the Manager.
- 4 **Not a Party.** The Manager is not a party to and is not responsible for, any Trades or other transactions or dealings between Franchisees and Members.

24. DISPUTES BETWEEN MEMBERS

- 1 **Disputes.** Where a dispute in relation to a Trade arises between two or more Members, the parties to the dispute shall, in good faith, attempt to resolve the dispute by negotiation.
- 2 **Referral of Dispute to Arbitration.** Where Members are party to a dispute in relation to a Trade and are unable to resolve the dispute, they may request the Manager, in writing, to refer the dispute to an Arbitrator for determination.
- 3 **List of Arbitrators.** The Manager shall maintain a List of Arbitrators who shall be qualified and practising lawyers and Members.
- 4 **Nomination of Arbitrator.** Upon receiving a written request from two or more Members to refer a dispute in relation to a Trade to Arbitration, the Manager shall nominate an Arbitrator from the List of Arbitrators.
- 5 **Procedure.** The Arbitrator shall determine the time, place and procedures to be adopted at the Arbitration and shall deal with the dispute as expeditiously as possible. All evidence shall be in a written form, unless the Arbitrator determines otherwise.
- 6 **No Legal Representation.** The parties shall not be represented by lawyers at the Arbitration.
- 7 **Cost of the Arbitration.** The parties to the dispute shall bear their own costs of the Arbitration and will share the Arbitrator's costs equally, which shall be set by the Manager from time to time and shall be payable in Trade Dollars.
- 8 **Arbitrator's Decision Binding.** The parties to the dispute agree to be bound by the Arbitrator's decision and to sign any documents and to do such things as are necessary to give effect to the Arbitrator's decision. The Manager shall process the necessary transaction(s) to give effect to the Arbitrator's decision.

25. CONFIDENTIAL INFORMATION AND RESTRAINT AGAINST COMPETITION

- 1 **Access to Confidential Information.** From time to time, whilst participating in the Trading Program, a Member may have access to certain trade secrets or proprietary information of the Manager consisting of technical information, methods, processes, trade secrets, formulae, compositions, systems, techniques, computer programs, research projects, business information, customer lists, pricing data, sources of supply, financial data and marketing, training, production or merchandising systems and plans and other information relating to the Trading Program confidential to the Manager (Confidential Information).
- 2 **Not to Abuse Confidential Information.** A Member shall not, whilst a Member or at any time after ceasing to be a Member, make use of the Confidential Information either:
 - (a) for the financial advantage or benefit of the Member or any other person; and/or
 - (b) to the detriment or disadvantage of the Manager.

- 3 Restraint.** A Member may be or become a Member of any other trade exchange and may participate in that trade exchange, but otherwise shall not, without the prior written consent of the Manager:
- (a) whilst continuing to be a Member, work for, engage in, or participate in any business in competition with the business of the Manager; or
 - (b) remain a Member whilst any of its directors, shareholders, partners or proprietors works for, engages in, is or becomes a director, shareholder, partner or proprietor or otherwise participates in the operation of any business in competition with the business of the Manager; or
 - (c) at any time during any of the periods referred to hereunder, whether directly or indirectly and whether solely or jointly with or as director, manager, agent or servant of any person or corporation, carry on or engage in or be interested in or participate in any business which is competitive with the business of the Manager, at any place within twenty-five kilometres from a place at which any other Member carries on business as appearing from the most recent Directory published by the Manager prior to the time of the Member ceasing to be a Member; that is to say, at any of the following times:
 - (i) at any time prior to the date being six months after the Member ceases to be a Member;
 - (ii) at any time between the date referred to in Rule **25.3(a)** hereof and the date six months thereafter.

26. TAXES

- 1 Collect.** Selling Members shall charge any appropriate sales, consumption, excise taxes and goods and services tax (GST) at the point of sale and charge the same to the Buying Member in Trade Dollars and collect and record these as required by law.
- 2 Manager not Liable.** Under no circumstances shall the Manager be responsible to pay any sales, consumption, excise, GST or other tax on behalf of any Member.
- 3 Taxable Event.** A Trade may be treated as a taxable event for any Government taxation purposes and the obligation to declare, report and account for all Government taxes resulting from Trades rests with the Members participating in the Trade. Each Member hereby indemnifies the Manager in respect of any penalty, charge or cost which may be imposed or incurred in respect of any failure by the Member to comply with any applicable taxation laws in relation to any Trade in which that Member participates.
- 4 Reporting of Transactions.** Members acknowledge and agree that the Manager may be required from time to time to make disclosure to the Commissioner of Taxation or equivalent Government authority, in relation to Trades. The Manager is authorised to provide any information to and to co-operate in any way with such authorities, in such manner as they in their absolute discretion think fit and whether or not the Manager is obliged by law to furnish such information or to provide such co-operation. The Manager shall not be liable to any Member in respect of information furnished, or co-operation provided, to such authorities, in any circumstances whatsoever.

