



Code of Practice on the granting and operation of a McMullen Tenancy



BII BENCHMARKING *and* ACCREDITATION SERVICES

Judged to be a clear statement of this company's code of practice for lessees and tenants



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Who we are

McMullen & Sons, Limited has been Brewing in Hertford since 1827 - ten years before Queen Victoria ascended to the throne. Brewing was started by Peter McMullen, great-great-great grandfather of the McMullens who work in the Company today. The brewery began in a modest building in what is now Railway Street, Hertford. The first McMullen & Sons, Limited pub was in Bengoe and opened in 1836. Today, there are some 138 McMullen & Sons, Limited pubs in and around Hertfordshire and London.

A new brewery has recently been built next to the original site in Hertford, and produces our famous ales: McMullen Cask Ale, AK and Country Best Bitter as well as our Seasonal selection.

Today, McMullen & Sons, Limited is still an independent family business, proud of its traditions and aware of the immense value of skills and knowledge that have been carefully passed down from one generation to the next to create and preserve a unique trading and business support culture.

Business opportunities in the Pub Industry

Freehold

The Licensee owns the pub and is free to purchase goods from any suppliers

Lease hold property

The Pub Company owns the property but it is run by a self employed licensee under a fixed term agreement usually 10 years or more. The licensee is responsible for the day to day running costs but retains the profit. Generally a lease agreement has more repair obligations than a tenancy but it is possible to sell (assign) the lease

Tenancy

A tenanted pub is owned by the Pub Company but run by a self employed licensee on a short term agreement typically 3 to 5 years in duration. This agreement will usually have a shared repairing liability with the landlord and be non-assignable

Managed

The Licensee is paid a salary and runs the pub on behalf of the Pub Company. The Pub Company is responsible for all the running costs and they also retain any profits

What we offer

Our business and tenancy agreement

- McMullen & Sons, Limited offers a six-year tenancy agreement, subject to earlier determination by both parties
- It is excluded from the provisions of the Landlord and Tenant Act. This means that renewal is not a legal right but in most cases where all parties are agreed a renewal of the agreement by negotiation will take place
- It has no rent reviews but rent increases/ decreases in line with RPI (see page 4)
- McMullen are responsible for all major repairs – see the Tenants maintenance obligations schedule.

- It is a tied agreement for the supply of all draught, bottled beers, ciders, stouts and ready-to-drink products, allowing business partners to source their own suppliers of wines, spirits and minerals. However, we do supply these items at competitive prices.
- McMullen has a managed house estate but this code is solely concerned with Tenanted opportunities

Our "Try before you buy" agreement

This is designed for prospective tenants who have limited finances or who are new to the licensed trade, it is of twelve months duration and has all the benefits of the full 6 year agreement other than the discount scheme and may be terminated by giving three months notice by either party at any time

Please see our synopsis to our Business and Tenancy Agreement on the following pages for more information.

A synopsis of the McMullen & Sons, Limited Business and Tenancy Agreement

SUBJECT TO FORMAL LEGAL AGREEMENT WHICH WILL FORM THE BASIS OF THE RELATIONSHIP BETWEEN US AND WHICH WILL TAKE PRECEDENCE ON ALL MATTERS OVER ANY INFORMATION SUPPLIED EITHER VERBALLY OR IN WRITTEN FORM BY AN EMPLOYEE OR REPRESENTATIVE

BUSINESS AGREEMENT HEADS OF TERMS

Term

The fixed six year term ensures that there is no stamp duty liability.

Tie

There is a tie for all beers, ciders and ready-to-drink products, which must be bought from McMullen & Sons, Limited or its nominated supplier on the terms set out in the relevant price list.

There are no minimum purchase obligations and although we also supply a full range of wines, spirits and soft drinks tenants may purchase these and any other goods, including dry goods for resale, from any supplier.

Assignment/ sub-letting

This is not permitted.

