



Wine Grape Growers Australia
Review of wine grape contracts

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Executive Summary

A review was undertaken of a small sample of wine industry contracts, to determine the extent to which they complied with the Australian Wine Industry Code of Conduct and provide insights into the general standard of contracts in the industry.

Overall, the contracts were found to comply with the majority of core requirements of the Code: specification of price, terms of payment, identification of parties to the agreement and grapes to be purchased, and duration of contract. 29 of the 32 provisions of the Code were met by at least 15 of the 20 contracts. On the other hand, there was only one contract identified that fully complied with all provisions of the Code, although five stated that they were covered by the Code.

A number of concerns with the contracts was identified – relating to:

- Complex clauses relating to the determination and notification of pricing
- The one-sided nature of contract price-setting mechanisms
- The absence of penalties for late payments
- The non-explicit nature of quality standards used in the final determination of price
- The ability of the purchaser to make decisions at his/her “sole discretion”
- The lack of dispute resolution clauses in up to 50% of contracts
- Inconsistencies over the use of various termination clauses to cover different scenarios
- The presence of errors and poorly worded clauses
- Complex and lengthy contracts that are hard to read and understand
- A number of contracts that stated they were covered by the Code but were considered to be non-compliant

Recommendations for future research and improvements to the Code as a result of the analysis include:

- Recommendation that a legal opinion be obtained on a number of areas to address concerns identified above
- Recommendation that the Code be modified to provide clarification on some terms and additional requirements identified as omissions
- Recommendation that an auditing mechanism be developed for contracts of Code signatories to ensure they are compliant
- Recommendation that a sample contract template or standard clauses be developed to assist industry in the writing of compliant and best practice contracts
- Recommendation that information be provided to industry regarding the broad outcomes of this exercise, identifying the value of ensuring that contracts are compliant with the Code as a way of ensuring they are accurate and complete and offer the best protection to both parties.

1. Introduction

The WGGGA Executive Committee agreed to undertake a review of a sample of winegrape purchase contracts, to determine the extent to which they complied with the Australian Wine Industry Code of Conduct and provide insights into the general standard of contracts in the industry.

2. Methodology

A sample of 20 contracts was reviewed under conditions of strict confidentiality.

The review involved reading the contracts and making a judgement as to whether each requirement of the Code was met within each contract. This was a non-legal audit conducted by a layperson with a view to assessing the documents as a grower might look at them and considering whether they were user-friendly and accessible to non-legal readers.

The clauses of the Code were considered in five broad groupings:

1. Price-related clauses
2. Terms of payment
3. Quality and quality assessment
4. Harvest issues
5. Variations and problems
6. Dispute resolution
7. General contracting provisions

Although not all contracts post-dated the Code or were from Code signatories¹, this assessment still provided a good benchmark against which to assess the general standard of the contracts and identify any common issues.

The sample of contracts was not large and the sampling method was not random – therefore the findings cannot be said to be representative of all wine industry contracts, nor can definitive quantitative information be derived. The exercise was to obtain qualitative information leading to insights into contracting practices and suggest further research and other future actions. It should be noted in particular that some of these contracts may no longer be in use and therefore may not reflect current practices.

¹ As many contracts were redacted, it is not possible to state with certainty in all cases whether the purchaser was a Code signatory.

3. Overall results

Overall, the contracts were found to comply with the majority of core requirements of the Code: specification of price, terms of payment, identification of parties to the agreement and grapes to be purchased, and duration of contract. Despite over 25% of the contracts pre-dating the Code, 29 of the 32 provisions of the Code were met by at least 15 of the 20 contracts² – including six annual agreements. On the other hand, there was only one contract identified that fully complied with all provisions of the Code, although five contained the statement that the contract was covered by the Code and therefore should have been compliant.

A summary of the findings is given in table 4.