27. LEGAL LIABILITY OF THE MANAGER

- 1 No Liability to Procure New Members.** Whilst the Manager shall use its best endeavours to procure new Members to the Trading Program, the Manager shall not be liable for any failure to procure new Members or retain existing Members.
- 2 No Warranty as to Availability of Particular Goods or Services.** The Manager makes no warranty in relation to the availability of any particular goods or services under the Trading Program. The Manager shall not be responsible or in any way liable if a Member cannot obtain particular goods or services from other Members or if other Members do not buy goods or services from a Member.
- 3 Compliance with Laws.** All Members engaging in Trades shall observe and comply with all laws and regulations applying to the Trade.
- 4 Manager not Liable.** The Manager shall not be responsible or in any way liable for, or in respect to, any failure on the part of any Member or Members to comply with such laws.
- 5 Disclaimer of Liability.** The Manager makes no representation or warranty either express or implied as to the fitness, quality or merchantability of any goods and services the subject of any Trade. The Manager shall not, to the fullest extent permitted by law, be in any way liable for the fitness, quality, delivery date, merchantability, price or terms of any Trade.
- 6 Unauthorised Use of Vouchers.** The Manager shall not be responsible for:

- (a) the use of Member's Cards, Gift Certificates or other authorised forms by unauthorised persons; or
- (b) transactions that are not conducted in accordance with the Rules.

- 7 Member's Indemnity for Failure to Perform.** Each Member shall indemnify and keep indemnified the Manager and each of their directors, officers, employees, agents, independent contractors, subcontractors and Franchisees in respect of any failure by that Member to perform its obligations under these Rules.
- 8 Member's Indemnity for Claim, Debt or Liability.** Each Member shall indemnify and keep indemnified the Manager and each of its directors, officers, employees, agents, independent contractors, sub-contractors and Franchisees, in relation to any claim, debt or liability whatsoever, arising out of or in connection with any Trade in respect of which that Member is or purports to be the Buying Member or the Selling Member.
- 9 Not Bound by Representations of Others.** The directors, officers, employees, agents, independent contractors, sub-contractors and Franchisees of the Manager or its Associates, shall have no right to make any representation or commitment on behalf of the Manager without written authorisation of the Board or authorised representative of each respective company or entity.

28. TITLE TO GOODS VESTS IN THE MANAGER

- 1 Trade Leading to Debit Balance.** This Rule applies where a Buying Member enters into a Trade and the debit entry of the Trade results in the Trade Account of the Buying Member having a debit balance.
- 2 Assignment of Title.** Where a Selling Member enters into a Trade to which this Rule applies, the Selling Member shall assign all title to any goods the subject of the Trade to the Manager and title to those goods shall vest with the Manager in accordance with this Rule.
- 3 Retention of Title.** The Manager shall retain title to all goods the subject of a Trade to which this Rule applies, until the debit balance resulting from the Trade has been discharged either by payment from the Buying Member to the Manager, or by credits subsequently made to the Buying Member's Trade Account as a result of transactions carried out in accordance with these Rules.
- 4 Right to Possession.** Whilst the Manager holds title to goods in accordance with this Rule, the Manager may take possession of such goods, or any part thereof.
- 5 Power to Take Possession.** The Manager is hereby irrevocably authorised by the Buying Member to do all or any of the following things in taking or attempting to take possession of the goods (or any part thereof) and may exercise any of the following powers through any of the Manager's directors, officers, servants, agents or sub-contractors:
 - (a) to enter upon any land, buildings or property owned, leased or occupied by the Buying Member;
 - (b) to use reasonable force in order to obtain entry to any such land, buildings or property;
 - (c) to sever, remove and disconnect the goods (or any part thereof) from any land, building or other property to which the same have been attached or affixed, without liability for any damage or injury thereby caused to such land, buildings or other property;
 - (d) to appoint a receiver to take possession of the goods or any part of them; and
 - (e) in the event that the goods (or any part of them) have been inter-mingled with goods of the same or a similar character or description, to appropriate out of the goods so inter-mingled such quantity or amount as in the opinion of the Manager fairly represents the quantity or amount and the value of the goods sold to the Buying Member.
- 6 Buying Member Not to Sell etc.** Whilst title to any goods remains vested in the Manager, the Buying Member shall not sell, lease, encumber, or otherwise deal with or part with possession of the goods or any part thereof until title has been transferred to and becomes vested in the Buying Member.
- 7 Buying Member to Hold Proceeds of Sale for Manager.** In the event that the Buying Member does, in breach of this Rule 28, sell, lease, encumber, deal with or part with possession of the goods or any part thereof, all proceeds of such sale, lease, encumbrance, dealing or parting with possession of the goods shall be placed by the Buying Member in a separate account and shall be held by the Buying Member in trust for the Manager until such time as title to the goods has passed to and become vested in the Buying Member in accordance with the provisions of this Rule.

