

batemans



CRAFT BREWERS  
SINCE 1874

**Good Honest Pubs  
Run By Good Honest People  
Profit Partnership**

# 'Eyes Wide Open'

The 'Eyes Wide Open' operating and procedures manual is designed to give Business Owners a better understanding of the Profit Partnership Plus Business Agreement and how best to benefit from the services offered by the Brewery.

batemans



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October 2019



## BACKGROUND

There are some 50,000 public houses in England, Scotland and Wales. They vary from beer led community style houses, to gastro style food led pubs. Similarly, there is a wide range of operating methods, from management or short term tenancies through to franchises, short term leases, fully repairing and insuring leases, assignable leases and ultimately free trade operations, which may include freehold ownership.



Running a pub is a complex business and the qualities required by a publican are many and varied and the hours are long. However, it can be an exceedingly rewarding career, but it is essential that prior to taking on a pub, prospective Business Owners fully understand the commitment they are making. Equally important is for the prospective Business Owner to understand the part we play in the partnership.



Batemans is one of a small number of independent family breweries which offer a selection of Business Agreement Options in order to ensure that the most appropriate arrangement can be selected by the prospective Business Owner and ourselves, to help maximise the business potential of each particular pub, whilst fulfilling the prospective Business Owner's aspirations.



With all our Business Options, business support and assistance is given, whilst allowing prospective Business Owners an avenue into the trade with limited financial commitment, in contrast to the greater resources required in order to take on a leasehold pub or a freehold property. Our Profit Partnership Plus Business Agreement is based on Business Owners paying highly discounted prices for their drinks products. And we have no rent reviews!



This 'Eyes Wide Open' operating manual will assist in clarifying all of the opportunities offered to prospective Business Owners and is designed to give Business Owners confidence in working with us. It works in conjunction with the Industry Code of Practice (1-499 Tied pubs), which is legally binding and which we provide our prospective Business Owners with a copy of.



## **INTRODUCTION**

from Stuart Bateman

My family has been brewing beer in Wainfleet since 1874, and over the years has carefully built up an estate of some 50 quality pubs, primarily in the towns and villages of Lincolnshire, East Midlands and Norfolk, and a reputation for being fair and caring people to work with. The pubs vary from busy town houses to delightful country inns; from one-bar community pubs to pubs with letting rooms and extensive food operations.

The success of each of these pubs relies upon the expertise, professionalism and hard work of the individual Business Owner and it is our aim to support each and every Business Owner to maximise the business potential for each and every pub.

A Profit Partnership Plus Business Agreement gives a Business Owner the opportunity to run their own business with our assistance and expertise. The Business Owner takes all the retail profit from the business and pays the majority of the overheads, whilst paying us a rent and purchasing all their drinks from us.

Our philosophy was encapsulated in the words of Mr Harry Bateman, our founder's son, in 1953 when he said:

**“In your business don't ever lose the human touch with your employees and Tenants.”**

We believe this still holds true today.

Our business is about people. We have not only won many national accolades in recent years for our beers, but have won many for our people, including our Business Owners. We have been recognised as 'Regional Brewer of the Year' and 'Pub Company of the Year' (20-199 Outlets) by the Publican Magazine, and 'Cask Ale Supplier of the Year', by the national company, WTBS. Their Managing Director said:

**“Batemans perform brilliantly, they are reliable, great people, who offer innovative and creative solutions.”**

**(Jeff Jamet, MD of WTBS)**



## **'EYES WIDE OPEN'**

The Profit Partnership Plus Business Agreement and the Industry Code of Practice (1-499 Tied pubs), are separate documents covering the contractual relationship between us and our Business Owners. It is essential that prospective Business Owners are fully aware of the details within them.

The Industry Code of Practice (1-499 Tied pubs) applies to our Profit Partnership Plus Business Agreement but not the Short Term (usually 5 months and 25 days) and the Tenancy at Will Agreements.

This document is intended to ensure that prospective Business Owners have the necessary skills, advice and knowledge to take on a pub business and that they receive sufficient information to enable them to undertake a thorough evaluation of the business opportunity and to prepare a detailed business plan.

Because our Profit Partnership Plus Agreement is legally binding we do insist that prospective Business Owners produce documentation demonstrating that they have received independent legal and financial advice about their prospective venture.

We help Business Owners make a success of their businesses and this document is a stepping stone along the way towards this end. However, running a business is not risk free, although we help minimise the risks and help the Business Owner to run a happy and rewarding business at their chosen pub.

The Pub Advisory Service (PAS), which is administered by the BII, can provide an initial offering of free advice to all prospective and current Business Owners.

### **PRE ENTRY AWARENESS TRAINING (PEAT)**

Prospective Business Owners need to complete the Pre Entry Awareness Training course run by the British Institute of Innkeeping (BII), for which they make a small charge. Details are on the website: [www.bii.org/home](http://www.bii.org/home).

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*(Please note there is a glossary of terms at the end of 'Eyes Wide Open' which helps to explain the meaning of some of the words used.)*

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## **PROFIT PARTNERSHIP PLUS BUSINESS AGREEMENT AND OPTIONS**

We offer two business options which can work in conjunction with our Profit Partnership Plus Business Agreement, depending on the pub and the qualities, experience and financial status of the prospective Business Owner. They are designed to reward and appeal to first time Publicans, Publicans with small financial resources, Publicans who might alternatively be looking for the financial benefits offered by assignable leases and Publicans with significant capital which they wish to invest and might otherwise therefore be looking at free houses and freeholds. We can meet all prospective Publicans' aspirations without the magnitude of risk often associated with leases and freehold properties.

It should be noted that the Options are not available in every case.

Initial heads of agreement covering the principles and terms of the Profit Partnership Plus Business Agreement are supplied to the prospective Business Owner at the outset, with a full copy of the Profit Partnership Plus Business Agreement, before the Business Owner is asked to sign any commitment.

The curtilage of the Property in terms of buildings, outbuildings and land is defined during the interviewing process.

### **OUR THREE YEAR RENEWABLE AGREEMENTS HAVE NO RENT REVIEWS**

#### **SECURITY**

Our Three Year Renewable Agreement is for an initial period of three years and is subject to the Landlord and Tenant Act (1954), which gives the Business Owner the automatic right to renew the Profit Partnership Plus Business Agreement at the end of each three year term, providing the statutory renewal procedures and notices have been followed and the agreement terms have been adhered to.

#### **NOTICE**

The Three Year Renewable Profit Partnership Plus Business Agreement, to all intents and purposes, is the Business Owner's, until they decide they wish to terminate it. As landlords we can only serve notice to terminate this Profit Partnership Plus Business Agreement on specific grounds; if the Business Owner has been in breach of the Profit Partnership Plus Business Agreement or if we wish to redevelop the premises or get them back for our own use; examples include developing the site for alternative use or turning the operation into a managed house. In the event of us serving notice to take the site back, compensation may be due.

With our Three Year Renewable Profit Partnership Plus Business Agreement, the Business Owner has the right to serve notice to leave at the third, and subsequent tri-annual anniversaries of the agreement only. Formal notice to terminate needs to be received by us between six months and twelve months prior to a tri-annual anniversary.

We do offer a fixed term three year agreement which is contracted out of the Landlord & Tenant Act and the terms of the agreement are renegotiated prior to the commencement of any new term.

If a Business Owner wishes to be released early from their contractual term this may be considered, but compensation would be due to the Brewery. The level of compensation would be discussed prior to agreeing the termination date (see 'Early Surrender').

## **AGREEMENTS, ARRANGEMENTS & OPTIONS**

We discuss the most suitable Agreement with prospective Business Owners at interview. It should be noted that all agreements are not available in every case.

### **Profit Partnership Investment Arrangement** *(this is available with all our agreements)*

With this arrangement, rather than purchasing the fixtures and fittings (the inventory), as per a traditional Tenancy arrangement, the Business Owner purchases the right to run the business ('the investment'). The cost will depend upon the forecasted profitability of the pub. This ensures that there is a direct correlation between the potential earnings of the business and 'the investment'. The Business Owner is however responsible for the repair, maintenance and depreciation of the inventory.

### **Three Year Renewable Agreement**

This is a standard three year agreement with security of tenure and automatic right to renew, which may involve the Profit Partnership Investment Arrangement or the conventional purchase of the inventory for those Business Owners who prefer this traditional route. There is no standard rent review clause other than rents being adjusted annually in line with RPI.

### **Fixed Term Agreement**

We do offer a fixed term three year agreement which is contracted out of the Landlord & Tenant Act and is not necessarily renewed at the end of the fixed term. However if the agreement is renewed the terms of the agreement are renegotiated prior to the commencement of the new term.

### **Goodwill Creation Option**

This Option focuses on giving added reward to Business Owners who have increased their overall business. In effect the agreement provides the opportunity for a Business Owner to receive a payment for developing aspects of the business not only directly linked to the sale of drinks, but to such as food and accommodation.

