

ELECTRONIC TRADING APPLICATION TERMS OF USE

Last Modified: May 23, 2023

These Electronic Trading Application Terms of Use (these “Terms of Use” or “Terms”) form a binding agreement between you (“You” or “your”) and Barchart.com, Inc. (“BARCHART”). These Terms, together with BARCHART’S End User Terms of Service, Privacy Policy, any other documents incorporated by reference, and any other agreement between You and BARCHART (collectively, the “Agreement”), govern trades and orders entered into by You through the use of any of BARCHART’S software products or trading applications, including but not limited to “Barchart Trader” and cmdtyView (the “System”). These Terms supplement all other agreements in place between You and BARCHART. Terms used in these Terms of Use but not defined herein shall have the respective meanings given to them in the End User Terms of Service.

1. **License Grant.** BARCHART grants You a limited, non-exclusive, non-transferable, revocable license to use the System. Through the System, BARCHART makes available to You software, applications or services that allow You to access, use, and view your trading accounts with third-party brokerage firms or futures commission merchants. BARCHART has the right to limit, alter or discontinue available features and services, or terminate or suspend the System, at any time and at BARCHART’S sole discretion, without prior notification to You.
2. **Proprietary Rights.** You acknowledge and agree that as between You and BARCHART, BARCHART holds all right, title, and interest in and to the intellectual property rights in the System. You may not modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the System, or remove any proprietary notices on the System.
3. **Account Access.** Your brokerage firm will assign You a unique confidential user identification name (“User ID”) and password (“Password”) which must be used solely by You in order to access your trading account through the System. You agree to treat your User ID and Password as confidential and shall not disclose them to any other person or entity. You acknowledge that your User ID and Password are personal to You and agree not to provide any other person with access to the System using your User ID or Password. You agree to notify BARCHART immediately of any unauthorized access to or use of your User ID or Password or any other breach of security. BARCHART has the right to disable your access to the System at any time if, in its opinion, You have violated any provision of these Terms.
4. **Your Orders.** All orders that You initiate are your responsibility and are solely at your risk. If You do not receive affirmative notification that the order has been either accepted or rejected for placement, it is your responsibility to notify the brokerage firm carrying your trading account. You acknowledge and agree that BARCHART is entitled to assume that any order placed through the System under your account details has been transmitted by You and BARCHART has the absolute authority to process any order made through the System, where the requisite User ID and Password information in relation to your account has been provided. You acknowledge that BARCHART is entitled to decline to process any order initiated under your User ID and Password if BARCHART suspects fraud or unauthorized use, or for any other reason. Notwithstanding the foregoing, acceptance of an order for placement does not constitute an agreement or representation by BARCHART that there is sufficient margin in your account to support the resulting position. You hereby acknowledge your responsibility to keep apprised of current margin requirements in connection with all trading activities.
5. **Privacy and Security.**
 - 5a. Use of the System involves the electronic transmission of data and information to and from You across wireless and other networks. You acknowledge and agree that BARCHART does not operate or control the wireless and other networks used to access your account and BARCHART is not responsible or liable for the privacy and security of your wireless data and information transmissions. BARCHART’S Privacy Policy, which is available on BARCHART’S website, shall apply to these Terms and your use of the System.

5b. BARCHART has implemented features within the System to prevent system failure. However, as with any electronic system it is possible that service may, from time-to-time, be subject to delay, error, or failure, with results that include, but are not limited to: (i) loss of connection to third-party platforms integrated into the System; (ii) an inability for You to place orders; (iii) delay in receipt of information by BARCHART from You or by You from BARCHART; (iv) your failure to receive messages from BARCHART; or (v) You erroneously believing that You have placed an order when BARCHART's records show that BARCHART has not received an order from You. Depending on the type of failure, it may not be possible to access the System to enter new orders, and/or modify or cancel orders previously entered. Due to the nature of the System, BARCHART does not warrant that the operation of the System will be uninterrupted or entirely error-free. BARCHART shall not be liable for any loss resulting from systems failure, breakdown of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorized access to your User ID and Password, your operating errors and any other condition over which BARCHART does not control.

6. LIMITATION OF LIABILITY. EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF WILLFUL OR GROSS MISCONDUCT, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS UNDER THIS PARAGRAPH, NEITHER BARCHART NOR ITS OFFICERS, DIRECTORS, AFFILIATES, SUBSIDIARIES, OR ANY OF THEIR EMPLOYEES SHALL BE LIABLE UNDER OR IN CONNECTION WITH THE TERMS OF THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SYSTEM; (C) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (D) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, BARCHART'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID TO BARCHART UNDER THIS AGREEMENT DURING THE MONTH IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.