- 8 **Consideration.** Members agree and acknowledge that title to any goods to which this Rule applies are transferred by the Selling Manager to the Manager in consideration of the Manager providing a credit limit to the Buying Member or allowing the transaction to proceed notwithstanding that the balance of the Buying Member's Trade Account is, or will, as a result of the Trade, be in debit.
- 9 **Manager Not a Party.** The Manager shall not be a party to any Trade to which this Rule applies and nothing in this Rule shall affect the operation and effect of Rules 2.4 and 6.3.

29. WAIVER

- 1 **No Waiver.** Any failure or delay by the Manager in exercising any right shall not operate as a waiver thereof and any single or partial exercise of a right shall not preclude any other further exercise of any right.
- 2 **Cumulative Remedies.** The Manager's rights and remedies are cumulative and are not exclusive of any remedies provided by law.

30. INSOLVENCY OF MEMBER

- 1 **Grant of Charge.** Each Member grants to the Manager a charge over all Trade Dollars credited to that Members Account for unpaid Fees or other charges owed to the Manager from time to time.
- 2 **Where Insolvent Administration.** If a Member commits an act of bankruptcy, has a receiver, liquidator, provisional liquidator, administrator or controller appointed to it or to any of its assets, makes any arrangement or composition with its creditors or becomes insolvent or bankrupt, then all cash Fees and other fees and charges shall immediately become due and payable in full. The Manager shall have the option, in lieu of continuing as a creditor, of treating the Trade Dollar balance in the Trade Account as equal in value to the amount of cash Fees and other charges owing and terminate the Trade Account.

31. DISSOLUTION OF TRADING PROGRAM

- 1 **Events Triggering Dissolution.** The Trading Program shall be dissolved in accordance with this Rule if an order is made that the Manager be wound up (other than for the purpose of reconstruction or amalgamation).
- 2 **Procedure on Dissolution.** Upon the occurrence of an event referred to in Rule 31.1 the following procedure shall apply:
 - (a) **(Inform Members)** The Manager shall inform each Member that such an event has occurred and draw their attention to the requirements of these Rules.
 - (b) **(Balancing Period)** Each Member and the Manager shall, unless otherwise declared, be entitled to continue to Trade for a period of ninety days (the Balancing Period) for the purpose of bringing its Trade Account, as near as possible, to a zero balance, but no Member shall be obliged to Trade during this period.
 - (c) **(Members in Credit - Fees Payable)** Each Member having a Trade Account with a credit balance shall, at the expiry of the Balancing Period, immediately pay to the Manager:
 - (i) an amount in Cash, being the cash equivalent of the Trade Dollar Transaction/Service Fees that would have become payable in the ordinary course of the Trading Program if that Member had entered into a Trade as a Buying Member in an amount sufficient to spend the amount of Trade Dollars standing to its credit at the expiry of the Balancing Period; and
 - (ii) the Cash Transaction/Service Fees that would have become payable in that event.
 - (d) **(Members in Debit - Fees Payable)** Each Member having a Trade Account with a debit balance at the expiry of the Balancing Period shall immediately pay to the Manager:
 - (i) an amount in Cash, being the cash equivalent of the Trade Dollar Transaction/Service Fees that would have become payable in the ordinary course of the Trading Program if that Member had entered into a Trade as a Selling Member in an amount sufficient to bring the amount of Trade Dollars standing to its Trade Account at the expiry of the Balancing Period to a nil balance; plus
 - (ii) the cash Transaction/Service Fees that would have become payable in that event; plus

