

Checklist for wineries entering into a grape supply contract

Why is it important to have a contract?

Whenever you agree with a winegrape grower to purchase grapes for a certain price, you are entering into a contract. A contract doesn't have to be in writing but a written contract is *strongly recommended* so both parties can be sure exactly what has been agreed to. This helps if there is a dispute later over the terms of the agreement.

What are some tips for fair and effective negotiation?

- ✓ Prepare thoroughly. Know what you wish to purchase, what it is worth and how much is a fair price to pay to enable you *and* the grower to continue operating a sustainable business. This in turn promotes a long-term sustainable industry.
- ✓ Be professional – ie business-like, respectful and thorough.
- ✓ Make sure you and the grower both agree on all the terminology, and the terms, in the contract.
- ✓ Don't rush the signing of a contract. There should always be time given for both parties to think or seek advice. This will pay dividends in the long run.

What are the main areas that should be covered in a contract?

- ✓ The names, ABNs and signatures of both (or all) parties.
- ✓ The start date and duration of the contract as well as ways to terminate it.
- ✓ Exactly what is being offered for sale – eg how many tonnes, from what block, what variety, what quality specifications etc.
- ✓ What defects will lead to a reduction in price or rejection of fruit.
- ✓ Any cropping level restrictions and what will happen if cropping levels are exceeded.
- ✓ The price – or how price will be determined – including any provision for excess fruit.
- ✓ Payment terms: how and when the grower will be paid. The industry standard advocated in the Australian Wine Industry Code of Conduct (see more below) is:
 - *1/3 at the end of the month following the month of delivery;*
 - *1/3 at the end of June in the same year as delivery;*
 - *1/3 at the end of September in the same year as delivery*
- ✓ Any penalties for late payment.
- ✓ A dispute resolution process.

How do I make sure it's a fair contract?

- ✓ The contract is straightforward and easy to understand
- ✓ Terms (particularly price and quality standards) are all fully spelt out – not vague like “fair market price” or “reasonable grounds”
- ✓ Any variations always require BOTH parties to agree (rather than being at the “sole discretion” of one of the parties)
- ✓ There is a specified minimum price
- ✓ The rights of both the winery and the grower are dealt with fairly in the case of unforeseen and uncontrollable events such as hail, machinery breakdown or serious illness
- ✓ There is an agreed position on the grower's right to make vineyard management decisions and the winery's right to intervene in order to ensure that grapes are produced to specification

- ✓ Maximum MOG and defect levels are clearly set
- ✓ The grower's right to sell the vineyard, change vineyard manager or remove vines is catered for in the contracted arrangements.

What happens if I have a dispute with the grower?

A good contract will specify how disputes should be handled. Use the specifications of your contract wherever possible.

Good ways to successfully handle a dispute are:

- ✓ First attempt to solve any issues directly (this is by far the cheapest and quickest option as well as the best for your long-term relationship);
- ✓ Engage an independent person to make an assessment – eg in a case of rejection of grapes on quality grounds. Note that the Code maintains a list of Independent Experts that will be a useful reference in these circumstances (www.wineindustrycode.org);
- ✓ Use the informal dispute resolution procedure available to growers through the Australian Wine Industry Code of Conduct (www.wineindustrycode.org);
- ✓ Going to court is an option - but one that is suggested only after considering the foregoing.

How can the Australian Wine Industry Code of Conduct assist you?

All wineries are encouraged to become signatories to the Australian Wine Industry Code of Conduct. The Code sets minimum standards for agreements between winegrape growers and winegrape purchasers. Signatories agree to be bound by its provisions. Many points in this checklist are included in the Code. The Code also provides more specific provisions relating to price determination, terms of payment and assessment and harvest. Finally, the Code contains a detailed dispute resolution process that involves negotiation and arbitration as means of resolution. Legal recourse is however considered the last resort.

The Code has been developed for the Australian wine industry by a joint committee of the WFA and WGGA, and both organisations have endorsed the Code. Signatories recognise that providing a clear basis for their commercial relations with growers and an impartial, cost-effective and non-legal dispute resolution process is important for good long-term commercial relations between winegrape growers and winegrape purchasers. The benefits of better commercial relations include lower costs of doing business and greater ability to secure the amount and quality of fruit you require.

To find out more, visit www.wineindustrycode.org.

Where can I get more information or advice?

business.gov.au	-	Information on all aspects of running your own business.
wfa.com.au	-	Winemakers' Federation of Australia – the national industry body for wineries.
wgga.com.au	-	Sample contract template available for downloading.
wineindustrycode.org	-	Website of the Australian Wine Industry Code of Conduct.
acc.gov.au	-	Information on recognising unfair contracts under Australian consumer law.
iama.org.au	-	Institute of Arbitrators and Mediators Australia.
fedcourt.gov.au	-	Federal Court of Australia – information about taking court action.
healthyvines.com.au	-	Annual report on prices paid and tonnages by region (South Australia only).
wineaustralia.com	-	See <i>winefacts</i> for information on grape crush, prices, forecasts etc.