



Negotiating a “Win-Win” Grape Contract

March 2009

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Negotiating a “Win-Win” Grape Contract

- Example of a “good” Grape Purchase Agreement
- Standard “boiler plate” provisions
- Options for addressing “key” contract provisions
- How to Address potential “problem/conflict areas”
- Provisions/language to “watch out for”

Example of a “Good” Grape Purchase Agreement

- We have provided an example of a typical “good” Grape Purchase Agreement for your information
- Do not use this example of a Grape Purchase Agreement or any provisions therein without consulting your own attorney
- Nothing we will present constitutes legal advice

Standard “Boiler Plate” Provisions

- 1.01 Purchase and sale
- 2.02 Harvest and delivery
- 3.01 Representations by Grower
- 3.02 Representations by Winery
- 6.01 Force majeure
- 6.03 Right to resell grapes
- 6.05 Notices
- 6.06 Amendment and waiver
- 6.07 Modification
- 6.08 Severability
- 6.09 Further assurances
- 6.10 Counter parts
- 6.11 Governing law
- 6.12 Entire agreement

Options for Addressing “Key” Provisions

- 1.02 Price of grapes
- 1.03 Payment terms
- 1.04 Terms of agreement
- 5.01 Disputes and litigation costs
- 6.04 Use of vineyard name

Options for: Price of Grapes (1.02)

- Price per ton contract
- Acreage contract

Options for: Price of Grapes (1.02)

-Per ton Contract-

- Specific price/ton for each year of term
- Specific price/ton for initial year and then escalation thereafter:
 - Fixed escalation rates
 - CPI or other inflation index
 - Change in Average price for District 4 from last 2 Grape Crush Reports (Table 10)
 - Changes in selected index, such as State posted price list
- Average price/ton for District 4 from the last Grape Crush Report plus or minus some percentage
- Price/ton based upon retail bottle price of brand your grapes go into (eg, 100 times the bottle price)

Options for: Price of Grapes (1.02)

-Acreage Contract-

- Provides Winery with more control on farming practices and gear
- Price per acre likely to be based upon “normal year expectations”
- Aspects to consider:
 - Allocation of risks between Grower & Winery
 - Responsibility for “extra” farming costs

Options for Payment Terms (1.03)

- Net 30 days after last harvest (generally whites)
- 50% 30 days after last harvest; remainder by a specific date (Dec 31, Jan 15, Jan 31)
- Be careful with regard to extended or revised payment terms:
 - Interest on outstanding balances
 - Credit worthiness
 - Risk to Grower lien

Option for Term of Agreement (1.04)

- Fixed Term
- Evergreen

Options for Disputes and Litigation Costs (5.01)

- Mediation
- Arbitration: Non-binding vs. binding
- Litigation
- Responsibility for legal costs

Options for: Use of Vineyard Name (6.04)

- Extent of rights to use name: exclusive vs. non-exclusive
- Premium for use of vineyard name?
- Control, if any, by Grower?

Potential “Problem/Conflict Areas”

- 2.01 Viticultural practices
- 2.03 Grape quality
- 2.04 Inspection and rejection
- 4.01 Termination
- 6.02 Successors and assigns

Problem/Conflict Areas: Viticultural Practices

- Make sure Grower and Winery are in agreement on language and requirements:
 - Exhibit with standards and/or
 - Annual vineyard/farming plan
- Obligation of grower to implement Winery recommendations
- Responsibility for “extra” costs
- Process for resolving disputes
- Obligation to meet/communicate/agree periodically during crop year

Problem/Conflict Areas: Grape Quality

- Make sure Grower and Winery are in agreement on expectations of “quality level” and harvest decision process
- Process for resolving disputes - alternative to confrontation at weigh station:
 - pricing adjustments
 - custom crush grapes for grower to “keep” wine
 - release to sell grapes elsewhere
- Obligation to meet/communicate periodically during crop year to measure progress

Problem/Conflict Areas: Inspection and Rejection

- Agree on “local” inspector because state inspectors will not be as available or as knowledgeable as a “local” inspector
- Agree on a rejection process that fully covers the mechanics, rights and obligations of each party
 - load by load inspection
 - keeping evidence and records
 - notice of rejection and reasons for rejection

Problem/Conflict Areas: Termination

- Termination should be a last resort; but if the relationship isn't working, then there should be a mechanism to disengage amicably
- Any termination process should provide sufficient time for Winery to find a new source of grapes and for Grower to find a new buyer for the grapes – but be clear on termination process

Problem/Conflict Areas: Successors or Assigns

- Assignment is a very touchy area because there is no way to know who might be the assignee
- Any provision should be mutual
- Consider requiring approval by the other party but require that “such approval cannot be unreasonably withheld”

Provisions/Language to “Watch Out For”

- Consequential damages
- Production Capacity as force majeure
- Sole discretion

Watch Out For: Consequential Damages

- Any obligation/liability for claims for damages should not include any losses missed by Winery once grapes start fermenting
- No Grower should ever be responsible for any consequential costs, expenses or losses once the grapes start fermentation unless the Grower is guilty of gross negligence or willful misconduct

Watch Out For: Other Provisions/Concepts

- “Lack of production capacity for Winery” should never be considered as a force majeure event
- “Sole discretion” should rarely be used and only in cases where its application is truly justified. Consider substituting the concepts of “reasonable judgment” or “good faith” in lieu of “sole discretion”

The Final Word

A “Good” Grape Purchase Contract needs to be:

- thorough and fully agreed to by both parties
- balanced – one-sided contracts are a recipe for disaster/litigation
- flexible because circumstances will change and they will need to be addressed
 - no substitute for constant communication