



Fair Trading Under NZ Law

Helping you understand NZ law
for the sale of goods and services
and how the law applies to trading
within the Bartercard Exchange.

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Fair Trading under NZ law

This booklet has been designed to help you understand NZ law for the sale of goods and services. This includes examples and how the law applies to trading within the Bartercard Exchange.

To comply with the Fair Trading Act (FTA), members must not engage in '*unfair practices*'. To assist in defining what is fair, Bartercard New Zealand has issued this booklet which takes into account the FTA and the rules of the Bartercard Exchange that members agree to when they join Bartercard.

Transactions are to be 100% in Bartercard Trade Dollars and charged at the same rate as a cash customer would be charged for the same service on the same day. This applies to sales that would be typical in the ordinary course of your business.

Example:

A mechanic will service a range of vehicles in their workshop however they may contract out (*outsource*) work for European cars or major engine rebuilds, services that are outside of the standard service offering. In terms of fair trading, the mechanic would therefore be required to provide all their standard services on full trade i.e. 100% in Bartercard Trade Dollars.

The work that is outsourced (*that falls outside of their standard service offering*) may therefore not be available on Bartercard.

Bartercard members must provide all services in their directory listing fully payable with 100% Bartercard Trade Dollars. If members fail to honour their directory listings they could be prosecuted for bait advertising under section 19 of the FTA. A directory listing that is vague or unclear as to what services are available on Bartercard could also be considered as a form of bait advertising. **Refer to the FTA section of this booklet.**

We accept that in certain industries it is not obvious as to what the normal cash price is.

The following are examples as to assist members in avoiding unfair practices.

Accommodation

The price on your own website on the day of the booking is the price that will be charged, or if it is a telephone booking, the same price that would be offered to a cash paying customer. This means that a typical 'rack rate' cannot be used as a basis for Bartercard pricing.

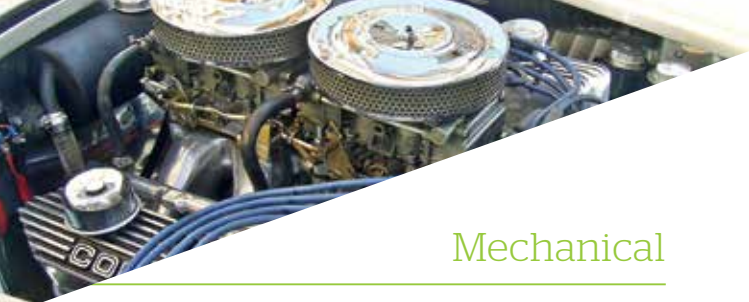
Fair practice for accommodation providers:

- » Reduced pricing on a third party or discounter site is not applicable on Bartercard.
- » 100% Bartercard pricing.
(e.g. No cash for parking unless this is clearly a third party e.g. Wilson's Parking Building).
- » Clear directory listing of when accommodation is available i.e. if a member has a known unavailability during peak times.

DIRECTORY LISTING EXAMPLE:

Stylishly furnished studio, 1 & 2 bedroom apartments situated in the heart of the city. All bookings are subject to availability. No bookings accepted during special events & festivals.





Mechanical

- » As with all industries this should be set out in the member's directory listing.
- » 100% Bartercard on servicing, brakes, cambelts and transmission servicing.
- » 100% Bartercard for sundry items like oil, filter, wiper blades, fuses, bulbs and lubricants.

DIRECTORY LISTING EXAMPLE:

WOF, full service on 4 cylinder cars excluding European, brakes & clutch kits supplied and installed, transmission servicing on all 4-6 cylinder vehicles. Larger jobs or full overhauls to be discussed with Bartercard.

Hospitality & Restaurants

- » 100% Bartercard for meals and drinks
- » Group / large bookings by arrangement
- » Bookings as per the directory listing availability

DIRECTORY LISTING EXAMPLE:

A warm welcoming atmosphere and interesting menu awaits you. Open breakfast, lunch & dinner. Families welcome. Bookings are essential, please call first. Winter hours: Tuesday to Saturday.



Retail

- » Goods / Services should be sold at your normal selling price. A rack rate that is never charged, cannot be used. It must be aligned with what a cash client would pay.
- » Any 'special' price that continues for longer than a short duration of the sale will become the regular or usual selling price.
- » A business cannot set an artificially high price knowing this would lead to little or no sales. They can't then offer the product at a 'discounted' price. This may mislead the customers into thinking it's a fair price.
- » You cannot mislead a client with an advertised price, and then charge a different price upon completion of sales e.g. Checkout and payment, quoting and payment.