The Fair Maintainable Trade (FMT) for the pub is agreed and if on a third anniversary the Business Owner can demonstrate, through audited accounts, that for the previous two years they have exceeded the agreed Fair Maintainable Trade (FMT), they are rewarded with a payment of 50% of the average for the two years by which the Fair Maintainable Trade (FMT) has been exceeded over that period.

This payment is obviously in addition to the extra profit the Business Owner has already generated.

The Business Owner can renew their Profit Partnership Plus Business Agreement at the pub when this option is exercised, at which point the target level is rebased to that of the previous two years which were used for the assessment. **SEE EXAMPLE IN APPENDIX 3**

### **Capital Investment Option**

With this agreement there is the incentive for the Business Owner to invest their own money into the structure of the pub, or items which would normally be the Brewery's responsibility. Should a project and the level of investment be agreed with us (usually no more than £50,000), then at the date of the agreement to invest, or an alternative agreed date, the turnover of the business is determined. At any anniversary, if the Business Owner can demonstrate, through their audited accounts, a net percentage increase for that year (taking

into account inflation) in the turnover of the business, they have the right to 'call in' their original investment, with interest paid at the same percentage rate as the percentage increase in turnover. Should the Business Owner wish to 'call in' their investment and the turnover has decreased in the last year, then returned to them would be their original investment minus the same percentage decrease that there was in the turnover.  
**SEE EXAMPLE IN APPENDIX 3**

The Business Owner can continue with their Profit Partnership Plus Business Agreement at the pub when this option is exercised.

**5 Months and 25 Days Short Term Agreement/Tenancy at Will**

There are introductory agreements, sometimes offered to less experienced Business Owners, or when both parties may wish for a shorter agreement, for a variety of reasons. This type of agreement is not automatically renewable and does not fall under the regulations of the Landlord & Tenant Act (1954).

If it is the intention of the Business Owner and the Company to extend the agreement for a longer term, contracted out or not contracted out, this will have been discussed at the interview stage and ongoing between the Business Owner and the Profit Partnership Manager, during the term of the agreement, in order to conclude whether it is desirable. We will take into consideration the Business Owner's performance during the period of the agreement, reviewing adherence to the business plan, trading performance and credit control.

We endeavour to give a minimum of one month's notice (although this is not always possible) prior to the expiry of the short term agreement to the Business Owner of whether we wish to offer an extended agreement and what the terms of that agreement would be.

With a 5 months and 25 days agreement the term expires on the pre-arranged date and with a Tenancy at Will the Business Owner or the Brewery must give not less than 15 working days' notice at any time of their intention to terminate.

A Tenancy At Will or Temporary Tenancy is an agreement which can be terminated at short notice and is used to cover temporary arrangements while longer term arrangements are finalised. The term of this agreement could be as short as one week and as long as 5 months and 25 days.

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We are willing to consider variations to the standard agreements we offer, which may involve such things as a longer term or partial freeing up of the drinks tie.

**Once an agreement has been entered into please note that we do not operate a 'cooling off' period nor can agreements be assigned.**

## **BUSINESS OWNER'S DISCLOSURES**

Prospective Business Owners considering entering into an agreement with us are expected to be open and honest in disclosing and subsequently discussing, all relevant information, specifically in respect of:

- their credit worthiness
- their background and relevant experience
- their source of finance and any proposed borrowings to support the execution of the business plan
- any reason why the Police or any other body might oppose them operating a licensed premises
- references will be required

## **BUSINESS OWNER'S RESEARCH**

We expect all prospective Business Owners to have carried out their own enquiries into the trading performance of the pub and have visited the premises sufficiently often, during different trading times, in order to have formed their own opinion of the trading potential. We also expect prospective Business Owners to have visited other pubs in the vicinity and to have surveyed the trading environment sufficiently to understand the opportunities and threats that prevail.

In some cases, the outgoing Business Owner may be prepared to provide detailed financial information, relating to food sales, letting accommodation, income and costs, which may not be known by us.

Before being offered a Profit Partnership Plus Business Agreement we insist that prospective Business Owners have inspected all the public and private areas of the pub at least once. A member of the Profit Partnership team can arrange this.

## **BUSINESS PLAN**

The information gathered by the prospective Business Owner and provided by us, should form the basis of a business plan. It should describe how the public house is to be operated and provide detailed financial projections including sales, margins, costs and cashflows. Our Profit Partnership team can assist with putting this together and a business plan template is available.

The prospective Business Owner must take independent financial and legal advice from qualified professionals, who can demonstrate they have the necessary credentials and relevant experience in dealing with public houses, before entering into a Profit Partnership Plus Business Agreement with us. It is the prospective Business Owner's responsibility to pay for any costs incurred in obtaining the said advice.

The above requirements may be waived at our discretion in cases where it is deemed that the Business Owner is suitably qualified through previous experience and achievement, or is a company of sufficient standing, to rely on their/its own judgement.

## **ACCOUNTANTS AND STOCKTAKERS**

The Business Owner must provide information on the approved accountant and stocktaker that will be used during the first twelve months of the Business Agreement, if it has been agreed that the Brewery nominated accountant and stocktaker will not be used. Information must be shared with the Brewery.

## THE SELECTION PROCESS

We will make contact with an applicant upon receipt of a completed application form to arrange an initial interview. At the initial interview the applicant is either advised:

- a) of current suitable vacancies and asked to visit them; or
- b) that they are suitable but we have no current appropriate vacancies for them, which is confirmed in writing. They are subsequently contacted when a suitable pub becomes available; or
- c) they are unsuitable.

Should we consider the applicant unsuitable contact will be made confirming this.

If an applicant is interested in a suitable vacancy they are asked to complete a business plan and are notified of the specific qualities which we feel are required to operate the business. After the prospective Business Owner has carried out the required research etc and submitted a business plan a second interview is arranged, after which they are either offered the pub or informed that their application has been unsuccessful. The option to remain as a prospect on our database for future vacancies is nearly always given.

## LICENSING

The Business Owner must be the holder of a personal licence and become the Designated Premises Supervisor (DPS) or nominate an appropriate person to hold the position and licence.

We hold all public house Premises Licences in our own name, although we recharge the annual fee to the Business Owner. The Premises Licence is discussed in detail with prospective Business Owners and copies of the relevant documents provided, as it is imperative that all the conditions on the licence are understood and adhered to fully by the Business Owner.

We reserve the right to charge the costs, or associated costs, if conditions are placed on the licence, which result directly from the Business Owner's actions.

If the Business Owner is planning to broadcast copyright music, whether recorded or live, they will need to obtain the appropriate Performing Rights Society (PRS) licence. If they intend to offer music via a jukebox they will also require a Phonographic Performance Limited (PPL) Licence although it is likely that the supplier will provide the relevant licence.

Visit: [www.pplprs.co.uk](http://www.pplprs.co.uk)



# **OPERATION OF THE PROFIT PARTNERSHIP PLUS BUSINESS AGREEMENT**

## **GENERAL**

We consider our Profit Partnership Plus Business Agreement to be one of the fairest available in the pub industry and that it represents a genuine partnership between us and our Business Owners and gives every opportunity for both parties to achieve their legitimate business objectives.

There is no minimum purchase obligation in our agreement.  
**There are also no rent reviews!**

**The Profit Partnership Plus Business Agreement allows Business Owners to pay highly discounted prices for their drinks products.**

## **INGOING COSTS**

To 'purchase' the business at one of our pubs, the Business Owner is required to pay the following:

### **PROFIT PARTNERSHIP INVESTMENT**

The value of the Profit Partnership Investment has a direct correlation between the Business Owner's investment and the potential reward from operating the pub ie '**fair investment for fair reward**'. It avoids the risk that a Business Owner may have over invested by buying an inventory at a value which bears no relationship to the earnings potential of the pub. This investment is held by us and can be used to cover any future debts and more usually to offset any depreciation in the value of the inventory.

### **TRADE FIXTURES AND FITTINGS (Inventory)**

Prior to ingoing the inventory of the pub is valued by two valuers, one selected and paid for by the Brewery and one selected and paid for by the Business Owner. It is their responsibility to reach agreement on a fair valuation.

There may be instances when we and you agree to share one valuer, which would involve sharing the cost of the valuer. The decision of the valuer is binding. Agreement to share a valuer must be confirmed in writing by us prior to arrangement.

At the end date the inventory is again valued by two valuers, one selected and paid for by the Brewery and one selected and paid for by the Business Owner. It is their responsibility to reach agreement on a fair valuation. The difference between the ingoing valuation and the outgoing valuation (taking into account depreciation, authorised additions, replacements and removals) is then deducted from (or added to) your Profit Partnership Investment Sum, or the Actual amount paid together with any other sums, including dilapidations charges, owed by you to us, before the remainder is then returned to you.

### **REPAYMENT OF PROFIT PARTNERSHIP INVESTMENT**

When the Business Owner leaves the pub a valuation is made of the trade fixtures and fittings, with all approved additions being added and then the Profit Partnership Investment is returned to the Business Owner, having been adjusted to reflect appreciation or depreciation of the value of the fixtures and fittings against the 'benchmark' and taking into account any outstanding debts to us.