Rent

The rent is agreed for the first year of the term and, unless the beer, cider and ready-to-drink product tie is changed, it will move annually in line with the Retail Prices Index (RPI). Adjustments in the rent may be upwards or downwards according to the movement of the Retail Price Index at the time of the anniversary

Where it is agreed at the beginning of the tenancy that a special trading opportunity exists for the tenant over the period of the agreement, the rent may increase annually by more than RPI. In such cases extra percentage points will be added, as agreed. This will be agreed at the beginning of the agreement and cannot be altered for the life of the agreement.

There may be occasions when trading circumstances outside the control of a Tenant affects the profitability of the business. Tenants who find themselves in such a situation may ask the Company to reconsider the level of rent payable.

This should be discussed with the Tenancy Operations Manager who will arrange a full business review in order to assess in detail the effect of the change on the trading circumstances of your pub.

Before agreeing to any change in the rent the Company will need to be confident that the pub is being operated to a competent standard and all reasonable commercial profit enhancing initiatives have been implemented.

Rent payments

Rent plus VAT is payable monthly in advance by direct debit.

Trading account payments

All trade accounts will be payable fortnightly in arrears by direct debit, giving a minimum of 14 days' credit facility.

Landlord and Tenant Act 1954

This agreement excludes sections 24 to 28 of The Landlord and Tenant Act 1954 which relate to security of tenure and compensation.

Repairs

The Company is responsible for major repairs to:

- foundations
- structural timbers
- roofs
- walls
- cellar decoration
- car park
- drains (excluding blockages)
- cellar cooling and dispense equipment
- For health and safety reasons the Company is also responsible for routine maintenance repairs including:
 - servicing and cleaning of boilers
 - extractor fans and chimneys
 - electrical and gas certification (Landlords) copies of which will be supplied
 - asbestos report

Tenants are required to keep the remainder of the premises in a good state of repair and will be supplied with a Tenants maintenance obligations schedule which will be sent out with the information pack

Tenants should check the condition of the pub at the start of their tenancy as it will be checked at the end of their occupation (by way of a schedule of dilapidations) and Tenants maybe liable to make good. (as per the Tenants repairing responsibility schedule). If a dispute should arise then this dispute will be subject to the disputes procedure on page 12 of this code

Health and Safety

Tenants must ensure that the premises, the tenant's inventory, and the operation of the business comply with Health and Safety Regulations.

Alterations

Alterations to the property are expressly forbidden. If a tenant has a proposal that may improve the business then this should be discussed with the Company's Tenanted Operations Manager.

Insurance

The Company will insure:

- buildings
- landlord's fixtures and fittings
- loss of Premises Licence
- two years' loss of rent

The monthly premium will be recharged to Tenants.

The Company insures all its pubs at a group rate for ease of administration which enables us to charge you what we believe is a competitive premium. However, if a Tenant can secure "like for like" cover at a cheaper premium the Company will match it and adjust the premium accordingly.

Tenants **must**, however, insure certain other aspects of their business, including those that are legal requirements. Further details of the extent of the necessary cover will be provided to you and include:-

- material damage
- loss of profits
- loss of business money
- employers liability
- public liability & products liability
- tenants personal contents and the fixtures and fittings in the pub
- cash in amusement machines and cash floats

The Company will request annually a copy of this insurance cover to ensure that it is always in force.

Decoration and Signage

All external signage will be supplied, fixed and maintained by the Company.

The Company will decorate all internal and external trade areas - including trade cellars, kitchens and letting accommodation - once every six years if necessary, this decoration is paid for by McMullen and Sons and is not re-charged to the Tenant .

Machines

In order to maximise revenues from all forms of machines, the Company will install and manage all non-electronic and electronic forms of entertainment.

Tenants will be informed of the siting, collection arrangements and numbers of machines, in line with the agreed business plan.

The Tenant's share of machine income has been omitted from any rental calculation or projection.

