

Bar, Pub, Restaurant or Licensee Retail Store Owners

WHAT YOU NEED TO KNOW ABOUT ... working with a Liquor Manufacturer or Agent

Can I work directly with a liquor manufacturer or agent to promote his or her liquor products?

Yes. You may work with any B.C. liquor manufacturer - a winery or brewery, for example - or with any B.C. liquor agent to promote the manufacturer/agent's liquor products, 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 the liquor manufacturer or agent. It spells out what you and the manufacturer or agent 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:

- borrow **expensive promotional items** - such as umbrellas, mirrors, wine racks, menu boards, or temporary display structures - from a manufacturer/agent
- accept T-shirts, hats and other **promotional clothing items** to give away to your customers
- attend **educational events and activities** put on by a manufacturer/agent and accept payment from the liquor manufacturer for your travel and other costs
- accept **hospitality** from a manufacturer/agent for costs (drinks, meals, travel, etc.) worth more than \$25 and *not* associated with an educational event/activity
- conduct a **contest** with a manufacturer/agent that is not also running in government liquor stores (provided you follow Liquor Distribution Branch guidelines).

In addition:

- If you own a bar or pub, you must have a buy-sell agreement to:
 - hold a **theme night** with a manufacturer/agent (theme nights are not allowed at other licensed establishments).
- If you own a bar, pub, or restaurant, you must have a buy-sell agreement to:
 - hold a **joint promotion** (such as a brewmaster's or winemaker's dinner) with a manufacturer/agent.

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

The buy-sell agreement is intended to make sure that a manufacturer/agent does not unduly influence you to stock or sell his or her products. The agreement ensures that the manufacturer/agent markets his or her products directly to the customer - that it is the customer who benefits from the manufacturer/agent's promotions, such as a free drink sample or a T-shirt, rather than you or your staff. The buy-sell agreement also serves to limit how many "freebies" - such as tickets to a sports event, free drinks or meals - you are allowed to accept.

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

- Offer or give you money, gifts, rewards or other remuneration for carrying the manufacturer/agent's products.
- Provide you with any items, products or services that are necessary to the operation of your business.
- Pay any portion of your advertising costs, or advertise your entertainment line-up, drink specials, or menu items. With your permission, the manufacturer/agent can include your logo in his or her ads, but cannot demand or receive financial compensation or other consideration in return.
- Provide or pay for entertainment in your establishment.

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

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

- accept **promotional items of nominal value** from a manufacturer/agent, such as coasters or tent cards, shelf talkers and ceiling danglers
- buy **promotional items** - such as shirts, caps or key chains with a brand or name on them - from a manufacturer/agent at fair market value, to re-sell or give away to your customers or staff
- accept **product samples** from a manufacturer/agent (one small bottle of wine or spirits, or 12 bottles/cans of beer or cider per establishment per year)
- accept payment by a manufacturer/agent for **hospitality costs** (drinks or meals, etc.) up to a maximum of \$25 at any one time, and
- run a **contest** with a manufacturer/agent, provided the manufacturer/agent runs the same contest at the same time in government liquor stores.

If you own a bar, pub or restaurant, you also do not need a buy-sell agreement to:

- allow a manufacturer/agent to **purchase drinks for your patrons**, and
- have your sports team or sports event **sponsored** by a manufacturer/agent, provided the team plays or the event is held outside your establishment.

If you own a licensee retail store, you also do not need a buy-sell agreement to:

- conduct an in-store **value-added promotion** with a manufacturer/agent, provided the manufacturer/agent conducts the same promotion in one or more government liquor stores at the same time, and
- accept **product vouchers** that are redeemable at your store.

If you own a restaurant or licensee retail store, you also do not need a buy-sell agreement to:

- conduct **consumer taste tests** with a manufacturer/agent.

What is "nominal" value"?

A manufacturer or agent can give items of nominal value to other 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 a manufacturer/agent give me more expensive promotional items? Why does it have to be a loan?