We may decide part way through an agreement that we wish to carry out a revaluation of the inventory, at our cost and require the Business Owner to 'top up' the Profit Partnership Investment to the 'benchmark' value. In the event of a significant addition by us to the value of the inventory we agree with the Business Owner a 'new benchmark' value. (SEE APPENDIX 1)

Should the Business Owner improve or add to the inventory, with our written agreement, this will be taken into account in the outgoing valuation when they leave.

Should we at any time have carried out our right to debit an amount from the Profit Partnership Investment, due to an unpaid debt, or for repayment to us for having carried out work which was the responsibility of the Business Owner, then we may require the Profit Partnership Investment to be brought back up to the 'benchmark' or 'new benchmark' value within seven days. Before we debit any amount from the Profit Partnership Investment we will discuss the issue with the Business Owner.

We reserve the right to obtain a revaluation of the inventory at each tri-annual anniversary, with the Business Owner and the Brewery paying their share of the cost of carrying out the valuation.

We do not make any payment of interest on the Profit Partnership Investment finance held.

#### **STOCK AND GLASSWARE**

These are purchased on the ingoing day, at the valuation provided by a licensed trade stocktaker.

#### **STAMP DUTY, LEGAL FEES AND INVESTIGATORY COSTS**

There are no legal fees or stamp duty associated with the Profit Partnership Plus Business Agreement.

Any costs incurred by the Business Owner when investigating the viability of the proposed Business Agreement are not reimbursable even if no appointment is made.

#### **ELECTRONIC COMMUNICATION**

In order to ensure effective and speedy communication between ourselves and our Business Owners, Business Owners are expected to maintain a valid email address and internet connectivity throughout the term of the agreement, as well as ensuring there are landline telephone services.

#### **RESPONSIBLE RETAILING**

In order to help ensure the safety and well-being of Business Owners, staff, customers and the local community, we insist that our Business Owners introduce responsible retailing initiatives including Drink Aware and Challenge 21, amongst others.

#### **SIGNIFICANT FINANCIAL AND COMMERCIAL ADVANTAGES (VALUE ADDED SERVICES) WE PROVIDE**

##### **Discounts**

We discount the list price of products providing the Business Owner is paying to terms. However all discounts may be suspended for a period if the Business Owner is not operating within the terms of the Profit Partnership Plus Business Agreement.

We commit that the prices may be adjusted only once per year, and will never be more than by 5% of the full wholesale selling price of a product prior to discounts. However any duty increases are passed on at the time of government implementation.

### **Product Promotions**

Regularly special reduced price promotions or merchandise promotions are offered on selected products.

### **Drink Brands Available**

As well as supplying our own award winning cask ales and nationally renowned brands, we commit to endeavouring to offer market leading brands and the products which are most suitable for each individual outlet. However we do have to take into account how we can best maximise our ability to give Business Owners discounts and trade marketing support. This has a bearing on the selection of brands we can offer.

We give at least seven days' notice of any pending product availability changes or price changes.

### **Group Buying Opportunities**

We may negotiate special prices on behalf of our Business Owners, resulting in savings that would not be available to an individual purchaser.

### **Outside Bars/Events**

We can provide equipment and services to help run outside bars/events at highly subsidised rates. In some circumstances we also contribute to any tender a Business Owner might wish to make, in order to obtain the business at an outside bar/event.

### **Marketing**

We provide assistance and advice on advertising, promotions and other marketing matters.

Key point of sale materials such as bar towels, beer mats, posters etc are provided free of charge.

### **Open Book Accountancy Service**

The Brewery may insist upon the Business Owner using a nominated accountant and sharing the financial information with the Brewery so that assistance can be given with financial planning.

### **Rating Service**

We always inform Business Owners of the rateable value of a pub and the actual rates payable, prior to an agreement being signed. We can obtain the services of a reputable company to advise on all aspects of rating.

### **Websites and Website Design**

Expertise is offered to ensure that Business Owners can set up and best utilise their own personalised pub website.

It should be noted that prior to the termination of the Profit Partnership Plus Business Agreement, the Business Owner must provide the Brewery with such information as will be required to enable us or any future Business Owner to continue to operate the website and social media, associated with the pub. This includes usernames, passwords and ID's etc.

Failure to provide the relevant information will result in a delay in the repayment of the Profit Partnership Investment and may ultimately result in a reduction in the amount of repayment made.

### **Catering Assistance**

In order to help Business Owners make the most of their catering potential and to help ensure they run the operation within the necessary legislation and regulatory guidelines, we have developed our own in-house catering manual on how best to help Business Owners. The manual covers many issues, from Health & Safety, kitchen layout, food preparation, customer service and menu planning, to effective marketing of a food operation.

### **Menu Printing**

We can organise a menu printing service.

### **Wine Advice & Printing Service**

We provide assistance and advice on the planning of wine lists and can provide a printing service.

### **Brewery Visits**

The Brewery is available for organised visits. However, bookings need to be made and there is a small charge for these events.

### **Business Support & Advice**

A Profit Partnership Manager visits Business Owners on a regular basis, the frequency to be agreed with the Business Owner, and provides advice and support. Issues discussed include actions required to help make the business more efficient and profitable.

### **Newsletter**

We issue periodic newsletters which may contain ideas to help Business Owners develop their businesses further, in terms of increasing trade and decreasing costs.

### **Legislation and Regulations Advice**

Advice is given on legislation and regulations in order to assist the Business Owner in trading legally and fulfilling the licensing objectives etc although it remains the Business Owner's responsibility for ensuring that they are fully compliant.

### **Training Courses**

We firmly believe good training to be an essential part of a licensee's success and development. We discuss with the Business Owner what their and their staff's training requirements are and assist them in fulfilling their needs.

A comprehensive package of training courses is available for Business Owners and their key staff, at subsidised prices or free of charge. These courses cover: Cellar Management, Award for Personal Licence Holders (APLH), Basic Food Hygiene, Stock Control, Finance, Drug Awareness, Marketing, Customer Service, Catering, Employment Law, Social Media, Energy Conservation and Wine (the content of the courses may vary from time to time).

We have developed a two day course called 'Running a Pub Successfully'. We may make attendance at this course a condition of an offer to a prospective Business Owner and a condition of any future capital investment, and reserve the right to make a contributory charge for this training.

Should, for whatever reason, the Business Owner not have attended a 'Running a Pub Successfully' course when we have required them to do so, then we reserve the right to withhold all discounts until the course has been attended.

The majority of courses are delivered at the Brewery. Some course are free and some we make a charge for. We have an approved BII training centre.

### **Explanation of the Business Owners' and the Brewery's Obligations (Pre Entry Awareness Training, PEAT)**

We deliver a training module which explains all the obligations of both the Business Owner and ourselves when acting as partners.

Prospective Business Owners also need to complete the online Pre Entry Awareness Training module run by the British Institute of Innkeeping (BII), for which they make a small charge. Details are on the website:

[www.bii.org/support/startingout/preentryawarenesstrainingpeat](http://www.bii.org/support/startingout/preentryawarenesstrainingpeat).

### **Promotion to Larger Public Houses**

The size of our estate enables Business Owners in smaller pubs to move to larger ones, should both they and we feel that such a move would be beneficial to both parties. Business Owners wishing to move to a larger business should check our web site and raise the matter with the Profit Partnership Manager.

### **Fruit Machine Analysis**

We employ a machine monitoring company to analyse machine take and supplier performance, in order to help ensure that each site is performing optimally.

### **Surveyor and Design Services**

We provide a free surveying service for agreed developments, which includes the preparation of plans for refurbishment, the submission of planning applications and advice on planning and property matters. We provide an interior and exterior design service for agreed developments.

### **Cellar Cooling**

Cellar cooling is serviced annually by our nominated contractor. We make a charge for this and for maintenance and repair. This also applies to remote coolers.

### **Boiler Servicing**

It is our responsibility to ensure the Landlord's Gas Test Certificate is in place but it is the Business Owner's responsibility to ensure that the boiler is serviced annually, maintained and certificated. We have negotiated preferential terms with a local firm to provide servicing, the cost of which is recharged to the Business Owner weekly. Repairs to boilers are the Business Owner's responsibility and are at their expense.

### **Health & Safety Management Systems**

We will provide, pay for and recharge you at cost, a documented Health & Safety Management System, installed by Health & Safety consultants. This covers Health & Safety Policy, Employee Booklets, Induction Procedures, Fire Risk/Risk Assessment Considerations, Fire Procedures, Training Records, Manual Handling Procedures, The Confined Spaces Act and The Disabled Discrimination Act. A consultant can carry out an annual visit and audit and act as the Public House competent person for Health & Safety & Welfare Regulations 1999. An annual certificate can be provided.

A fire alarm maintenance record must be provided every six months to ensure the fire safety equipment complies with regulations.

This facility gives Business Owners the confidence that they have demonstrated to Trading Standards Officers, Environmental Health Officers, Fire Officers and other enforcement organisations that these issues are being handled in a competent manner. However, it should be noted that Business Owners still have day to day responsibilities with regard to the aforementioned. The consultants are there to help and guide as appropriate.

