

Manufacturers and Agents

WHAT YOU NEED TO KNOW ABOUT ...

promoting your products at bars, pubs, restaurants and licensee retail stores

Can I promote my liquor products at bars and restaurants?

Yes. You may promote your liquor products at liquor-primary establishments (bars and pubs), at food-primary establishments (restaurants), and at licensee retail stores (LRS) — provided you understand what a buy-sell agreement is and when you need to have one in place.

Okay. What is a buy-sell agreement?

A buy-sell agreement is a contract between you and a licensee (the licensed owner or manager of a bar, pub, restaurant or licensee retail store). It spells out what you and the licensee have agreed to and for how long that agreement is to remain in place (36 months is the maximum).

When do I have to have a buy-sell agreement?

You must have a buy-sell agreement to:

- loan **expensive promotional items** to a licensee (for example, signs, umbrellas, wine racks, mirrors, or menu boards to a bar or restaurant, and temporary display structures or related promotional items to a licensee retail store)
- provide a licensee with T-shirts, hats and other **promotional clothing** items that they may give away to their customers
- hold a **joint promotion** (such as a winemaker's or brewmaster's dinner) with a bar, pub or restaurant
- hold **theme nights** at a bar or pub
- conduct a **contest** with a bar, pub, restaurant or licensee retail store that is not also running in government liquor stores
- supply **value-added promotional items** to licensee retail stores *only* (not government liquor stores), provided the items do not contain liquor
- **sponsor events or activities** at licensed sports stadiums, recreational centres, concert halls, university or cultural centres
- put on **educational events and activities** for licensees, and pay travel and other costs for the event/activity, and
- pay a licensee for **hospitality** (drinks, meals, travel, etc.) worth more than \$25 not associated with an educational event/activity.

Why do I have to have a buy-sell agreement?

The buy-sell agreement is intended to make sure that you do not unduly influence a licensee to stock or sell your products. The agreement ensures that you market your products directly to the customer — that it is the customer who benefits from your promotions, such as a free drink sample or a T-shirt, rather than a bar or restaurant's owners or staff. The buy-sell agreement also limits how many “freebies” — such as tickets to a sports event, free drinks or meals — you can give to licensees.

You may not, at any time, either with or without a buy-sell agreement:

- Offer or give money, gifts, rewards or other remuneration to licensees who carry your products.
- Provide any items, products or services to other licensees that are necessary to the operation of their businesses.
- Pay any portion of a licensee's advertising costs, or advertise a licensee's entertainment line-up, drink specials, or menu items. With the licensee's permission, you can include the licensee's logo in your ads, but you can't demand or receive financial compensation or other consideration in return.

When do I *not* have to have a buy-sell agreement?

You *do not* need a buy-sell agreement to:

- give **promotional items of nominal value** to a licensee, such as coasters, tent cards, shelf talkers and ceiling danglers
- sell **promotional items** — such as shirts, caps or key chains with your brand or name on them — to a licensee at fair market value, for the licensee to re-sell to his or her customers or staff
- offer **value-added promotions** in one or more licensee retail stores, provided you offer the same promotions in one or more government liquor stores at the same time
- **visit** a bar, pub or restaurant and purchase drinks for patrons
- provide **product vouchers** that are redeemable at participating licensee retail stores at no charge (you must have the store's approval first)
- give **product samples** to a bar, pub, restaurant or licensee retail store - one small bottle of wine or spirits, or 12 bottles/cans of beer or cider per establishment per year — provided you keep a record of all samples supplied, by name, location, amount and date
- conduct **consumer taste tests** at a restaurant or licensee retail store
- cover the costs of **hospitality** (drinks or meals, etc.) for a licensee up to a maximum of \$25 at any one time
- run a **contest** with a bar, pub, restaurant or licensee retail store, provided you run the same contest at the same time in government liquor stores, and

- **sponsor** a bar, pub or restaurant's sports teams or sports events, provided the team plays or the event is held outside the licensed establishment.

What is "nominal value"?

You can give items of nominal value to licensees, without a buy-sell agreement. Essentially, this means items that are worth very little each — primarily disposable paper products like tent cards, coasters and posters.

Why can't I give more expensive promotional items to a licensee? Why do I have to loan them?

You are required to *loan* (not give) more expensive promotional items to a licensee — and to document the loan in a buy-sell agreement — because otherwise it may appear that you are trying to induce (bribe) the licensee to carry or highlight your products.

Under the buy-sell agreement, the items remain your property and must be returned to you at the end of the agreement, unless you sign another buy-sell.

Under a buy-sell agreement, can I require the licensee to sell only my products?

No, you cannot. A buy-sell agreement must not exclude, restrict or otherwise prohibit a licensed establishment from carrying or selling the products of your competitors.

Can I give glasses with my brand on them to a bar or pub?

