



OREGON LIQUOR & CANNABIS COMMISSION

CUSTOM ORDER AGREEMENT FOR MALT BEVERAGES

An introduction to brewing arrangements

In order to determine if the brewing arrangement is allowed and how it should be licensed, it is important to determine the facts of the arrangement and how it relates to the examples listed below.

1. "U-Brew." Under ORS 471.403(2) a Brewery or Brewery-Public House licensed in Oregon may allow a patron to make malt beverages on the licensed premises for personal use and not for resale (also known as "U-Brew"). The Brewery or Brewery-Public House licensee may assist the person in the process. "Assist" is not a defined term and the licensee may perform much of the brewing process. Under ORS 471.268(3), a licensee may not acquire any ownership interest in malt beverages produced under ORS 471.403(2).
2. Alternating proprietorship. This is a term used by the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) to describe an arrangement at a licensed premises where two or more parties use the same premises and equipment to make an alcoholic beverage (in this case, malt beverage).
 - At premises with an OLCC Brewery license. Each party must have its own OLCC Brewery license (not a Brewery Public House license).
 - At a premises with an OLCC Brewery-Public House license. Each party must have its own OLCC Brewery-Public House license (not a Brewery license). The OLCC requires each party to obtain its own TTB Brewer's Notice.
3. Private label. OAR 845-010-0206 allows a Brewery or Brewery-Public House licensee to produce a private label malt beverage for an OLCC retail licensee (these are a Full On-Premises, Limited On-Premises, Off-Premises and Temporary Sales License). In order to comply with the rule, the manufacturer and retail licensee must have a private label agreement on file with the Commission and the private label product must be available to other retail licensees under a different label. Both the private label and the agreement must be approved by OLCC before the Brewery or Brewery-Public House may sell any of the product.
4. Custom order agreement. This term is defined by OAR 845-006-0410(1). It means "an agreement whereby a Brewery or Brewery-Public House licensee agrees to produce or manufacture malt beverages based on certain specifications for a commission licensee authorized by the commission to receive the malt beverages under a custom order agreement."

The producing Oregon Brewery licensee or Brewery-Public House licensee must control the production process. This includes owning the equipment, paying employees, paying the OLCC privilege taxes, and obtaining federal formula and label approval. If the party receiving the product is in Oregon, it will need an OLCC liquor license and it must be authorized by OAR 845-006-0410 to receive the malt beverage. The malt beverage is held by the producing party and will pass to the receiving party after production is complete and all taxes have been paid.

What is "custom order agreement?"

This is an agreement whereby a Brewery or Brewery-Public House licensee produces malt beverages for another party *authorized to receive it* and the malt beverages are considered produced by the producing Brewery or Brewery-Public House licensee (not the receiving licensee).

Link to rule: [OAR 845-006-0410](#)

What is "contract brewing?"

The term "contract brewing" is not defined by the OLCC or the TTB. It is a term of art used by the industry to describe an arrangement that is essentially a custom order agreement.



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How is a custom order agreement different from alternating proprietorship?

With an alternating proprietorship, all parties hold an OLCC license that allows the production of malt beverage at the same address. Each party is responsible for producing its own malt beverage.

With a custom order, typically only one party at the address holds an OLCC license that allows the production of malt beverage. The party with the OLCC license then produces the malt beverage for the other party.

Compare “custom order agreements” to “private labels?”

- Custom order agreement rule: [OAR 845-006-0410](#)
- Private label rule: [OAR 845-010-0206](#)