### **ACTIONS TAKEN TO COUNTER DETRIMENTAL INFLUENCES ON THE TRADING SITUATION**

We recognise that there can be significant changes to the trading situation of a pub during the term, which are no fault of the Business Owner, and whilst altering the viability of the business do not warrant an extraordinary review as detailed in the Profit Partnership Plus Business Agreement. For example this might include such things as a significant rise in the running costs of the pub outside the Business Owner's control. When any changes have a detrimental effect on the business the Business Owner, or the Business Owner's financial advisors, must bring it to our attention as soon as possible. We undertake to hold discussions with the Business Owner and any appropriate advisors, to decide upon the best course of action (if any).

## **MACHINES**

**(AWPs are fruit machines and SWPs are quiz machines)**

### **DISTRIBUTION OF INCOME**

Distribution of the machine income, after Machine Games Duty (MGD), is split between the machine supplier, the Brewery and the Business Owner and varies between AWP's, SWP's and Pool Tables.

MGD is left onsite by the collection team and it is the Business Owner's responsibility to pay any MGD due on a quarterly basis to HMRC. In addition any VAT charged by the machine supplier or on the Brewery's income, is deducted from the Business Owner's share. The VAT charged can be claimed back with the Business Owner's normal quarterly VAT return.

The terms listed below are current terms but are subject to change as and when new supply contracts are agreed. Business Owners will be notified in writing of any changes that effect the distribution of income.

The AWP income is split: Supplier 30%, Brewery 35% and Business Owner 35%, after MGD.

SWP machines are provided on a shared basis. Income is split 60% to the Supplier and 20% each to the Brewery and the Business Owner. SWP's are also subject to MGD and this is deducted before the income is distributed on the above terms.

Pool Table income is shared on a 50/50 basis between the Brewery and Business Owner after the supplier's rent has been deducted. Should the Pool Table take fail to cover the rent then the shortfall is also paid on a 50/50 basis by the Brewery and the Business Owner.

### **MACHINE PERFORMANCE MONITORING**

The Brewery employs a machine management company to analyse machine income, monitor supplier performance and provide cash security controls, for the benefit of both the Brewery and the Business Owner. To fund this service the Brewery takes a net amount of £5.50 per AWP each week and £2.50 per week for each piece of ancillary equipment such as Juke Boxes and Pool Table, from those machines which are provided on a rental basis. This may be reviewed periodically.



## **RENT**

**We are committed to following the rent calculation principles set out by the Royal Institution of Chartered Surveyors (RICS).**

### **RENT CALCULATION**

**It is always our intention that any rent calculation does not penalise successful performance, but also that it does not compensate for under-performance.**

The rent payable is based on a percentage of the estimated Fair Maintainable Trade (FMT). This takes into consideration trade from all parts of the business, excluding machine income but including drinks, food, accommodation, entrance fees, room letting, caravan site lettings etc.

We show prospective Business Owners our assumptions and the basis upon which we have arrived at them, when agreeing rents. We highlight what figures are actual and what figures have been assessed and why and upon what basis.

Cask Ale has a very small amount of undrinkable sediment at the bottom of the cask and an allowance is made for this in the rent calculation. Details are included within the rent calculation document.

Industry benchmarking reports are available to help the Business Owner evaluate the assessments.

With our Profit Partnership Plus Business Agreement we give Business Owners the opportunity of purchasing drinks at highly discounted prices.

### **RENT REVIEWS**

**WITH OUR THREE YEAR RENEWABLE AGREEMENT WE DO NOT HAVE STANDARD RENT REVIEWS! HOWEVER THERE MAY BE EXCEPTIONAL CIRCUMSTANCES OUTSIDE OUR OR THE BUSINESS OWNER'S CONTROL, RESULTING IN TRADE INCREASING OR DECREASING. THIS MIGHT INVOLVE SUCH THINGS AS THE CLOSURE OF LOCAL COMPETITION RESULTING IN AN INCREASE IN TRADE OR THE INTRODUCTION OF ADDITIONAL COMPETITION, RESULTING IN A DECREASE IN TRADE, FACTORS WHICH COULD NOT HAVE BEEN TAKEN INTO CONSIDERATION WHEN THE RENT WAS ORIGINALLY SET.**

### **FAIR MAINTAINABLE TRADE**

When assessing the Fair Maintainable Trade (FMT) we take into consideration the level of trade which would be expected from an 'average operator' and when we are evaluating historical performance, we adjust any figures downwards if we consider a previous Business Owner has performed at an above average level. We will also adjust upwards if we consider that a less than 'average operator' has performed at a lower than average level.

As we may have no definitive information on which to base estimates for catering sales and accommodation, these are based on our judgement, and are discussed with the prospective Business Owner before the agreement is signed.

If a pub has not traded to its full potential, the ingoing rent is calculated on the potential profit considered likely to be achieved by an 'average operator', operating the same premises.

### **ANNUAL RPI RENTAL ADJUSTMENTS**

The rent is increased/decreased by the same percentage as the Retail Price Index (RPI) at the annual anniversary of the agreement and may be upwards or downwards. The headline rate of inflation used is taken from the Bank of England's website.

## CAPITAL IMPROVEMENTS

We and the Business Owner may decide to make alterations to the premises during the term of the Profit Partnership Plus Business Agreement to enhance the business. Any capital investment is only actioned if the Business Owner agrees to the scheme in its entirety and signs up to the rental and investment implications of the proposed project. Before any alterations commence we agree and confirm the arrangements in writing:

Usually the value of any investment in a capital improvement is rentalised at the rate of between 7% and 12% per annum of our capital cost, but this can vary dependent on circumstances.

Should a Business Owner wish to make capital improvements at their own expense and we agree then a Licence to Alter may be issued and both parties must sign the agreement. At no time or in any circumstances (unless agreed in writing by the Managing Director) will the Business Owner be compensated for any such work.

## PUB INDEPENDENT RENT REVIEW SCHEME (PIRRS)

If we and the Business Owner cannot agree what is a new fair rent and the Internal Disputes Procedure (page 20) has been followed, then we agree that the matter be referred to the Pub Independent Rent Review Scheme with their decision being binding. Each party is responsible for their own costs in this matter.

Details can be found on the PIRRS website: [www.pirrscheme.com](http://www.pirrscheme.com)

The Business Owner still has the right to seek arbitration if he does not wish to use the Pub Independent Rent Review scheme.

## **RENEWING AND TERMINATING THE AGREEMENT**

Our Three Year Renewable Profit Partnership Plus Business Agreement is protected by the Landlord & Tenant Act (1954) and this gives Business Owners the right of renewal at the expiry of each term (commonly known as security of tenure), provided there have been no material breaches of the agreement, that the Business Owner is trading the business at a level which might be expected from an 'average operator', that he is meeting the repair and maintenance responsibilities and is abiding by the payment terms.

Within the 'notice window' if there are no grounds to terminate the agreement, then a Section 25 Notice is served. This document informs the Business Owner that we intend to offer them a new three year term at the expiry of the current three year term. Although the Business Owner does not need to formally respond to this notice, it is good practice to sign and return the Section 25 documentation to confirm that a new three year term is desired. In the absence of any information to the contrary it will be taken that a Business Owner wishes to renew.

If a Business Owner does not wish to renew the Business Agreement at the end of the term then we need notifying a maximum of twelve months and a minimum of six months, 'the notice window', prior to the expiry date. Failure to do so will be taken as an automatic desire to renew.

We, as landlords, can only serve notice to terminate a Three Year Renewable Agreement on specific grounds; if the Business Owner has been in breach of their Profit Partnership Plus Business Agreement or if we wish to redevelop the premises or get them back for our own use, examples of which include developing the site for alternative use or turning the operating arrangements from Profit Partnership Plus to Management.

In the unlikely event of us taking the site back for our own use, compensation may be due to the Business Owner.

## **DILAPIDATIONS**

Prior to the end of an agreement, arrangements are made for a surveyor to visit in order that a schedule of condition can be drawn up. Business Owners will be charged for this service.

The schedule is presented to the Business Owner a minimum of one month prior to the termination date (unless the change is agreed at short notice) and agreement made between the Business Owner and the surveyor as to whether the Business Owner is going to do the work (to an agreed standard), whether we are to do the work and charge the Business Owner, or whether a charge is to be made to the Business Owner and settled on the day of changeover. If previously agreed works have not been carried out by the Business Owner by the day of changeover, the Business Owner is charged for the cost of the work to be subsequently carried out. Should the Business Owner not be happy with the Schedule of Condition the Disputes Procedure should be actioned and indeed the matter can be referred to the Pub Independent Conciliation and Arbitration Service (PICAS).

It should be noted that this Dilapidation Schedule is relative to the original Schedule of Condition or a subsequent Schedule of Condition if we have refurbished the pub. Business Owners are not obligated to bring the condition up to a better standard than it was at the commencement of the term of the Profit Partnership Plus Business Agreement, however no compensation will be paid to the Business Owner if the condition is better than the original Schedule of Condition. (For the duration of the term of the Profit Partnership Plus Business Agreement we reserve the right to enter the premises, as detailed in the Profit Partnership Plus Business Agreement, to check the condition of the premises. It is our policy to inspect the domestic quarters regularly.)