DIRECTORY LISTING EXAMPLE:

Knee high socks. Made in NZ with Merino wool, help cold feet and legs stay warm. For babies, kids and adults alike. Not for wholesale sales.

» If you cannot supply a product or service, do not advertise it.

Advertising

- » All advertising and marketing should be 100% Bartercard.
- » Advertising should be sold at your normal selling price. A rack rate that is never charged, cannot be used. It must be aligned with what a cash client would pay.
- » An advertising promotion cannot be a form of bait advertising to win cash contract through other channels.
- » Websites and website hosting are to be payable 100% Bartercard.
- » SEO services are to be 100% Bartercard.

Open and sales days

Sales days - Sale implies that products are 'on sale' and the consumer will be getting a discount that otherwise would not be available.

Open day - Product is available but doesn't imply that stock is discounted.

The majority of the store/stock must be available on Bartercard - Products not available must be clearly stated - e.g. 'GoPro's not available' or 'excludes items already reduced'. Refer to page 10 for more tips.

Pricing

- » There can't be two different prices.
- » Prices must be consistent with what someone else would actually pay on the day. e.g. if you advertise a price on your website and it is not a genuine mistake then you are legally obligated to provide the product/service at this price.
- » Members who are running specials or promotions should clearly state any exclusions that may apply e.g. GoPro or Apple products not available.
- » Don't compare your product and price to that at another company unless they are identical. Comparing similar but not identical products may mislead customers.

Professional services

- » Full Trade for all services.
- » Disbursements are acceptable in cash e.g. Land title office fees.

DIRECTORY LISTING EXAMPLE:

Quality accounting and taxation services at a reasonable price from a small practice. Specialising in Xero, making your accounts easy. Free initial consultation.



Trades

- » Labour - 100% payable on Bartercard.
- » You must give the customer the opportunity to source products that you do not stock on Bartercard.
- » Sundry items & small value items - glues, washers, lightbulbs, cables, what is carried in the vehicle at all times 100% payable on Bartercard.
- » Merchants must have the ability to do 100% Bartercard jobs - e.g. a carpet supplier that will only lay his carpet but won't do the supply on Bartercard is not acceptable.
- » Jobs with a value of more than \$10K refer to the large value transactions section.

Directory listings must be specific to what you can do - e.g. do not include full house builds if you cannot do these on 100% Bartercard.

DIRECTORY LISTING EXAMPLES:

Contact us for all your residential interior & exterior painting & decorating requirements, including wallpapering, spray-painting & plastering within Auckland & Hamilton. Contact Bartercard for larger jobs & commercial work.

Master electricians, industrial, communities, domestic installation + repairs. Testing + tagging, appliance repairs. Security lighting, heatpumps, ventilations, heat transfer systems. Underfloor heating, 24hr service.



Vehicle sales

For vehicle sales, the first T\$10K is payable on Bartercard or 50% whichever is greater. *Refer to the large value transactions section below.*

If a car yard wishes to sell a vehicle that fits within the rules these will be all listed via the property website and promotions can be sent directing potential buyers to the website to view, 100% Bartercard vehicles can still be sold via MYBC.

All cars from licensed dealers must be 'yard ready' and of same selling price in cash economy.

Large value transactions

We accept that in certain industries large value transactions which are in the ordinary course of business, may not always be possible at 100% Bartercard. For these situations Bartercard will approve in writing which members can sell at less than 100% Bartercard. An example of this would be selling cars. The fair practice for this will be a minimum of \$T10K Bartercard Trade Dollars or 50% in Bartercard Trade Dollars whichever is higher in Trade Dollars.

EXAMPLE ONE:

A car selling for \$14K, would be at a minimum of \$T10K Bartercard Trade Dollars.

EXAMPLE TWO:

A car selling for \$25K would be at a minimum of \$T12,500 Bartercard Trade Dollars.

These are the minimum levels and for sales to occur often the minimum amount will need to be increased to achieve a sale.

Additional tips to help with fair trading and meeting your legal obligations

There may be times when you may come across another member who does not wish to obey the rules of the exchange. With recent changes in legislation such as the FTA it is important that you are aware of your rights and obligations.