Manufacturers and agents are required to *loan* (not give) more expensive promotional items - and to document the loan in a buy-sell agreement — because otherwise it may appear that the manufacturer/agent is trying to induce (bribe) you to carry or highlight his or her products.

Under the buy-sell agreement, the items remain the property of the manufacturer or agent, and must be returned to him or her at the end of the agreement, unless you sign another buy-sell.

What about more expensive promotional items that were in my establishment before you started requiring buy-sell agreements? Some were here when I bought the place.

We suggest you make an inventory of all the more expensive branded promotional items currently in your establishment and not covered by a buy-sell agreement.

- If you can prove that you bought an item at fair market value (you have the receipt), you do not have to do anything else.
- If you can identify a particular item as having been given to you by a particular manufacturer or agent, contact the manufacturer or agent and write up a buy-sell agreement for the item.
- If you cannot identify where an item came from, and you do not have a receipt for it, put it on a list marked "Source Unknown" (or something similar). This will indicate to us that you are aware of the new rules and doing your best to comply.

Can a manufacturer/agent require me, under a buy-sell agreement, to sell only his or her products?

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

I own a bar. Can I accept glasses with a manufacturer's name or brand on them as a gift?

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

The basic rule is: if it's necessary to the operation of the licensed establishment, you 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 the manufacturer/agent must loan it to you 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 a manufacturer's name or logo. If an item is essential to the operation of the your business, then you cannot accept it as a gift. You must pay fair market value.

What if I already own an item, and want to put a manufacturer's name or brand on it?

If you already own awnings, umbrellas or other items, and want to put a manufacturer's name or brand on them, you may do so with the manufacturer's permission, at your own expense, without a buy-sell agreement. (Keep a copy of the invoice for proof.)

Can a manufacturer or agent pay for the menus for my restaurant or similar items, if they do not have the manufacturer's name or brand on them?

No. Again, menus are items that your restaurant requires to operate. A manufacturer/agent may not provide or pay for any items, products or services that are necessary to the operation of your business — either with or without a buy-sell agreement.

My pub has organized a baseball team, made up of patrons and staff. Can a manufacturer or agent sponsor my team? Can I and my staff still play on the team?

Yes. A manufacturer or agent may sponsor any sports team, provided it plays outside a licensed establishment — in other words, your baseball team, playing in the local park, is fine, but a darts team that plays inside your pub is not. A manufacturer or agent may also sponsor other outside sports events associated with your establishment, such as golf tournaments or tennis matches.

You and your staff may play on the team or help out at the event.

Do I need a buy-sell agreement to have a manufacturer sponsor my sports team or event?

No, unless you run a bar or restaurant at a sports stadium, recreational centre, concert hall, university or cultural centre - in which case you will need a buy-sell agreement.

I own a licensee retail store. Do I need a buy-sell agreement for a value-added promotion run by a liquor manufacturer or agent?

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

A manufacturer or agent may run a value-added promotion in your LRS *without* a buy-sell agreement, provided the manufacturer/agent has already received approval from the Liquor Distribution Branch to run the same value-added promotion in government liquor stores.

If the manufacturer/agent wants to run the promotion in your LRS - or other LRS's - *only* (not in government liquor stores as well), then you must complete a buy-sell agreement. The manufacturer/agent does not need to obtain LDB approval for LRS only promotions.

What kind of value-added promotional items can I accept from a manufacturer or agent?

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

Please Note:
If the promotion is running in licensee retail stores *only*, liquor products are not allowed.

These guidelines state that 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 one product, attached to a full bottle of another 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.

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.

Are coupons allowed 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 manufacturer/agent.

The manufacturer/agent 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 the manufacturer/ agent's products
- a free liquor product of any kind, or
- cash.

Can a manufacturer or agent hand out coupons for a free or discounted drink at my bar?