## **EARLY SURRENDER**

There are times when we are prepared to release a Business Owner from their obligation to complete the duration of the term of the Profit Partnership Plus Business Agreement. However, this can be an exceedingly costly exercise. We therefore reserve the right to make a charge to reflect this cost, which could be the value of between six months and twelve months rent (although it is dependent upon the circumstances) to cover our potential loss of profits and will be related to the amount of rent which would have been paid should the Business Owner have completed their term.

## **CONSEQUENCES OF BREACH OF AGREEMENT**

The Profit Partnership Plus Business Agreement is a legal contract and breaches may result in legal proceedings and forfeit of the Profit Partnership Plus Business Agreement, which may result in repossession and the Brewery seeking damages and costs.

An injunction to restrain breaches of covenant may be implemented to regularise the Business Owner's continued occupation of the premises and costs are sought from the Business Owner. A consent order agreed between the Business Owner and the Brewery, which is enforceable by the court, may lead to reinstatement of the term of the Profit Partnership Plus Business Agreement if it is fully complied with.

## **RETIREMENT POLICY**

Once the Business Owner reaches normal retirement age, in certain circumstances, subject to agreement, we allow Business Owners the opportunity to continue with the term of the Profit Partnership Plus Business Agreement. This will be reviewed in line with any future legislation.

## **SERVICES AND SERVICE STANDARDS**

### **INTRODUCTION TO BREWERY STAFF**

Prior to taking the pub over the Business Owner is introduced to the staff at the Brewery so that they are able to put faces to the names of those responsible for organising the various services.

### **LANDLORD'S REPAIR, DECORATION AND SIGNAGE OBLIGATIONS**

We are responsible for all structural repairs and the external decoration of the premises. This document and the Profit Partnership Plus Business Agreement define the responsibilities of both ourselves and the Business Owner for the repair and redecoration of the building.

We are responsible for the provision of all external signage and endeavour to ensure that the pub is signed to optimum effect to promote not only our products, but also the amenities offered by the Business Owner. Business Owners shall not erect their own signs, without written permission.

The Business Owner is responsible for the redecoration of the public and private areas at a minimum frequency of every three years, and in the final year of the agreement. This must be to a standard and specification agreed by us.

### **INSURANCE**

In our capacity as the property landlord, we are responsible for the buildings insurance and recharge this cost back to the Business Owner. Any insurance excesses relating to the buildings insurance would be the responsibility of the Business Owner. Full details of the buildings insurance cover will be provided by us to the Business Owner.

It is a requirement for all Business Owners to insure the inventory, fixtures and fittings, Public/Products Liability and Employer's Liability. Evidence of the insurance policy must be provided and approved by us in writing. As the Business Owner is responsible for this insurance, they are also responsible for any insurance excesses. We can provide further information regarding insurance and payment terms. Full details will also be provided in the Offer Letter.

Insurance for personal belongings is the Business Owner responsibility.

### **PROVISION OF BEER RAISING AND DISPENSE EQUIPMENT**

The handpulls and beer engines are our property.

All dispense pumps, electric or handpulls are supplied and maintained by us, as is the beer raising equipment. We pay for any installations and you pay for repairs to the equipment, including the cooling systems.

### **DISPENSE EQUIPMENT MAINTENANCE**

We provide a 'One Stop Shop' for the repair of cellar and dispense equipment (not for cellar cooling).

For emergency calls an estimated time of attendance is given. Emergency calls are for Health & Safety issues, electrical failures, frozen containers, remote unit down or all standard lager or keg ale completely off sale.

## **CELLAR COOLING**

We organise a service contract and any repairs required. We reserve the right to make a charge for this service. There is an out of hours emergency contact if required. You are responsible for, and at your cost, repairs, maintenance and replacement.

## **PRODUCT INSTALLATIONS**

Installations need agreeing with the Profit Partnership Manager, who will organise them if agreed.

## **SUPPLY OF DRINKS**

We supply a comprehensive range of ales, lagers, ciders, wines, spirits and minerals, all of which can normally be supplied on one delivery.

In certain circumstances other brewers' cask ales may be available periodically, but when they are, there should always be at least one more Batemans cask beer on dispense than guest beers, unless agreed in writing with the Profit Partnership Manager. There should never be more than the optimum number of beers to ensure throughput does not exceed four days per cask.

As well as supplying our own award winning cask ales, we commit to endeavouring to offer market leading brands and the products which are most suitable for each individual pub. However we do have to take into account how we can best maximise the discounts and trade marketing support opportunities for all our Business Owners, which has a bearing on the selection we can offer.

It cannot be stressed enough how important it is for Business Owners to adhere to the commitment to purchase all drinks products from us and in return for which they receive certain significant financial and commercial advantages, as detailed in this document.

## **FLOW METERING EQUIPMENT**

We believe in the benefits offered by flow metering equipment to pub businesses in helping to plan effective customer service, adjust stock levels and deliver optimal margins, as well as flagging up dispense issues relating to dispense equipment.

If flow metering equipment is installed in the pub this will be at our expense and running and maintenance costs will be at your expense and be your responsibility. The Brewery reserves the right to install flow metering equipment part way through the term of the Profit Partnership Plus Business Agreement.

Business Owners will have access to all the data accumulated.

We have access to the information and if it provides evidence to support buying outside the contractual purchasing commitment arrangement, the Business Owner will be charged a minimum of £100 per draught barrel and £5.00 per litre for packaged products for which there is evidence of breach of contract. This charge will be invoiced separately to the Business Owner's trading account and is a contribution towards our loss of profits and administration costs. However, we will first have undertaken an investigation into the situation and will not rely entirely upon the information provided by the flow monitoring equipment data. Rather than applying any charges, we may consider suspending all discounts which we apply to the value of the Business Owner's purchases, for a period of a minimum of three months and recharge any discounts given in the previous three months. We also reserve the right to terminate the term of the Profit Partnership

Plus Business Agreement and charge for injunctive relief. Should a Business Owner dispute any of the findings of the Brewery then the Disputes Procedure should be activated by them.

If the Business Owner refuses to cooperate with our investigations then we reserve the right to take the described actions and implement the described charges.

If there is substantive evidence of tampering with the equipment, charges may be made by the Brewery to correct any issues and discount on the value of the products supplied to the Business Owner by the Brewery may be suspended for a minimum of one month, although we reserve the right to terminate the Profit Partnership Plus Business Agreement.

If Business Owners are found to be in breach of the purchasing commitment then they may be required to give a formal written undertaking that there will be no further breaches in this contractual obligation.

#### **STEPS WHICH ARE TAKEN BY US IF THE BUSINESS OWNER'S DRINKS PURCHASING COMMITMENT IS NOT OBSERVED**

(See flow metering equipment.)

If for any reason an ordered product is not delivered by us and we cannot meet the Business Owner's requirements within an acceptable time frame then the Business Owner should contact the Profit Partnership Manager to discuss how the situation is best resolved. A purchase (or borrowing) of stock outside of the trade tie is not permitted without his written permission.

#### **TELESALES**

Telesales call Business Owners to take orders. Telesales also inform Business Owners of any special offers and promotions.

There is a minimum requirement of forty eight hours between order and delivery.

The Brewery may introduce an equivalent electronic communication facility for order collection, the use of which will be compulsory.

#### **CREDIT CONTROL**

All payments to us should be made weekly by direct debit. Business Owners are notified by letter of the amount that is to be collected.

We offer one week's credit for goods and rent is paid a week in advance.

Monthly statements are issued detailing all transactions and payments.

Where possible we allocate payments to specific invoices but when we receive lump sum payments on account, these will be allocated to outstanding invoices as deemed appropriate by the Credit Controller.

We reserve the right to charge an administration fee for returned cheques or direct debits. If payment is returned a request is made for payment to be re-issued before the next delivery.

We reserve the right to charge interest on overdue balances on Business Owners' accounts, or debit the Profit Partnership Investment balance if appropriate. This charge is 4% above the base rate at Nat West Bank.

We reserve the right to carry out checks to ascertain the Business Owner's credit worthiness from time to time.

If a Business Owner is having problems meeting payments they should contact the Profit Partnership Manager to discuss ways in which we can be of assistance.

## DISTRIBUTION

We provide a delivery either once a week or fortnightly for all drink requirements.

The Transport Department, at their discretion, can provide emergency deliveries in exceptional circumstances, up to a maximum of six times per year per pub, however we do reserve the right to make a charge for this service, which is discussed prior to any emergency delivery being made. The charge normally varies between £20 and £50 per delivery, but we reserve the right to review this.