The proceeds of these machines will be divided equally between the tenant and the Company after VAT, rental and duty are paid.
McMullen do not accept royalty payments from machine operators.

Permitted Use

The premises must only be used as a public house for the sale of drinks and the provision of food. In addition, the premises may be used to offer other refreshment, normal public house entertainment facilities and B & B type accommodation for paying guests with the prior written consent of the Company.

Premises License

The premises License for all pubs will be paid for and held by and in the Company's name

Termination

The tenant may terminate this agreement by giving not less than 52 weeks' notice at any time during the term.

In the first two years of the tenancy, the Company may terminate the agreement by giving not less than 26 weeks' notice.

After two years from the grant of the agreement, the Company may terminate the agreement by giving not less than 52 weeks' notice.

Ingoing costs

Tenants will be asked to provide proof and the ability to provide funds to cover the purchase at fair valuation of the outgoing tenant's fixtures and fittings, stock and small wares.

A refundable security deposit will be required which will be held by the Company with interest accruing at 1% above base rate, this interest will be paid to the tenant each year by a credit to their account, the amount of the deposit will be dependent on the trading potential of the tenancy. This deposit will be refunded to the tenant minus any outstanding trade or rent amounts on the determination of the agreement

Discount scheme

We offer a discount scheme, based on a Fair Maintainable Trade barrelage ('FMT') which is agreed as part of the rent negotiation. This FMT is the level of trade which is agreed to be achievable if the pub is run by a competent efficient operator with good hospitality and customer skills.

Once a tenant reaches 90% of the annual FMT target every (36 gallon converted) barrel of tied product above 90% of the FMT level purchased from the brewery will attract a discount of £80.

This will be calculated at the end of each McMullen & Sons Ltd financial year and credited against your trading account in November of that year. In the first year of occupation and in a terminal year, this discount will be calculated pro-rata.

Training

We recognise that running a successful and profitable McMullen pub requires a broad range of professional and financial skills.

In addition to achieving a personal licence (NCPLH) we have therefore devised a portfolio of subsidised training courses along with hands on practical coaching which we would like all Tenants to attend prior to taking the tenancy.

- These are: -
1. BIIAB Award in beer and cellar quality.
 2. 1 week 'work experience' with an existing tenant
 3. A three day tenancy induction course including health & safety, employment law, finance and marketing
 4. A one day basic food hygiene course (level 2 food safety in catering)

We would also like all tenants to improve their business and management skills by attending the following tenant development courses (in addition to the above) within 12 months of taking their tenancy. (Please refer to our training brochure for more details)

Customer Service –“High 5”and sales- High Sales- 2 days

First Aid

McMullen Action Centred Leadership (3 day)

Employment Law

Business development (Marketing, promotions, merchandising/ and business planning) - 2 days.

Should a Tenant demonstrate during the application process a wealth of relevant experience the Company may waive the requirement for the Tenant to attend the compulsory training course.

How we work with our Tenants

We will promise to answer any enquiries or questions in a timely and courteous manner. If we do not know the answer we will say so and try to find someone who can help. We will not offer opinions that we cannot reasonably prove regarding levels of trade or the trading patterns at the pub in question.

What we send prospective tenants when we are contacted.

We will ensure that the following items are sent in a timely manner, either by post or by electronic means through our website or by email:

- An application form
- Letting details for any vacancies we may have at that time
- A copy of the heads of terms of our agreement
- The opportunity to set up an appointment for an informal meeting to answer any questions you might have
- Contact details for the tenancy team
- A current and relevant wholesale price list
- A training course directory

What Tenants need to do before taking over a McMullen tenancy:

- Fill in the application form fully and honestly
- Visit any vacancies, several times, at different times and days
- Visit any vacancies initially as a customer only
- Obtain a Personal Licence
- Complete the BII Pre-entry Awareness Training (PEAT) which is an interactive e-learning package designed to help new entrants to the pub industry understand the complexities of tenancy and lease agreements
- Be open and to discuss any personal or financial information that might effect this application or ability to successfully obtain a Personal Licence
- Receive professional, independent advice and or training on the viability of the business and the content of the agreement. We will ask for confirmation that you have done so. The BII "PEAT" test will be acceptable.
- Ensure that adequate and unencumbered funds are available 10 days prior to the anticipated change date