No. Product vouchers or coupons are allowed for value-added promotions at participating licensee retail stores only.

Do I need a buy-sell agreement for a contest run by a liquor manufacturer or agent?

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

A manufacturer or agent may run a contest in your bar, pub, restaurant or LRS *without* a buy-sell agreement, provided the manufacturer/agent has already received approval from the Liquor Distribution Branch to run the same contest in government liquor stores.

If the manufacturer/agent wants to run the promotion in your establishment *only* (not in government liquor stores as well), then you must complete a buy-sell agreement. The manufacturer/agent does not need to obtain LDB approval.

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

The liquor manufacturer or agent is responsible for installing all of the contest's promotional items and removing all promotional items within 10 days after the contest has ended.

You are both 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. (Prizes of lesser value do not need to be recorded.)

Am I responsible for recording prizes handed out during a theme night at my pub?

Yes, if the manufacturer or agent is not there and the prize is worth more than \$100. (The manufacturer or agent must be present on-site at your bar or pub for at least part of the theme night, but does not have to be there the whole time).

Either you or the manufacturer/agent must record the name of anyone who wins a prize valued at over \$100. You do not need to record prizes worth less than \$100.

Can a manufacturer or agent pay for a band to play during a theme night at my pub?

No. The bar or pub must, in general, cover all entertainment cost.

A manufacturer or agent 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 I or my staff wear branded T-shirts or caps, etc?

If you own a bar or pub, a manufacturer/agent may give branded clothing to you and your staff to wear for a theme night (and may allow you to keep the clothing after the theme night is over).

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

- buy the items from the manufacturer/agent at fair market value, and
- the manufacturer's brand is not so prominent that it appears you are promoting his or her liquor products exclusively.

Can a manufacturer or agent buy drinks for the house at my pub?

No. Manufacturers and agents are not allowed to mass treat or buy drinks for the house at any licensed establishment (bar, pub or restaurant), and may not leave money for this purpose. A manufacturer/agent may, however, join your customers at a table and buy a drink for everyone at that table.

What about gifts? Can I accept a meal, or a ticket to a hockey game or a round of golf from a manufacturer or agent?

Yes, you can, but if the manufacturer/agent's hospitality is worth over \$25, you must document it in a buy-sell agreement. The maximum a manufacturer/agent is 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.

Can I accept free drinks or prizes for staff parties from a manufacturer or agent?

No. You are not allowed to receive or keep any promotional items or liquor products (except for product samples).

Can a manufacturer or agent offer on-site training to me and my staff without a buy-sell agreement?

No. All educational events or activities provided by a manufacturer or agent — either on-site or off — must be documented in a buy-sell agreement (except for short on-site presentations — 10 or 15 minutes, for example).

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

What about my expenses for attending a manufacturer/agent's product seminars?

Educational activities, such as an all-day "wine school" designed to improve your knowledge of the manufacturer/agent's products or ability to sell the products, also have a dollar limit. A manufacturer/agent may pay up to \$1,000 per licensee location per year for legitimate travel, meal, accommodation, and entertainment expenses associated with educational events. If you have multiple licensed establishments — a chain of restaurants, for example — the manufacturer/agent may pay expenses of \$1,000 per person to a maximum of \$3,000 per licensee head office per year.

Who has to sign the buy-sell agreement?

The buy-sell agreement must be signed by you, your manager or other person in charge, and by the manufacturer/agent or a member of his or her sales staff.

What if a liquor inspector asks the manufacturer/agent 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 *Food-Primary Terms and Conditions: A Guide for Liquor Licensees in British Columbia*, or *Liquor-Primary Terms and Conditions: A Guide for Liquor Licensees in British Columbia* or *Licensee Retail Store 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 working with liquor manufacturers and agents.

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 manufacturer/agent 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 manufacturer/agent'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 manufacturer/agent have agreed to, including the type, number and retail value of any promotional activities or items conducted or supplied by the manufacturer/agent.