## PRODUCT SHELF LIFE

We guarantee a minimum amount of shelf life on the products supplied to Business Owners:

- cask ales – minimum ten days
- shelf life on any guest ales varies
- keg beers, ciders and lagers – minimum fourteen days
- bottled products – minimum three months

## ULLAGE

We have an ullage policy to cover all beer which is considered unfit for sale:

Communication:

- our own ullage is to be reported by email to [ullage@bateman.co.uk](mailto:ullage@bateman.co.uk)
- factored ullage (all products other than Batemans) is to be reported by email to the Ullage Secretary [dstone@bateman.co.uk](mailto:dstone@bateman.co.uk) (*email address may be reviewed*)

Procedure:

- ullage tags are sent out which must be attached to the containers before they are collected by Transport
- tagged ullage is collected as soon as possible but usually on the next assigned delivery day
- on return, all products are examined and if the credit criteria is met, full credit is issued



## **DISPUTES PROCEDURE**

### **GENERAL**

It is acknowledged that from time to time disputes may arise that are not immediately resolvable.

It is important, therefore, that a procedure exists for resolving any such disputes in a timely and fair manner.

### **INTERNAL PROCEDURE**

In the event of a Business Owner being in dispute with us concerning any matter relating to the Profit Partnership Plus Business Agreement or the Industry Code of Practice (1-499 Tied pubs), they, in the first instance, should write to the Profit Partnership Manager, laying out in detail the substance of the dispute.

The Profit Partnership Manager arranges a formal meeting with the Business Owner, at which it is hoped that the dispute can be resolved. Following the meeting, the Profit Partnership Manager will write to the Business Owner detailing what agreement has been reached or confirming that the matter is still in dispute.

Should the matter remain in dispute the same procedure is escalated up to the Managing Director. Should the Business Owner still be unhappy with the decision then the matter can be referred to PICAS.

At all stages of the procedure we and the Business Owner may seek advice from such people as are seen to be appropriate.

### **PUB INDEPENDENT RENT REVIEW SCHEME (PIRRS)**

If we and the Business Owner cannot agree what is a new fair rent and the Internal Disputes Procedure has been followed, then we agree that the matter be referred to the Pub Independent Rent Review Scheme with their decision being binding. Each party would be responsible for their own costs in this matter.

Details can be seen on the PIRRS website: [www.pirrscheme.com](http://www.pirrscheme.com)

The Business Owner still has the right to seek arbitration if he does not wish to use the Pub Independent Rent Review scheme.

### **ACCESS TO THE MANAGING DIRECTOR**

The Managing Director is an active member of the Profit Partnership team and is always available for consultation, providing the Profit Partnership Manager is kept informed.



## **BREWERY and BUSINESS OWNER RESPONSIBILITIES**

### **REPAIR AND MAINTENANCE FUND**

In order to help Business Owners fund decorations and maintenance, we operate a repair and maintenance fund which we may require you to make a monthly contribution into, the value of which will be discussed with the Profit Partnership Manager. Business Owners can call upon their fund in order to help with any maintenance or decoration required within the terms of the agreement or by our surveyor. Interest is not payable upon this fund.

#### **(AT A GLANCE)**

<b>BREWERY</b>	<b>BUSINESS OWNER</b>
All repairs to the <b>STRUCTURE</b> and fabric of the building(s) eg walls, roofs and floors.	
	Repairs, maintenance and replacement of <b>INVENTORY</b>
Replacement of insured <b>WINDOWS</b> where broken, defective, whether embossed, brilliant cut, decorative sand blasted or acid etched.	Replacement of any defective or broken standard, clear or obscured glass in windows, doors and screens, and any other glass not the responsibility of the Brewery.
Repair and replacement of <b>ELECTRICAL</b> wiring and fuse boards from meter position, to and including, outlet points e.g. sockets, outlets, isolators etc, but excluding any fittings connected thereto. Electrical installation condition reporting to be carried out every five years to comply with legislation in accordance with BS 7671:2018 Requirements for Electrical Installations, 18 <sup>th</sup> Edition.	Maintain in sound working order and replace, as necessary, all light fittings and pendant drops, including drop wired light bulbs, tubes and illuminated displays and sign lights, whether internal or external.
Installation, repair and replacement of any defective wiring from <b>CONTROL PANELS</b> to outlet positions in connection with Fire Alarms, CCTV and Emergency Lighting.	Keep free from obstruction and in good working order all <b>BURGLAR ALARMS</b> and other security systems, <b>CCTV</b> emergency lighting, <b>FIRE ALARMS</b> , fire detection and sprinkler systems, firefighting and fire precaution equipment. Keep the means of escape in case of fire free from obstruction. <b>It is the Tenants' responsibility to ensure that fire detectors and alarms and carbon monoxide detectors and alarms are regularly checked and are in working order.</b>
Replacement of <b>WINDOW FRAMES and DOORS</b> etc as may be necessary due to wear and tear.	Repair and maintenance of door fastenings, hinges, locks, window fastenings, sash cords, springs and weights.
	Keep free from obstruction, clean and in good working order and condition all <b>KITCHEN</b> and catering equipment and fixtures and fittings associated therewith (including hoods, fans, filters and ducting), in line with insurance requirements.
Replacement of defective or broken urinals, <b>WC's</b> and <b>WASH HAND BASINS</b> .	Keep in good order and condition and scrupulously clean all privies, urinals, water closets, wash hand basins, sinks, draining boards and other sanitary fittings and to replace all defective small items (including lavatory seats, toilet roll holders, soap dishes, taps, pop-up wastes, sparge pipes, plugs, wastes and chains). Maintain and replace all washers and ball valves and to attend promptly to all pipe leaks, bursts and running overflows.

<b>BREWERY</b>	<b>BUSINESS OWNER</b>
Repair and replacement of defective underground <b>DRAINS</b> , down pipes and <b>GUTTERS</b> .	Keep all internal and external drains, gutters, down-spouts, grease traps, gratings, waste pipes, sumps, soakaways, cesspits, septic tanks, filter beds, inspection chambers, properly cleaned and free from obstruction.
All external <b>SIGNS</b> to be supplied and fixed by the Brewery.	Keep clean the exterior, including all paintwork, signs, fascias and light fittings.
Keep boundary walls and gates maintained in the <b>EXTERNAL AREAS</b> and <b>CAR PARKS</b> , and in good condition.	Keep fences in good condition and replaced as necessary. Keep clean, tidy, weed free and unobstructed all yards, car parks, draw-ins, delivery areas and barrel drops.  Keep lawns, gardens, flower borders and baskets properly cultivated and in good order and also trim climbing plants when necessary.
Installation or replacement of the <b>BOILER</b> and major parts and pipework (where such items expire through normal wear and tear and have been regularly maintained in accordance with manufacturer's instructions).	Repairs to the boiler. Keep in good working order and condition the <b>CENTRAL HEATING SYSTEM</b> , to include maintenance and servicing. Have available for inspection by the Brewery an up to date service contract.
Installation.	Repair and keep <b>COOLING SYSTEMS</b> maintained, serviced and operating correctly.
Landlord's <b>GAS</b> Safety Record. Annual testing.	Service gas appliances annually and have available for inspection by the Brewery an up to date service contract.
<b>EXTERNAL PAINTING.</b>	<b>DECORATE</b> the interior of the domestic, public and service areas at least every three years and also in the last year of the term prior to the surrender of the Tenancy, with sufficient coats of good quality paint or paper, in a proper and workmanlike manner. The colour schemes and specifications must be approved by the Brewery in advance of works commencing.
<b>INSURANCE</b> of the property ie bricks and mortar.	Insure at the Tenant's own cost, in the joint names of the Tenant and Landlord all the plate glass, goods, stock, fixtures, fittings, decorations and effects belonging to the Tenant, against damage by fire, to the full reinstatement value. Also to insure and keep insured in the Tenant's name against third party or Public and Employers' Liability risks including liability for loss of customers' cars or goods.
	Ensure <b>SERVICING</b> and maintenance of all equipment throughout the premises and testing as required by the manufacturer and/or legislation.
	Keep all <b>CERTIFICATES</b> handy for inspection by the Environmental Health Officer, Fire Officer or Company Surveyor.
	<b>PORTABLE APPLIANCES TESTING (PATs)</b> to be carried out annually and prior to surrender of Tenancy.
	<b>PEST CONTROL</b> & eradication. <b>CHIMNEY</b> and <b>FLUE CLEANING.</b>

**Both the Business Owner and the Brewery understand that they are partners in business, with the objective of maximising the profit from the term of the Profit Partnership Plus Business Agreement and fulfilling the aspirations of the Business Owner and the Brewery, whilst also accepting that, not only the Profit Partnership Plus Business Agreement, but the Industry Code of Practice (1-499 Tied pubs) are legally binding.**

**Public House Name:** .....

**Public House Address:** .....  
.....  
.....  
.....

**Managing Director**

**Business Owner**

**Name:** .....

**Name:** .....

**Signature:** .....

**Signature:** .....

**Date:** .....

**Date:** .....

**Witness's Signature:** .....

**Witness's Address:** .....  
.....  
.....

## **Glossary of Terms**

### **Amusement with Prizes (AWP) Machines**

Fruit machines giving customers the chance to win prizes for a small stake.