When a BREWERY licensee produces the malt beverage

Type of License Receiving the Malt Beverages	Brewery Licensee Produces the Malt Beverages under a Custom Order Agreement OAR 845-006-0410(4)	Private Label OAR 845-010-0206
Full On-Premises, Limited On-Premises, Off-Premises, and Temporary Sales License who are <u>NOT</u> the same licensee of record as the Brewery licensee	As per subsection (4)(a), may <u>NOT</u> use a custom order agreement to produce or manufacture malt beverages for a Full On-Premises, Limited On-Premises, Off-Premises, or Temporary Sales License who is <u>NOT</u> the same licensee of record as the Brewery licensee.	May produce a private label malt beverage for a Full On-Premises, Limited On-Premises, Off-Premises, and Temporary Sales License who are <u>NOT</u> the same licensee of record as the Brewery licensee. This includes: The Brewery must first sell, or transfer title to, the malt beverages to a Wholesale Malt Beverage and Wine (WMBW) licensee. The WMBW licensee would then sell the malt beverages to the receiving retail licensee. The WMBW licensee must follow the price list rule, OAR 845-010-0210.
Full On-Premises who is the <u>SAME</u> licensee of record as the Brewery licensee	As per subsection (4)(a), may use a custom order agreement to produce or manufacture malt beverages for a Full On-Premises who is the <u>SAME</u> licensee of record as the Brewery licensee. However, if the Full On-Premises license is not at the same primary address as the Brewery license, the Brewery licensee must use a WMBW licensee to distribute the malt beverages to	Because both the Full On-Premises and Brewery licensees are the same licensee of record, OAR 845-010-0206 does not apply. However, if the Full On-Premises license is not at the same primary address as the Brewery license, the Brewery licensee must use a WMBW licensee to distribute the malt beverages to the Full On-Premises license.



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	the Full On-Premises license.	
Brewery-Public House license	<p>As per subsection (4)(b), may use a custom order agreement to produce or manufacture malt beverages for a Brewery-Public House licensee.</p> <p>Both parties must follow the requirements in subsection (4)(b).</p> <p>Because the Brewery-Public House licensee is not the producer of the malt beverages, it may sell the malt beverages only at retail (it may not distribute or sell it at wholesale).</p>	<p>May produce a private label malt beverage for a Brewery-Public House licensee. This includes:</p> <ul style="list-style-type: none"> • The Brewery must first sell, or transfer title to, the malt beverages to a Wholesale Malt Beverage and Wine (WMBW) licensee. The WMBW licensee would then sell the malt beverages to the receiving Brewery-Public House licensee. The WMBW licensee must follow the price list rule, OAR 845-010-0210. • The Brewery and the WMBW must treat the receiving Brewery-Public House licensee as a retail licensee. • The Brewery and the WMBW must not provide any prohibited financial assistance to the receiving Brewery-Public House licensee. • The Brewery-Public House license may sell the malt beverages <u>only</u> at retail (it may not distribute or sell it at wholesale).
Grower Sales Privilege	<p>As per subsection (4)(c), may use a custom order agreement to produce or manufacture malt beverages for a Grower Sales Privilege licensee.</p> <p>Grower Sales Privilege licensees may sell the malt beverages only at retail and only for consumption off the premises in a securely covered container (growler).</p>	OAR 845-010-0206 does not apply.
Warehouse	<p>As per subsection (4)(c), may use a custom order agreement to produce or manufacture malt beverages for a Warehouse licensee.</p> <p>Malt beverages may be removed from the warehouse licensed premises only as allowed by ORS 471.242.</p>	OAR 845-010-0206 does not apply.
Wholesale Malt Beverage and Wine (WMBW)	As per subsection (4)(c), may use a custom order agreement to	OAR 845-010-0206 does not apply.



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	<p>produce or manufacture malt beverages for a WMBW licensee.</p> <p>Malt beverages may be removed from the WMBW licensed premises only as allowed by ORS 471.235.</p>	
Winery	<p>As per subsection (4)(c), may use a custom order agreement to produce or manufacture malt beverages for a Winery licensee.</p> <p>Winery licensees may sell the malt beverages only at retail and for consumption on or off the premises or for consumption off the premises in a securely covered container (growler).</p>	OAR 845-010-0206 does not apply.
A different Brewery licensee	<p>As per subsection (4)(c), may use a custom order agreement to produce or manufacture malt beverages for a different Brewery licensee.</p> <p>Note that both licensees should be aware of the “common control” element as per ORS 471.221.</p>	OAR 845-010-0206 does not apply.