- Prepare a business plan which will include detailed cash flow projections for two years and a SWOT analysis on the pub and its competitors, following personal visits and research and the use of professionally competent advisors such as accountants and legal professionals. We would also recommend the use of Industry bench marking reports such as the one produced by the Association of Licensed Multiple Retailers
- You will need to undergo the company's Tenancy Induction training courses, above and complete any other training courses identified as required in discussion with the company during the interview process. You will be supplied with the company's program of available training courses.

What funds are needed to operate a McMullen's tenancy?

Dependent on the pub:

- | | |
|---|---------------|
| • Funds to buy the Tenants fixtures and fittings | c. £14-18,000 |
| • Funds to buy the stock and small wares | c. £3-5,000 |
| • McMullen & Sons, Limited returnable security bond | c. £5,000 |
| • One months rent in advance | c. £2,000 |
| • Brokers and stock takers fees if used | c. £2,000 |
| • Working capital | c. £5000 |
| • Other costs (fees, training, brokerage, licensing etc.) | c. £2,500 |
| • Estimated Total | c. £36,500 |

These figures are typical of an average pub but can vary widely depending on the size of the pub and the age of the fixtures and fittings.

What information will we supply at the application stage?

When a Tenant applies for a particular pub, we will supply:

- A 3-year barrelage history
- A 3-year machine income history
- As much relevant information on the pub, including any restrictions or important covenants in the agreement relating to the use of the premises; or planning/licensing constraints - e.g. trading hours
- A formal viewing of the pub, including the domestic accommodation
- A current wholesale price list
- Advice on preparing a business plan
- A brochure outlining all Company training courses
- A shadow profit and loss account based on the FMT which we believe a competent efficient operator running a pub should be able to achieve consistently. This will give an indication of the potential sales, expected gross margins and the likely level of expenses. We will use this shadow P&L to help determine the rent.
- A copy of the premises licence and any conditions attached to it, also any enforcement action taken in the last two years

- Any change of commercial conditions, that we are aware, of including any prospective developments to the McMullen and Sons Ltd, Managed Estate in the local area that might impact on the profitability of the pub, and how these might affect the business opportunity. In the event that the Company decides to sell a Public House, which is close to the tenancy you are interested in. The Company will inform you and may also place a restrictive covenant on the sale documents prohibiting it being used as a Public House again in order to protect your pub and other McMullen pubs nearby.

In addition we will examine and challenge the business plan for the pub. This should include the type of customers that will be attracted, the unique selling proposition, how it is intended to operate so as to appeal to these target customers and what activity is planned so as to make the pub the preferred venue locally.

If an application is successful we will provide a clear and concise written offer letter setting out the details of: rent along with any agreed annual rent increase over and above RPI (as per page 3, re special trading opportunity), FMT, and a target change over date.

Some Tenancy to Tenancy and Managed to Tenancy changes will result in some qualifying staff being covered by TUPE regulations; we will ensure that prospective Tenants are made aware of this and advised to gain legal and professional advice on TUPE implications to their business plan and on-going costs

What will we do to help our Tenants succeed?