Tips that can help with any potential unfair traders.

By you, the member being aware of how to deal with unfair traders, it will lead to a fairer and more beneficial trade exchange for both you and your fellow members.

Challenge unfair trading issues

As a new customer the best person to challenge any unfair trading issue in the first instance is you. As the purchaser you have the right to challenge the pricing or quote. So if you are uncomfortable with the deal, raise the point and if still unhappy withdraw.

Do your homework

Before you look at buying an item do a bit of due diligence and have a quick search of other products to see what the current market price is. If the item you are looking at is grossly overpriced, do not buy it. Advise the selling member that you feel it is overpriced and give a few examples. Notify your Trade Broker if you cannot obtain a fair price, but remember do not buy the item as then you have accepted the price.

NOTE:

If you are unsatisfied after you have paid or entered an agreement, then standard commercial practices will prevail. We would recommend you seek legal advice and consider options such as the Disputes Tribunal.



Get a written quote

If you are undertaking a sizeable job then ensure you get a quote for this. If the seller is wanting to use a cash portion that falls within the rules make sure this is clearly stated on the quote. If you accept this quote with a quoted cash/trade split then you have accepted this and therefore this cannot be objected at a later date.

Treat all your deals as you would a cash deal

All members are bound by the FTA and governed by the Commerce Commission. Disputes can be escalated to the Disputes Tribunal if required.

See: www.justice.govt.nz/tribunals/disputes-tribunal

Disputes

Should you have a dispute with another member, Bartercard is not able to directly assist in resolving the dispute as Bartercard is not a party to the contract. It would also be possible for a court or tribunal to overturn a decision made by Bartercard in such a dispute.

We therefore encourage members to have clear expectations prior to entering into agreements and to seek legal advice as required.

Communicate with your Trade Broker

Bartercard is interested in being made aware of any dealings that you have had that you believe are unfair or unlawful. Bartercard can then decide if the circumstances mean that a member should be removed from the exchange, particularly if it's a regular occurrence. By holding members accountable, this will assist in maintaining a healthy trade exchange.

Contract for services

Agreement for the provision of services with Bartercard payments.

This information is addressing concerns raised by Bartercard members. This involves instances where parties enter agreements for services or goods in which payment will be paid in full or in part with Bartercard Trade Dollars.

Soon after the relationship has begun some members have been told that Bartercard Trade Dollars would no longer be accepted under the agreement.

We have sought legal advice from our solicitors who have suggested the following steps are taken when contracting between Bartercard members.

1

Parties wishing to use Bartercard should state in the agreement the amount and the fixed term that Bartercard Trade Dollars will be accepted under the contract. This can be done by inserting the following:

- » Terms payment (clause 1): 100% Bartercard Trade Dollars and fixed for a term of x months/years.
- » The above should be noted on the front of any agreement between members of Bartercard.





2

To supplement the suggested Terms of Payment (1) we also suggest that the following term is inserted into the Terms of Trade or the Terms and Conditions of the agreement:

- » **BARTERCARD TRADE DOLLARS**
Where payments for services or goods provided under this agreement are to be paid with Bartercard Trade Dollars, payments are to be accepted according to the Terms of Payment.

- » Payment according to Clause 1 shall be fixed as stated in the Terms of Payment. Neither party shall unilaterally amend the Terms of Payment without agreement in writing by both parties.

Should you wish to enter into an agreement with other members for long term contract we suggest the above are included to ensure that the Terms of the Agreement are clarified as much as possible and seek legal advice.



Other items to consider

Paying a deposit

Paying a deposit will often make an agreement legally binding. The amount can be negotiated and depends on what service is involved. Ensure you get a receipt with the amount paid, the date and the recipient, and be wary if a seller asks for a 100% deposit in advance.

Paying in instalments

This generally occurs where ongoing purchases of supplies are needed to finish the job, or it could be the most convenient payment method.

The final payment

This is typically paid once the service has been completed. If you're asked to pay the full price prior to this, you should seek legal advice.

Information on the Acts in NZ

Fair Trading Act

The FTA applies to what people say and do when promoting and selling goods and services. The Act applies to all sales by professional traders, but not to one-off private trades.