When a BREWERY-PUBLIC HOUSE licensee produces the malt beverage

Type of License Receiving the Malt Beverages	Brewery-Public House Licensee Produces the Malt Beverages under a Custom Order Agreement OAR 845-006-0410(5)	Private Label OAR 845-010-0206
Full On-Premises, Limited On-Premises, Off-Premises, and Temporary Sales License who are <u>NOT</u> the same licensee of record as the Brewery-Public House licensee	As per subsection (5)(a), may <u>NOT</u> use a custom order agreement to produce or manufacture malt beverages for a Full On-Premises, Limited On-Premises, Off-Premises, or Temporary Sales License who is <u>NOT</u> the same licensee of record as the Brewery-Public House licensee.	May produce a private label malt beverage for Full On-Premises, Limited On-Premises, Off-Premises, and Temporary Sales License who are <u>NOT</u> the same licensee of record as the Brewery-Public House licensee.
Full On-Premises, Limited On-Premises, or Temporary Sale License when all licensees are the <u>SAME</u> licensee of record as the Brewery-Public House licensee	As per subsection (5)(a), may use a custom order agreement to produce or manufacture malt beverages for a Full On-Premises, Limited On-Premises, or Temporary Sale License when	Because all licensees are the same licensee of record, OAR 845-010-0206 does not apply.



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	<p>all licensees are the <u>SAME</u> licensee of record as the Brewery-Public House licensee.</p>	
A different Brewery-Public House license	<p>As per subsection (5)(b), may use a custom order agreement to produce or manufacture malt beverages for a different Brewery-Public House licensee.</p> <p>Both parties must follow the requirements in subsection (5)(b).</p> <p>Because the receiving Brewery-Public House licensee is not the producer of the malt beverages, it may sell the malt beverages only at retail (it may not distribute or sell it at wholesale).</p> <p>Parties licensed at the same address must have their own TTB Brewer's Notice for that address.</p>	<p>May produce a private label malt beverage for a different Brewery-Public House licensee. This includes:</p> <ul style="list-style-type: none"> • The producing Brewery-Public House licensee must treat the receiving Brewery-Public House licensee as retail licensee. • The producing Brewery-Public House licensee must not provide any prohibited financial assistance to the receiving Brewery-Public House licensee. • The receiving Brewery-Public House licensee may sell the malt beverages <u>only</u> at retail (it may not distribute or sell it at wholesale).
Brewery	<p>As per subsection (5)(c), may use a custom order agreement to produce or manufacture malt beverages for a Brewery licensee.</p> <p>All parties must follow the requirements in subsection (5)(c).</p> <p>Brewery licensees may sell the malt beverages only at retail and for consumption on or off the premises or for consumption off the premises in a securely covered container (growler).</p>	OAR 845-010-0206 does not apply.
Grower Sales Privilege	<p>As per subsection (5)(c), may use a custom order agreement to produce or manufacture malt beverages for a Grower Sales Privilege licensee.</p> <p>All parties must follow the requirements in subsection (5)(c).</p> <p>Grower Sales Privilege licensees may sell the malt beverages only at retail and only for consumption</p>	OAR 845-010-0206 does not apply.



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	off the premises in a securely covered container (growler).	
Warehouse	<p>As per subsection (5)(c), may use a custom order agreement to produce or manufacture malt beverages for a Warehouse licensee.</p> <p>All parties must follow the requirements in subsection (5)(c).</p> <p>Malt beverages may be removed from the warehouse licensed premises only as allowed by ORS 471.242.</p>	OAR 845-010-0206 does not apply.
Wholesale Malt Beverage and Wine (WMBW)	<p>As per subsection (5)(c), may use a custom order agreement to produce or manufacture malt beverages for a WMBW licensee.</p> <p>All parties must follow the requirements in subsection (5)(c).</p> <p>Malt beverages may be removed from the WMBW licensed premises only as allowed by ORS 471.235.</p>	OAR 845-010-0206 does not apply.
Winery	<p>As per subsection (5)(c), may use a custom order agreement to produce or manufacture malt beverages for a Winery licensee.</p> <p>All parties must follow the requirements in subsection (5)(c).</p> <p>Winery licensees may sell the malt beverages only at retail and for consumption on or off the premises or for consumption off the premises in a securely covered container (growler).</p>	OAR 845-010-0206 does not apply.