7. DISCLAIMER OF WARRANTIES.

(a) You acknowledge that all Information available through the System, including without limitation the real-time information concerning your trading and account activity, quotes, and market information, has been produced by independent providers unaffiliated with BARCHART, various commodity and securities markets, and by other outside sources. BARCHART and its affiliates are not responsible for the accuracy, completeness, timeliness or correct sequencing of the Information or Trade Information and BARCHART and its affiliates make no guarantees with respect to the Information or Trade Information. You agree the BARCHART shall not have liability for the accuracy, completeness, timeliness or correct sequencing of the Information or for any decision made or action taken by You in reliance upon the Information, or for any interruption of any data or Information. You agree not to reproduce, retransmit, disseminate, sell or distribute the Information without the express written consent of BARCHART.

(b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. BARCHART SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, BARCHART MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS,

OPERATE WITHOUT INTERRUPTION OR ERROR, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. THE INFORMATION, TRADE INFORMATION, AND ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

8. **Indemnification.** You shall indemnify, defend, and hold harmless BARCHART and its officers, directors, employees, agents, successors, and assigns from and against any and all liability, costs or damages of any kind, including legal fees, arising out of or resulting from: (a) any unauthorized use of your User ID and Password; (b) any Physical Commodities Trading Agreement entered into by You; (c) any information provided by or on behalf of You to BARCHART; (d) allegation of facts that, if true, would constitute your breach of any of your representations, warranties, covenants, or obligations under these Terms or your infringement or misappropriation of the patent, copyright, trade secret or other intellectual property right of any third party; or (e) gross negligence or more culpable act or omission (including recklessness or gross misconduct) by You in connection with these Terms.
9. **Dispute Resolution.** ALL DISPUTES (EXCEPT ACTIONS FOR INJUNCTIVE RELIEF BROUGHT BY BARCHART) ARISING UNDER THESE TERMS SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF ILLINOIS AND RESOLVED EXCLUSIVELY THROUGH BINDING ARBITRATION BEFORE A FORUM LOCATED IN CHICAGO, ILLINOIS. YOU AGREE THAT IN ANY SUCH DISPUTE OR ARBITRATION, YOU WILL ONLY ASSERT CLAIMS IN AN INDIVIDUAL (NON-CLASS, NONREPRESENTATIVE) BASIS, AND THAT YOU WILL NOT SEEK OR AGREE TO SERVE AS A NAMED REPRESENTATIVE IN A CLASS ACTION OR SEEK RELIEF ON BEHALF OF THOSE OTHER THAN YOURSELF. YOU UNDERSTAND THAT BY AGREEING TO THIS SECTION, YOU ARE GIVING UP THE RIGHT TO LITIGATE (OR PARTICIPATE AS A PARTY OR CLASS MEMBER) IN COURT. YOU ALSO AGREE THAT ANY DISPUTE RESOLUTION PROCEEDING WILL ONLY CONSIDER YOUR INDIVIDUAL CLAIMS AND YOU AGREE THAT NO DISPUTE WILL BE HEARD AS A CLASS ACTION, REPRESENTATIVE ACTION OR CONSOLIDATED ACTION. ANY ACTION, PROCEEDING, OR ARBITRATION BROUGHT BY A PARTY PURSUANT TO THESE TERMS OR ANY BREACH THEREOF MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION AROSE, WHETHER OR NOT THE PARTY HAD ANY KNOWLEDGE OR NOTICE THEREOF.
10. **Limitations on Investment Guidance and Professional Advice.** Futures trading involves substantial risk of loss and is not suitable for everyone. You should understand the risks involved in trading and carefully consider whether such trading is suitable in light of your financial circumstances and resources. Past performance is not necessarily indicative of future results. The System is not intended to provide legal, tax, investment, trading or insurance advice. You are solely responsible for determining whether any trade or related transaction is appropriate for You based on your personal objectives, financial circumstances and risk tolerance. You should consult a legal or tax professional regarding your specific situation.
11. **Changes to the Terms.** BARCHART reserves the right to make changes to these Terms from time to time in its sole discretion. BARCHART will provide notice of such changes, including the date the Terms were updated and the date the updates take effect. Your continued use of the System after the effective date of the updated Terms constitutes your agreement to the changes.