### **An Average Operator (sometimes known as a ‘reasonably efficient Business Owner’)**

An average operator is someone who we think has the qualities and qualifications we consider are needed to run any specific pub and achieve a profit in line with the Fair Maintainable Trade (FMT) assessment. This ensures that good operators aren't penalised for their endeavours.

### **The ‘Benchmark’ and the ‘New Benchmark’**

The ‘benchmark’ is the value of the inventory at ingoing and the ‘new benchmark’ is the revised value if we have agreed to add to it part way through the agreement.

### **BII**

The British Institute of Innkeepers (BII).

### **Composite Barrels**

To enable comparison of measurement between different product categories we convert all purchases into equivalent Brewers' Barrels.

A Brewers' Barrel, is a unit of measurement and is 36 gallons (288 pints or 1.613 hectolitres) of Beer, Lager, Stout and Cider. Wines, spirits and mineral volumes are converted into equivalent Brewers' Barrels.

The conversion rates we use are:

A Composite Barrel of wine is 14.5 gallons (66 litres).

A Composite Barrel of spirits is 5.25 gallons (23.8 litres).

A Composite Barrel of minerals (soft drinks) is 24 gallons (108 litres).

### **Fair Maintainable Barrelage (FMB)**

The predicted performance, in terms of composite barrels sold by the hypothetical ‘average operator’.

### **Fair Maintainable Trade (FMT)**

The predicted profit expected from the hypothetical ‘average operator’. Rental assessments are made on the basis of FMT.

### **Fair Maintainable Turnover**

The predicted turnover of the business expected from the hypothetical ‘average operator’.

### **Inventory**

Fixtures and fittings relating to the running of the business eg tables, chairs, carpets, catering equipment etc.

**P&L - Profit and Loss Account**

A statement which shows the financial health of the business and includes full details of income streams, broken down into drinks, food and other income (including machine income) along with details of costs.

**PAT - Portable Appliance Testing**

All, non-hard wired, electrical equipment for use in commercial situations must be PAT tested on an annual basis.

**PICAS - Pub Independent Conciliation and Arbitration Service**

This body can assist when there are matters of dispute other than for rent, with the ability to recommend compensation, to which all Business Owners can appeal. It complements the existing low cost PIRRS arbitration scheme which relates only to rents.

**POS - Point of Sale**

Marketing materials used to promote brands. Examples include beer mats, bar towels, bar runners, posters etc.

**RPI - Retail Price Index**

RPI is the measurement used to assess the change in the price of goods and services in the economy and is used as the measure by which we increase/decrease rents annually. The RPI rate is taken from the Bank of England website.

**SWP - Skill with Prizes Machines**

Commonly known as quiz machines, which provide skilled players with a greater chance of success.

**Small Pack**

Products supplied in bottles, cans or boxes.

**TUPE**

The Transfer of Undertaking for the Protection of Employment laws protect employees' rights when a business changes hands.

**Ullage**

Wet stock that needs to be returned to us due to it being outside of specification (eg cloudy, poor taste, poor aroma, leaking or flat).

## Profit Partnership Investment

### Profit Partnership Investment

The required Profit Partnership Investment Sum to take over a Batemans' pub business is in direct proportion to the estimated potential profit of the business. This is usually set at the rate of 30% of the first year's rent plus 30% of the inventory value. The stock and glassware need to be purchased separately.

The inventory is valued when the Business Owner enters the business and this creates the 'benchmark' value.

The Business Owner's Profit Partnership Investment Sum is held by us and used to cover any depreciation in the value of the inventory when the Business Owner leaves, less any monies owed to us. The final sum will not be released until all website and social media passwords and ID's have been transferred over to the Brewery.

The Business Owner can add to the inventory with our written permission.

With the Business Owner's agreement, we may add fixtures and fittings into the pub at our expense, and this value will be added to the 'benchmark' value to create the 'new benchmark' value.

The Business Owner is responsible for the insurance, maintenance, replacement and depreciation of inventory/fixtures and fittings.

After leaving the pub the amount returned to the Business Owner is the difference between the outgoing valuation and the 'benchmark' or the 'new benchmark'.

We endeavour to repay the amount due to the outgoing Business Owner within 14 to 28 days of exit, so long as the obligations of the agreement have been adhered to.

#### Example - The 'Dog & Duck'

*(please note, all figures are hypothetical for example only)*

Rent:	£14,000 (30% = £4,200)
Inventory on day of entry:	£25,000 (30% = £7,500)
Profit Partnership Investment Sum:	£11,700
Stock & glassware:	at valuation

Valuation of the inventory on exit may hypothetically be £23,000, a depreciation of £2,000 (£25,000 minus £23,000).

When the Profit Partnership Investment Sum is returned the calculation would be:

£11,700 minus £2,000 = £9,700 returned from the original PPI sum or actual amount paid

There may be the option for the Business Owner to pay less than the set Profit Partnership Investment Sum, but this would affect the rent by plus 7% of the shortfall: (this percentage figure may be reviewed periodically).

#### Example - 'The Dog & Duck'

- If the Business Owner only invests £9,000 then there is a shortfall of £2,700;  
7% of £2,700 is £189

Therefore the annual rent is £14,189 (£14,000 + £189)

### Goodwill Creation Option

Working in conjunction with the **Profit Partnership Plus Business Agreement** there are two additional Options designed to reward/incentivise Business Owners. These are the Capital Investment Option and Goodwill Creation Option.

Not every pub, or Business Owner's circumstances suit these Options. The most appropriate Option for each pub is discussed at the interview. If entered into, a separate document is signed.

### Goodwill Creation Option

This Option rewards Business Owners for increasing their profit over and above the target level. On any third year anniversary, the actual profit versus the target level is evaluated for the previous two years'. A payment is made by us to the value of 50% of the average of the previous two years total 'over achievement'. Obviously the 'over achievement' profit which has been made also belongs to the Business Owner.

#### Example - 'The Dog and Duck' (calculations exclude VAT)

Agreed Target per year: £30,000  
Profit in Year 1: £35,000; Year 2: £40,000; Year 3: £45,000

On any third year anniversary the actual profit versus the target is evaluated for the previous two years.

Profit in Year 2: £40,000; Year 3: £45,000; Total: £85,000

The target for two years was £30,000 per year = £60,000 for 2 years

Over achievement is £85,000 minus £60,000 = £25,000 over 2 years

Average over achievement per year = £12,500

Payment is £12,500 x 50% = £6,250

*(please note, all figures are hypothetical, for example only)*

If the Business Owner leaves prior to a third anniversary of this Option there is no payment due to the Business Owner.

### Capital Investment Option

Working in conjunction with the Good Honest Partnership there are two additional Options designed to reward/incentivise Business Owners. These are the Capital Investment Option and Goodwill Creation Option.

Not every pub, or Business Owner's circumstances suit all or any of these Options. The most appropriate Option for each pub is discussed at the interview. If entered into, a separate document is signed.

### Capital Investment Option

This Option rewards/incentivises Business Owners to invest in what would normally be projects/developments/items which are normally our responsibility (must first be agreed by us in writing). The Business Owner invests ('the input') and is able to 'cash in' their investment on any anniversary date and receive the value of 'the input' back, plus (or minus) interest at the same percentage rate as they have increased (or decreased) the turnover by, having taken inflation into account.

#### Example - 'The Dog and Duck' (calculations exclude VAT)

Investment: £25,000 ('the input')

Investment Option commencement date:	1/11/2016
Turnover for previous 12 months to 1/11/2016:	£175,000
Turnover for previous 12 months to 1/11/2017:	£210,000

(Option taken to 'cash in')  
Increase, £210,000 minus inflation (eg 2%) = £205,800

Increased turnover to 1/11/2017 above that of 1/11/2016:  
£205,800 minus £175,000 = £30,800 = 17.6%

'Cash in' value: £25,000 ('the input') + 17.6% = £29,400

(Please note all figures are hypothetical, for example only)

If the Business Owner leaves prior to an anniversary, having given notice to 'cash in', or not, the 'input' will be returned minus 10%.

# TERMS and CONDITIONS

## Customer is Business Owner

### **1 Definitions**

**Batemans:** George Bateman & Son Limited.

**Customer:** the party identified as the customer on the relevant Order Specification also known as the Business Owner.

**Delivery:** completion of delivery in accordance with clause 3.1.

**Delivery Date:** the date specified for delivery of an Order on the relevant Order Specification.

**Insolvency Event:** means (i) the Customer is unable to pay its debts as they fall due or deemed unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986; or (ii) the Customer proposes or enters into any compromise or arrangement for rescheduling debts with all or any of its creditors; or (iii) a petition is filed, notice given, resolution passed, or order made, for winding up the Customer; or (iv) a creditor or encumbrancer attaches or takes possession of, or distress, execution, sequestration or other process is levied or enforced on or sued against, any part of the Customer's assets; or (v) an application is made to court, or order made, for appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the Customer; or (vi) a person becomes entitled to appoint or appoints an administrative receiver or receiver over all or any of the Customer's assets; or (vii) any event occurs, or proceeding is taken, in any jurisdiction which has an effect equivalent or similar to any of the events mentioned in (i) to (vi) (inclusive); or (viii) the Customer ceases, or threatens to cease, to carry on all or substantially the whole of its business; or (ix) the Customer (being an individual) is (a) the subject of a bankruptcy petition or order or (b) dies or by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs.