The FTA prohibits misleading and deceptive conduct, false representations and unfair practices by people in trade. **Visit:** www.consumeraffairs.govt.nz for example.

Using someone else's trade mark in relation to goods not authorised by the trade mark owner can also be in breach of the FTA as well as the Trade Marks Act.

If you believe someone you have traded with is in breach of the FTA, and you are unable to resolve the issue with them directly, then you may wish to make a claim in the Disputes Tribunal or courts. The Commerce Commission also enforces some breaches of the FTA.

The FTA applies to everyone in trade. As well as traders and shops, the Act covers government agencies and state-owned enterprises. Most of the Act does not cover private sales.

The difference between the FTA and the Consumer Guarantees Act (CGA) is that, in general, the FTA covers claims about products and services prior to sale and the CGA covers the quality of those products and services after they have been bought.





Your rights under the FTA

Unfair practices & bait advertising

Unfair practices are selling methods which mislead you. Unfair practices which are illegal under the FTA include bait advertising.

This is when a seller advertises particular goods or services at a particular price, and doesn't intend supplying or selling reasonable quantities at that price or advertises as goods being payable in Bartercard but then you find when you come to collect the goods that cash is involved or the pricing is different when paying with Bartercard.

See pages: 4-10 in this booklet to see how this applies with Bartercard transactions.



Section 19 of the FTA is as follows:

(1) No person shall, in trade, advertise for supply at a specified price goods or services which that person –

(a) does not intend to offer for supply; or does not have reasonable grounds for believing can be supplied by that person – at that price for a period that is, and in quantities that are reasonable, having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(b) Any person who has advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

If you're unhappy with a product or service, first try to sort it out with the merchant concerned, if you can't make headway, you or anyone else can take criminal action under the FTA.

You can also apply to the High Court for an injunction to stop the Act being breached. The best option especially for small claims is civil action, most often through a Disputes Tribunal.

Disputes Tribunals can hear cases for claims up to \$15K or \$20K if both parties agree. Although you can take claims for specific misrepresentations under the Act such as about the price or quality of goods.

www.justice.govt.nz/tribunals/disputes-tribunal

A tribunal can award civil damages, which could include getting compensation or your money back. But only the courts can impose fines.



The Consumer Guarantees Act (CGA)

The CGA applies to sales by sellers 'in trade'. It does not normally cover private or one-off sales. All professional sellers (*people in trade*) should therefore comply with the following guidelines:

- » Disclose they are selling in trade (*in particular this applies to sales online*). Note: selling online includes website sales such as MYBC and Trade Me, smartphone apps, emails, text messaging, social media etc.
- » Ensure items they are selling are safe, durable and of acceptable quality.
- » Ensure items they are selling are fit for their intended purpose and any other particular purposes indicated.
- » Ensure items they are selling match the description given.
- » Act responsibly and promptly to fix any product faults within a reasonable time after the sale (*other than those caused by unreasonable use*) or offer a replacement or refund.
- » Offer a full refund upon the return of goods with any serious problems.
- » Ensure delivery terms are clear and can be met, e.g. include shipping costs, taxes, fees and estimated delivery times.

A close-up photograph of a person's hand holding a black pen and writing in a white notebook. The background is blurred, showing a desk and a window. The lighting is bright and natural.

Sale of Goods Act (SOGA)

In situations where the CGA does not apply, such as for private one-off sales, then the Sale of Goods Act 1908 (SOGA) will generally apply instead.

The SOGA includes warranties that are comparable to the CGA guarantees, including implied conditions that the seller is entitled to sell the goods and that the item meets the description. If it's clear that the buyer has relied on the seller's expertise, then there may be warranties as to the item's quality or fitness for purpose.

Helpful resources

www.consumeraffairs.govt.nz

[www.business.govt.nz/laws-and-regulations/
consumer-laws/understanding-the-fair-trading-act](http://www.business.govt.nz/laws-and-regulations/consumer-laws/understanding-the-fair-trading-act)

[www.consumeraffairs.govt.nz/legislation-policy/
changes-to-consumer-laws](http://www.consumeraffairs.govt.nz/legislation-policy/changes-to-consumer-laws)

[www.business.govt.nz/laws-and-regulations/
consumer-laws/understanding-the-consumer-
guarantees-act](http://www.business.govt.nz/laws-and-regulations/consumer-laws/understanding-the-consumer-guarantees-act)

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