No. Glassware is required equipment for any licensed establishment, so you may not give it as a gift. You may, however, sell glassware — including wine carafes and beer steins — with your name or brand to a licensed establishment at fair market value at any time, without a buy-sell agreement. The establishment may then either use them or re-sell them to customers.

The basic rule is: if it's necessary to the operation of the licensed establishment, the licensee must pay fair market value for it. If it is not really essential equipment and more of an expensive promotional item — a \$40 wine box, for example — then you may *loan* it to the establishment under a buy-sell agreement.

What about co-branded glassware or other items, such as awnings?

The same rules apply, even if an item is co-branded with your name or logo and the licensed establishment's name or logo. If an item is essential to the operation of the licensed establishment, then you cannot give it to the licensee; the licensee must buy it at fair market value.

What if the licensee already owns an item, and wants to put my brand on it?

If a licensee already owns awnings, umbrellas or other items, and wants to put your brand or name on them, he or she may do so with your permission, at his or her own expense, without a buy-sell agreement.

Can I cover the cost of items, such as menus for a restaurant, if they do not have my brand or name on them?

No. Again, menus are items that the restaurant requires to operate. You may not provide or pay for any items, products or services to licensees that are necessary to the operation of their businesses — either with or without a buy-sell agreement.

Can I sponsor or co-sponsor a pub's baseball team? Can the pub's staff play on the team?

Yes. You can sponsor any sports team (either associated with a bar, pub or restaurant or not) provided it does not play inside a licensed establishment — in other words, you can sponsor a pub's baseball team that plays at the local park; you cannot sponsor a darts team that plays inside the pub. You may also sponsor other outside sports events (either associated with a bar, pub or restaurant or not), such as golf tournaments or tennis matches.

Licensees and their staff may play on the teams or help out at the events you sponsor.

Do I need a buy-sell agreement to sponsor a pub's sports team or event?

No. However, you will need a buy-sell agreement to sponsor any activity or event (including sports events) held at a licensed sports stadium, recreational centre, concert hall, university or cultural centre.

Do I need a buy-sell agreement for a value-added promotion in licensee retail stores?

It depends on whether the promotion is running in government liquor stores, too.

You may run a value-added promotion in licensee retail stores *without* a buy-sell agreement, provided you have already received approval from the Liquor Distribution Branch to run the same value-added promotion in government liquor stores.

If you want to run the promotion in licensee retail stores *only* (not in government liquor stores as well), then you must complete a buy-sell agreement. You do not need LDB approval for LRS only promotions.

Do I have to run a value-added promotion in *all* licensee retail stores, or can I just select a few?

Provided the stores agree, you can run a value-added promotion in all licensee retail stores (and in all government liquor stores) across the province, or you can choose to work with one or two select stores, or all the stores in one region — such as the Okanagan, for example.

What kind of value-added promotional items can I provide?

All value-added promotions — either with or without a buy-sell agreement — must follow Liquor Distribution Branch guidelines.

These guidelines state that your promotional items must be of nominal value (not more than 20 per cent of the retail price of the base product), must be packaged as on-packs, in-packs or near-packs, and must be liquor or liquor-related or branded. For example:

- a liquor item may be a small bottle of a new product, attached to a full bottle of your product
- a liquor-related item may be a corkscrew or wine charm, shot glass or pocket cooler, and
- a branded item could be a T-shirt, key chain, pack of cards, golf balls, chocolates or other food item.

Please Note:

If you are running the promotion in licensee retail stores *only*, you may offer liquor-related or branded products – liquor products are not allowed.

Lottery tickets, collectible or cumulative value-added items are not allowed, because they would most likely exceed 20 per cent of the retail price of the base product.

Can I attach coupons as part of a value-added promotion?

Yes, but only if they are third-party coupons – coupons supplied by an outside company, not by either you or the LRS.

You may attach third-party coupons to your products by a neck tag or back label, or place them inside a case. These coupons may not be for:

- a rebate or reduction on the purchase price of one of your products
- a free liquor product of any kind, or
- cash.

Can I hand out vouchers or coupons for free or discounted liquor at a bar or pub?

No. Product vouchers redeemable for liquor are only allowed at licensee retail stores. (You may, however, visit a bar or pub and buy drinks for patrons.)

Can I hand out product vouchers for just one LRS?

No. You may not direct your vouchers to just one store or chain of stores; you must arrange to have your vouchers redeemed at more than one store or chain of stores. (Remember that you must have a store's approval before you hand out a voucher redeemable at that store.)

Do I need a buy-sell agreement for a contest? What about LDB approval?

Again, like value-added promotions, it depends on whether the contest is running in government liquor stores, too.

You may run a contest in a bar, pub, restaurant or LRS *without* a buy-sell agreement, provided you have already received approval from the Liquor Distribution Branch to run the same contest in government liquor stores.

If you want to run the promotion in licensed establishments *only* (not in government liquor stores as well), then you must complete a buy-sell agreement, and you do not need LDB approval.

Who is responsible for setting up the contest and for recording prizes, etc.?