- (iii) the cash equivalent of the debit balance of the Member's Trade Account.
- (e) **(Strike Accounts)** The Manager shall strike accounts off the Trading Program as and when the Member's account has been brought to a zero balance.
- (f) **(Notify Members of Fees Payable)** The Manager or any person appointed to do so by the Manager shall notify each Member of the amount of its debit balance and demand payment of the amount required to be paid under Rules **31.2(c)** and **31.2(d)**.
- (g) **(Dissolution Fund)** If the Manager receives any monies under Rules **31.2(c)**, **31.2(d)** or **31.2(f)**, it shall hold those monies in a separate bank account (The Trading Program Dissolution Fund) on trust subject to this Rule **31.2(g)**, for the Members whose Trade Accounts are in credit.
- (h) **(Manager to Recover Fees)** After the giving of notice under Rule **31.2(f)**, the Manager shall use its best endeavours to recover all amounts owing under Rules **31.2(c)** and **31.2(d)** and it shall be no defence for any Member from whom payment is sought to be recovered, to contend that, by reason of any conduct of the Manager or any other person, it was difficult or impossible to bring the Members' Trade Account to a zero balance during the Balancing Period or at any previous time.
- (i) **(Legal Action by Manager)** The Manager shall have no obligation to take or continue any legal action in respect of any amount owing by any Member where:
 - (i) the Manager perceives legal or practical difficulty in pursuing recovery;
 - (ii) it appears to the Manager that the amount that would or may be recovered will or might be exceeded by the cost of recovery;
 - (iii) the Manager, in its discretion, considers that there is some other sufficient reason.
- (j) **(Distribution of Dissolution Fund)** The Manager will distribute the Trading Program Dissolution Fund, after deduction of his or her proper costs and outlays, to the members whose Trade Accounts were in credit at the time of dissolution, on a *pro rata* basis in accordance with the amounts by which those accounts were in credit at the conclusion of the Balancing Period.
- (k) **(Receiver's Powers)** Any power or discretion exercisable by the Manager under this Rule may be exercised by any receiver or receiver and manager appointed by the Manager under the Charge.

32. SEVERANCE

If any part or provision of these Rules should be judged or found to be void or unenforceable, it shall not affect the validity and enforceability of all other parts and provisions of these Rules and shall be severable from every other part and provision of these Rules, to the intent that these Rules shall continue in force and effect to the fullest extent possible after severance of the part or provision which is void or unenforceable.

33. JURISDICTION

- 1 **Construction.** These Rules shall be construed and applied in accordance with the laws of the state or territory in which the Manager has its registered office.
- 2 **Submit.** In the event of any dispute or any action for enforcement of rights or obligations arising out of or in connection with these Rules, the Members shall submit to the jurisdiction of the courts of competent jurisdiction in the capital city, state or region or country in which the Manager has its registered office.

34. AMENDMENT OF RULES

- 1 These Rules may be amended only as follows:
 - (a) The Manager will notify the Members of any amendment of the Rules as soon as is reasonably practicable after the amendment has been promulgated.
 - (b) A Member may give notice of its intention to withdraw permanently from the Trading Program within seven days after receiving notification of such amendment.
 - (c) A Member who has not given written notice to the Manager of its intention to withdraw permanently from the Trading Program within seven days after receipt of such notification shall be deemed to have waived any

objection to the amendment of the Rules so notified to that Member and thereupon the amendment shall have effect and the Rules as amended shall constitute a contract:

- (i) between the Manager and all of the Members jointly;
 - (ii) between the Manager and each Member severally; and
 - (iii) between each Member and each other Member.
- (d) Without prejudice to the provisions of Rules **34.1(b)** and **34.1(c)**, a Member who conducts a Trade after the seven (7) day notice period referred to in Rule **34.1(b)** shall be deemed to have accepted and waived any objection to the amendment of the Rules of which notice has been given in accordance with Rule **34.1(a)**.