- Allow 14 days as a cooling off period, to change your mind with no penalty, between signing the offer letter and taking occupation of the pub
- Conduct regular business reviews. These will include: trading trends, marketing, pub retailing skills, customer retention and building ideas, training needs maintenance requirements and commercial advice
- Provide access to training courses at cost.
- Update Tenants on key legislative or industry changes and offer appropriate help. Recent examples include: the smoking ban and new Licensing Act
- Make Tenants aware of any marketing plans for new brands that we may be stocking
- Periodically review the business plan with you.
- Provide professional amusement machine advice and management
- Conduct one full property inspection per year, including domestics, to ensure that the maintenance obligations on both the Company and the Tenant are being observed
- Ensure that our property maintenance obligations are carried out by maintenance contractors in a timely and professional manner

- Provide professional Rating Valuation advice and appeals against unjustifiably high assessments on behalf of our Tenants through our agents. The cost for this service is invoiced to the tenant once per year
- Maintain full property perils insurance cover which is recharged to our tenants on a monthly basis
- Organise and pay for the periodic inspection report under the electricity at work regulations 1989.
- Deliver all ordered supplies in a timely and efficient manner and if able make supplementary deliveries for emergency orders to take care of unforeseen lifts in trade. We do reserve the right to charge for any extra deliveries.
- All Ullage claims should be submitted to the Brewery via the switchboard operator where upon the claim will be logged. A Cellar Technician will visit and authorise the claim and arrange for the uplift or disposal of the faulty product. A credit will be raised for the quantity in the container but please be aware that only product that is in the keg or that has been disposed of by the cellar technician will be credited. You will receive the credit on your trade account on your next statement.

Business support

In order to maximise the potential of the McMullen estate our business support managers have one of the lowest average ratio of houses

The Company's business support managers are experienced and committed professionals whose role is to help our Tenants to develop the potential of their business. They will undertake regular coaching and if necessary formal training on issues that affect our business and industry so we are able to advise all Tenants of any changes to legislation or profit opportunities.

Open book Accountancy

We recognise that the first twelve months of any new business are the most difficult, and in order to help our Tenants through this phase, we have instituted a mandatory system of Accountancy support which is provided by one of a number of accountancy business partners. The tenant is responsible for the cost of this support and any information processed by the accountants maybe shared with McMullen

The support that they will put in place in your business includes:

Regular stock takes to ensure margin maximisation
 VAT registration and quarterly returns
 Weekly break even indications
 Expenditure consultancy
 Payroll administration for staff
 Tenants own tax and NI affairs relevant to the business
 Retail price check versus GP% margins
 Price rise advice
 Quarterly and year end management accounts

Flow monitoring Equipment

The Company can, at its own expense, install and maintain a Flow monitoring installation connected to the draft products in your pub. Whereas this will help the Company to monitor sales of draught products at our pubs these systems have also proved to be very helpful to Tenants to improve gross margins, detect fraud from bar staff, better manage stock levels and help to manage wage rotas by tailoring resources to the peak trading pattern of the pub.

In the event of a tenant being accused of “buying out” of the tie which is supported by the flow monitoring equipment, this equipment will be re-calibrated and will be relied on in conjunction with other evidence of breach of tie

Tenants commitment to us once trading your McMullen pub

- Operate the business with high pub retailing standards within the statutory and legal obligations as personal Licensee, designated Premises Supervisor and employer.
- Honour the tie agreement and purchase all tied products from McMullen & Sons, Limited or its nominated suppliers without exception. Should breaches of the “Tie” occur we reserve the right to (but not limited to) charge damages for loss of wet rent
- Abide by the payment terms in the Agreement for both Rent and Trade Goods.
- Maintain the property in accordance with the Schedule of maintenance responsibilities.
- Develop and maintain high standards of product quality, service and hospitality.
- Make time for regular business review meetings and to contribute positively, and to advise the Company of any material changes to your status or circumstances that might affect the operation of licensed premises.
- Maintain full insurance cover at your own cost in relation to fittings, stock and other liabilities
- Fully abide by the contractual terms contained in the tenancy agreement and any attached documentation.

Making our business partnership work

In the event of a concern about McMullen’s support or any subsequent complaint the initial point of contact will be the Tenancy Operations Manager who will try to resolve the issue as quickly as possible.

Should the problem not be resolved to the total satisfaction of the Tenant, the issue must be referred immediately to the Tenanted Sales Director.