You are responsible for installing all of the contest's promotional items and removing all promotional items within 10 days after the contest has ended.

Both you and the licensee are responsible for making sure your buy-sell agreement lists each contest prize – 100 T-shirts, for example – and for recording the name of anyone who wins a contest prize valued at over \$100. (You do not need to record prizes of lesser value.)

Do I have to include theme night prizes in a buy-sell agreement? What about keeping track of prizes during the theme night?

Yes. Your buy-sell agreement must list the prizes you intend to provide for each theme night, along with the total value of all prizes (you do not need to list the prizes or the value of each prize individually).

If you are providing prizes, you must be on site at the bar or pub for at least part of the theme night. And, while you are there, you are responsible for recording the name of anyone who wins a prize valued at over \$100 during the theme night. (You do not need to record the names of people who win prizes valued at less than \$100.) While you are not there, the licensee is responsible for recording prize winners.

Can I pay for a band to play during a theme night at a pub?

No. The bar or pub must cover all theme night entertainment costs at all times.

You may, however, apply to the branch for an exemption for a special event, such as a pipe band for a Robbie Burns Day dinner.

Can staff at a bar or pub wear T-shirts or caps, etc., with my brand on them?

You may give branded clothing to pub staff to wear for theme nights, and staff may then keep the clothing after the theme night is over.

At all other times, staff at all licensed establishments may wear clothing with your brand on them (or co-branded with the name of the bar, pub, restaurant or LRS) at any time, provided:

- they buy the items from you at fair market value, and
- your brand is not so prominent that it appears the establishment is promoting your liquor products exclusively.

Can I buy drinks for the house at a bar, pub or restaurant?

No. Mass treating or drinks for the house is not allowed, and you may not leave money for this purpose. You may, however, join customers at a table and buy a drink for everyone at that table.

Can I treat a licensee to a hockey game or a round of golf?

Yes, you can, but if your hospitality is worth over \$25, you must document it in a buy-sell agreement, and you must be careful about how much you spend each year. The maximum you are allowed to spend per establishment per year for non-educational events or activities is \$1,000, plus any in-province (B.C. only) travel costs related to the event/activity.

Do I need a buy-sell agreement to provide on-site training for staff on my liquor products?

Yes. All educational events or activities provided by you — either on-site or off — must be documented in a buy-sell agreement (except for very short on-site presentations — 10 or 15 minutes, for example).

With a buy-sell agreement in place, you may pay legitimate travel and hospitality expenses for a licensee to attend an educational event or activity, up to \$1,000 per licensee location per year. Where a licensee has multiple licensed establishments — a chain of restaurants, for example — you may pay expenses of \$1,000 per person to a maximum of \$3,000 per licensee head office per year.

Is there a limit on how much I can cover for educational events or activities?

Educational activities, such as an all-day “wine school” designed to improve a licensee's knowledge of your products or ability to sell your products, also have a dollar limit.

You may pay up to \$1,000 per licensee location per year for legitimate travel, meal, accommodation, and entertainment expenses associated with educational events. Where a licensee has multiple licensed establishments — a chain of restaurants, for example — you may pay expenses of \$1,000 per person to a maximum of \$3,000 per licensee head office per year.

Can I provide drinks or prizes for staff parties free-of-charge?

No. You must promote your products directly to consumers only; licensees and their staff are not allowed to receive or keep any promotional items or liquor products (except for product samples).

Who has to sign the buy-sell agreement?

The buy-sell agreement must be signed by you (as a manufacturer or agent) or a member of your sales staff, and by either the licensee, the licensee's manager or other person in charge.

Do I have to carry my buy-sell agreements with me when I visit licensees?

No. You can keep your buy-sell agreements at your place of business.

What if a liquor inspector asks the licensee for a copy of our buy-sell agreement, and he or she has lost it? Am I liable, too?

No. Only the offending party is liable.

How long do we have to keep a buy-sell agreement?

You need to keep a buy-sell — and all related records — for two years after the agreement expires.

Where can I find out more about the rules for promoting my products?

You should have a copy of either *Winery Licence Terms and Conditions: A Guide for Liquor Licensees in British Columbia*, or *Brewer, Distiller and Agent Licences Terms and Conditions: A Guide for Liquor Licensees in British Columbia* (the latest versions are available on the web, at: www.pssg.gov.bc.ca/lclb)

These guidebooks contain detailed information on all the terms and conditions of your licence, including the rules for promoting your liquor products.

Is there a sample buy-sell agreement that I can use? Or do I have to make up my own?

The back of your guidebook has a sample buy-sell agreement. You must follow this format or a similar format, and both you and the licensee must keep a copy of the buy-sell agreement for two years after the agreement expires. All buy-sell agreements must include:

- your name and licence number
- the licensee's name and licence number
- the start and end dates of your agreement (no more than 36 months)
- the terms of the agreement - what you and the licensee have agreed to, including the type, number and retail value of any promotional activities or items conducted or supplied by you.