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What are the custom order agreement requirements?

When a BREWERY licensee wants to use a custom order agreement to produce malt beverages for:

A Brewery-Public House licensee

- The malt beverages are considered produced by the Brewery licensee
- The custom order agreement must be in writing
- Both parties must comply with ORS 471.398
- The receiving Brewery-Public House licensee must still follow all other laws and rules issued by the OLCC. This includes following ORS 471.200(2), which because the malt beverages were not produced by the Brewery-Public House licensee, would not allow the Brewery-Public House licensee to distribute the malt beverages to other entities licensed by the OLCC
- The custom order agreement must identify the malt beverages by a specific formula and identify a defined period of time for the agreement that is no longer than 60 days from production to delivery of the malt beverages to the receiving party
- The custom order agreement may not allow the producing Brewery licensee to store the malt beverages longer than the 60 day time period
- Both parties shall provide the written custom order agreement to the OLCC within 10 calendar days of the OLCC's request for the agreement

A Full On-Premises licensee and both the Brewery licensee and the Full On-Premises licensee are the SAME licensee (as shown on the license certificate)

- Because both licensees are the same licensee of record, there are no requirements regarding the custom order agreement
- However, if the Full On-Premises license is not at the same address as the primary Brewery license, ORS 471.221 requires the Brewery licensee to use a WMBW licensee to distribute the malt beverages to the Full On-Premises license

A Full On-Premises, Limited On-Premises, or Off-Premises licensee and the retail licensees are NOT the same licensee as the Brewery licensee

- This is not allowed

A Grower Sales Privilege, Warehouse, Wholesale Malt Beverage and Wine, or Winery licensee

- Because all parties are a manufacturer or wholesaler as defined by ORS 471.392, there are no tied house or prohibited financial assistance concerns; thus, there are no requirements regarding the custom order agreement
- ORS 471.221 requires the Brewery licensee to use a WMBW licensee to distribute the malt beverages to these licensees

A different Brewery licensee

- The malt beverages are considered produced by the producing Brewery licensee
- Because both the producing Brewery and the receiving Brewery are a manufacturer or wholesaler as defined by ORS 471.392, there are no tied house or prohibited financial assistance concerns; thus, there are no requirements regarding the custom order agreement
- However, note that both licensees should be aware of the "common control" element as per ORS 471.221



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When a BREWERY-PUBLIC HOUSE licensee wants to use a custom order agreement to produce malt beverages for:

A different Brewery-Public House licensee

- The malt beverages are considered produced by the producing Brewery-Public House licensee
- The custom order agreement must be in writing
- Both parties must comply with ORS 4721.398
- The receiving Brewery-Public House licensee must still follow all other laws and rules regulated by the OLCC. This includes following ORS 471.200(2), which because the malt beverages were not produced by the receiving Brewery-Public House licensee, would not allow the receiving Brewery-Public House licensee to distribute the malt beverages to other entities licensed by the OLCC
- The custom order agreement must identify the malt beverages by a specific formula and identify a defined period of time for the agreement that is no longer than 60 days from production to delivery of the malt beverages to the receiving party
- The custom order agreement may not allow the producing Brewery licensee to store the malt beverages longer than the 60 day time period
- Both parties shall provide the written custom order agreement to the OLCC within 10 calendar days of the OLCC's request for the agreement
- All Brewery-Public House licensees licensed at the same address must have their own valid Brewer's Notice issued by the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) at the premises address

A Full On-Premises, Limited On-Premises, or Temporary Sales license and all parties are the SAME licensee (as shown on the license certificate)

- Because all licensees are the same licensee of record, there are no requirements regarding the custom order agreement

A Full On-Premises, Limited On-Premises, or Off-Premises licensee and the retail licensees are NOT the same licensee as the Brewery-Public House licensee

- This is not allowed

A Brewery, Grower Sales Privilege, Warehouse, Wholesale Malt Beverage or Wine, or Winery licensee

- The custom order agreement must be in writing
- Both parties must comply with ORS 471.398
- Both parties shall provide the written custom order agreement to the OLCC within 10 calendar days of the OLCC's request for the agreement