Should the matter still be unresolved then our tenants are encouraged to contact the Managing Director.

If you believe that McMullen & Sons, Ltd has not adhered to this code in it’s dealings with you and, having failed to obtain resolution following the Company dispute procedure you may contact BIIBAS (at the Tenants expense). BIIBAS will pass on this information to the Company concerned and use its good offices to ensure, as far as possible, that there are no misunderstandings or personality issues that are standing in the way of a more fruitful dialogue between the Company and the Tenant or his representative.

This code of practice follows the pub industry Framework Code of Practice developed by the British Beer and Pub Association, BII and Federation of Licensed Victuallers Associations. It has been accredited by the BII Benchmarking and Accreditations Service Ltd (BIIBAS) and is not capable of being unilaterally altered. Any future revisions will be carried out in consultation with BIIBAS

Advisory notice

PRIOR TO SIGNING ANY AGREEMENT, YOU ARE STRONGLY ADVISED TO TAKE INDEPENDENT PROFESSIONAL ADVICE. WHILST MCMULLEN & SONS, LTD TAKES EVERY REASONABLE CARE TO ENSURE THE INFORMATION GIVEN TO YOU IS ACCURATE, YOU MUST USE YOUR OWN COMMERCIAL JUDGEMENT IN DECIDING TO PROCEED WITH OUR TENANCY AGREEMENT. IN ALL CASES AND WITHOUT EXCEPTION, THE WORDING CONTAINED IN THE FORMAL TENANCY AGREEMENT IS DEFINITIVE AND TAKES PRECEDENCE OVER ALL OTHER MATERIAL EITHER WRITTEN OR VERBAL.

The McMullen and Sons, Ltd code of practice should be signed by both parties signifying that they have understood and agreed the terms and obligations set out in this code

Signed on behalf of McMullen & Sons, Ltd

Applicant

Glossary of terms used in this guide

A

B

BIIBAS- The British Institute of Inn keeping Benchmarking and Accreditation Services

Brewers Barrel- 36 gallons of either one product or as per FMT of all tied products including bottled products converted into a composite 36 gallon measure

E

FMT- Fair Maintainable Trade is the term that describes the level of trade that should be achievable at a Public House by a competent, efficient willing operator and with the house in good repair and décor

Flow Monitoring Equipment- this is a system of flow meters installed into the beer lines in the cellar to monitor the amounts of particular brands that pass through the lines against the amounts delivered by the Brewery, it is also used by tenants to predict peak trading hours to enable efficient staff planning and security of product

L

Landlords Fixtures and Fittings- these are items that are owned by the Brewery and fitted in the pub such as, Bars, Cellar Equipment, Extraction systems, Sanitary ware and sinks, signage and some lighting, these remain the property of the Brewery and may need to be maintained by the Tenant and are used by the tenant in the day to day running of the business

P

PEAT- Pre Entry Awareness Training; a BII e-course designed to inform a prospective Tenant of the differences between the agreements available in the industry and some of their terms

R

Ready to Drink- these are alcoholic ready mixed drinks such as, WKD, Smirnoff ice Bacardi Breezer etc. sometimes known as FAB's

RPI- Retail Price Index

S

SWOT analysis-

A study of a pub or business idea based on the **S**trengths, **W**eaknesses, **O**pportunities and **T**hreats

I

Tenants fixtures and Fittings-

The Items of furniture, curtains, kitchen equipment, bric-a-brac, decorative items and kitchen/cellar equipment that belong to and are maintained by the tenant that maybe sold to the next tenant or the Brewery on a change of tenancy

Tie-

Products that must be purchased from the Brewery or its nominated supplier

TUPE-

Transfer of Undertakings protection of Employment, this is the act of law that protects the rights of employees that are employed on full time contracts when a tenancy transfers from one tenant to another

U

Ullage-

product or containers supplied damaged or not to specification, requiring credit to the Tenant as per our standard terms of trade