**Order:** an Order for Products submitted by the Customer to Batemans using the Batemans telesales order taking service.

**Order Specification:** details provided to Batemans by the Customer at the time of the Customer placing the Order.

**Product List:** the Batemans Product List as varied from time to time

**Product Prices:** the prices of the Products set out in the Product List.

**Products:** the products specified in the relevant Order Specification.

**Premises:** the premises of which the Customer is Batemans' Tenant and to which Delivery of the Order is to be made.

Any obligation in these Terms not to do something includes an obligation not to agree or allow that thing to be done.

### **2 Orders**

- 2.1 Subject to these Terms, Batemans shall supply and the Customer shall purchase the types and quantities of Products identified in the Order Specification.
- 2.2 Products on the Product List are offered subject to availability and customer credit status. No Order shall be deemed to be accepted by Batemans until it issues an order number to the Customer.

### **3 Delivery**

- 3.1 Delivery of an Order shall be completed when Batemans (or its agent) delivers the Order to the Premises.
- 3.2 Time is not of the essence for the purposes of Delivery. Delays in delivery of an Order shall not entitle the Customer to (i) refuse to take delivery of the Order; or (ii) claim damages.
- 3.3 Batemans shall have no liability for any failure or delay in delivering an Order to the extent that the same is caused by the Customer's failure to comply with its obligations under these Terms.
- 3.4 Packaging materials (including all containers, kegs and casks) shall, unless otherwise stated by Batemans, remain the property of Batemans or its nominee and the Customer shall make such materials available for collection at such times as Batemans shall reasonably request. Batemans may require a refundable deposit, or levy a surcharge, for certain packaging materials.

### **4 Acceptance & Defective Products**

- 4.1 The Customer may reject any Products delivered to it that do not comply with an Order Specification, provided that they: (i) examine the Products at Delivery; (ii) retain packaging materials for inspection; (iii) endorse the relevant delivery note with details of the defect; and (iv) notify Batemans in writing of the defect within 3 business days of Delivery or, if later, within 3 business days of the defect having become apparent. (See Usage Procedures for Draught Products.)
- 4.2 If the Customer fails to give notice of rejection in accordance with clause 4.1, it shall be deemed to have accepted such Products.
- 4.3 If the Customer rejects Products under clause 4.1 then Batemans may (at its discretion) either replace the rejected Products or repay the price of the rejected Products. Batemans will have no further liability to the Customer.

### **5 Title & Risk**

- 5.1 Risk in Products shall pass to the Customer on Delivery.
- 5.2 Title to Products shall not pass to the Customer until Batemans has received payment in full (in cash or cleared funds) for: (i) such Products; and (ii) all other sums which are or which become due to Batemans from the Customer for sales of Products or on any account.
- 5.3 Until title to Products has passed to the Customer, the Customer shall: (i) hold such Products on a fiduciary basis as Batemans bailee; (ii) store such Products such that they are identifiable as Batemans's property; and (iii) maintain such Products in saleable condition and keep them insured on Batemans behalf for their full price against all risks, provided always that the Customer may resell or use Products in the ordinary course of its business.
- 5.4 If before title to Products passes to the Customer the Customer becomes subject to an Insolvency Event then, provided that such Products have not been resold and without limiting any other right or remedy Batemans may have, Batemans may at any time require the Customer to deliver up such Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.
- 5.5 Save as otherwise provided, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.

### **6 Product Prices**

- 6.1 Product Prices are exclusive of VAT and are subject to change with immediate effect (including after acceptance of an Order but before Delivery) in the event of any change to relevant legislation.
- 6.2 Batemans reserves the right to withdraw and disapply any entitlement to discount on Product Prices if the Customer is in breach of the terms of its Profit Partnership Plus Business Agreement. Any evidence of buying Products outside of the contractual purchasing obligation may result in Batemans, at its sole discretion, charging the Customer for loss of profits and any administration or associated costs incurred.

### **7 Terms of Payment**

- 7.1 Unless otherwise agreed in writing, Batemans shall invoice the Customer for each Order on or at any time after Delivery and the Customer shall pay invoices in full and in cleared funds within 7 days of Delivery to the bank account nominated by Batemans
- 7.2 Without prejudice to any right to claim for interest under law, the Customer shall pay interest on any overdue amount at the rate of 4% per annum above National Westminster Bank plc's base rate from time to time.
- 7.3 Interest accrues on a daily basis from the due date until the date of payment, whether before or after judgment.
- 7.3 If the Customer disputes any invoice it shall immediately notify Batemans in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly.
- 7.4 Batemans may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Customer against any amounts payable by it to the Customer. If the Customer fails to adhere to the terms of its lease or Profit Partnership Plus Business Agreement or to agreed payment terms, Batemans may cancel and charge back any discounts received or receivable by the Customer during or in respect of the period of non-adherence.

### **8 Limitation of Liability - YOUR ATTENTION IS DRAWN TO THIS SECTION SPECIFICALLY**

- 8.1 This clause sets out the entire financial liability of the parties to each other in respect of: (i) any breach of these Terms; (ii) any use made or resale of the Products by the Customer, or of any product incorporating any of the Products; and (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.
- 8.2 Nothing in these Terms shall limit or exclude the liability of either party for: (i) death or personal injury resulting from negligence; or (ii) fraud or fraudulent misrepresentation; or (iii) breach of the terms implied by s.12 of the Sale of Goods Act 1979; or (iv) breach of s.2 of the Consumer Protection Act 1987.
- 8.3 Without prejudice to clause 8.2, Batemans shall not be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit, goodwill, business, business opportunity, anticipated saving, or special, indirect or consequential damage suffered by the Customer that arises under or in connection with an Order.
- 8.4 Without prejudice to clause 8.2 or clause 8.3, Batemans's total liability arising under or in connection with each Order, whether arising in contract, tort (including negligence) restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the value of the Products in that Order.
- 8.5 Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in these Terms.

### **9 Force Majeure**

Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under these Terms so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a force majeure event. A force majeure event means an event beyond the control of a party which by its nature could not have been foreseen by such party, or was unavoidable.

### **10 General**

- 10.1 Batemans beer excise Duty has been charged on 1.5484hl per barrel (36 gallons) of beer and 28.85 litres per key cask.
- 10.2 Cask ale sold by Batemans complies with the BBPA Statutory Code of Practice on the Contents of Casks and Kegs.
- 10.3 If any provision of these Terms (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 10.4 Any variation of these Terms must be in writing and signed by or on behalf of Batemans. Any waiver of any right under these Terms is only effective if it is in writing. Failure by a party to exercise any right under these Terms shall not preclude any future exercise of that right by that party.
- 10.5 A person who is not a party to these shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of these Terms.
- 10.6 These Terms and the documents referred to herein constitute the whole agreement and understanding of the parties relating to Orders and supersede any previous arrangement, terms and conditions, understanding or agreement between them relating to the subject matter of these Terms. No employee or agent of Batemans has any authority to bind Batemans by oral agreement at variance with these Terms. Nothing in this clause shall limit or exclude any liability for fraud.
- 10.7 These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

### **11 Dispense Equipment**

- 11.1 All beer raising and dispense equipment supplied by Batemans or its suppliers (the "suppliers") to the Customer shall remain the property of the suppliers but shall be at the Customer's risk while on the Customer's premises and under its custody or control, and the Customer shall insure it in accordance with paragraph 12 and the Customer shall act as bailee of the Equipment and shall not sell, assign, pledge, charge underlet or in any way part with possession of the Equipment and comply with the Terms and Conditions upon which Batemans and/or the suppliers have provided such Equipment. The Customer grants to the Company an irrevocable right of access to the Customer's premises at reasonable times and intervals and after giving reasonable notice for the purposes of inspecting or removing the Equipment.
- 11.2 The Customer shall be responsible for all loss and theft of and damage to the Equipment on a full indemnity basis. Where the Equipment is lost, damaged or stolen, the Company shall be entitled to charge the Customer the cost of replacement.
- 11.3 The Equipment shall be used only with the Goods of the supplier to which the Equipment relates, all in accordance with the then current supplier instructions and by statute and regulation and strictly as installed by the supplier's representatives.
- 11.4 In no circumstances shall the Customer remove from the Premises or move it to another part of the Premises except with the approval of and under the control of the Company and its suppliers. The Customer shall not permit or suffer any third party to remove, repair or modify the Equipment in any way, except with the express authority of the Company and its suppliers.

### **12 Insurance**

The Customer shall agree to cover by insurance against such risks specified by the Company any property belonging to the Company, or its suppliers, including beer dispensing and cooling equipment and returnable packages which are situated at the Customer's premises or place of sale, for its full replacement cost.