TABLE 4: SUMMARY OF COMPLIANCE OF CONTRACTS WITH CODE

<i>Clause in Code of Conduct</i>	<i>Code ref</i>	<i># of contracts compliant with Code</i>
Identify all parties to agreement	2.2.1	20
Specify duration of contract	2.2.1	20
Specify price	2.3.1	20
Price adjustment provisions specified	2.5.1	20
Terms of payment stated	2.6.1	20
Any penalties for late payment stipulated	2.6.3	20
Quantity of grapes specified	2.7.1	20
Grapes to be purchased identified	2.7.2	20
Quality standards stated (if applicable)	2.8.1	20
Restriction on transfer specified (if applicable)	2.12.1	20
Obligations on sale of vineyard specified (if applicable)	2.12.2	20
Variations specified and agreed in writing	2.16.1	20
NO provision allowing for unilateral amendment	2.16.1	20
Terms of payment for adjustment specified	2.6.2	19
Process for determining harvest specified	2.8.3	19
Delivery point specified	2.9.1	19
Party responsible for freight costs specified	2.9.1	19
Expiry date of contract specified	2.2.1	18
When title passes to purchaser specified	2.10.1	17
Point of rejection/acceptance specified	2.10.1	17
Force majeure clause specified if applicable	2.11.1	17
Mechanism for terminating agreement	2.2.1	16
Statement about price notification (regional pricing)	2.4.1	16
Method of quality assessment specified	2.8.2	15
Dispute resolution consistent with Code	2.14.1	7
Statement that contract is covered by Code	2.1.1	5
Statement about seeking independent advice	2.13.1	1

² In some cases compliance with the Code reflected more on the vague wording of the Code provision than good contracting practice (see detailed analysis section)

4 Detailed analysis

4.1 Price-related provisions

Concerns identified with the contracts

- The clauses relating to the determination of price seem particularly prone to involving complicated linkages with sub-clauses and references to the schedule.
- In general the contract price arrangements make the growers very much price-takers with seldom any reasonable negotiating power regarding price. The emphasis of the Code seems to support this by referring only to notice periods and offers – not to two-way negotiations. It is possible for contracts to comply with the Code but provide no indication of price until two weeks before harvest.

Concerns identified with the Code

- It is not clear what constitutes a “price offer or a negotiation” (2.4.1) and therefore whether various price arrangements such as described above should require the winery to issue indicative pricing as per the Code specifications
 - The Code provisions 2.4.1 and 2.4.2 are complicated; therefore it may be difficult for parties to an agreement to determine whether their arrangements are compliant with the Code or not.
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All contracts spelt out the price or a means of determining price (2.3.1)³. In the sample provided, eight (8) gave a fixed price and 12 a means of determining price.

Four contracts contained provisions relating to price notifications that appeared to be non-compliant.

All contracts specified price adjustment provisions (2.5.1).

4.2 Terms of payment

Concerns identified with the contracts

- Payment terms do not adequately or fairly deal with adjustments – particularly bonuses
- There are generally no penalties for late payments specified – even in contracts that fall under South Australian legislation requiring those payment terms⁴

Concerns identified with the Code

- Code does not require penalties to be specified for late payment
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³ The number in brackets refers to the corresponding Code statement.

⁴ The legislation would still prevail in South Australia and therefore arguably there is no need for penalties to be specified. A legal opinion would be useful to determine whether any additional benefit is obtained by making the penalties explicit in the contracts.

All contracts specified terms of payment (2.6.1). 14 of the 20 complied with the industry standard identified in the Code (including two from NSW and four from Victoria, where the standard is not legislated).

4.3 Quality specifications and assessments

Concerns identified with contracts

- Contracts generally refer to “quality” as meaning “lack of faults” rather than quality grades such as “A”, “B” etc or end-use equivalents. The Code does not differentiate between the two or provide guidance on how measurement of grades should be handled in contracts.
- Some contracts specify a “standard” using terms that are undefined, which makes it difficult for a grower to challenge a ruling that their grapes do not comply with the standard.
- Some quality standards may not be within the grower’s control – eg one contract required the temperature to be less than a certain level, but the grower was not responsible for delivering the grapes. Colour assessments may not be taken close enough to harvest to provide a true assessment of the colour on delivery.

Concerns identified with the Code

- The Code specifies that any method for vineyard or weighbridge winegrape assessment must be described *if that method is directly inconsistent with the methods described in “Winegrape Assessment in the Vineyard”*. This makes it difficult to assess whether contracts that are silent on the assessment method are actually compliant.
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All contracts reviewed specified quality standards that applied to the fruit being purchased (2.8.1) and the method of assessing that standard (2.8.2). However, very few contracts referred to quality standards in terms of grades (and bonuses) as opposed to faults (and penalties). Those that did provided no detail as to how these grades would be established beyond stating that they would be determined by the winery at its sole discretion by a vineyard or weighbridge assessment or by a later grading of the wine.

Overall it was assessed that five contracts did not comply with the requirement to describe an assessment method⁵ – and four of these were annual agreements, which generally were found to contain less detail.

⁵ If no method was described and the “Winegrape Assessment” book was not referred to then the contract was judged to be non-compliant although the clause in the Code strictly speaking does allow for the book not to be referenced if it is used. However this cannot be assessed in practice.

4.4 Harvest issues

Concerns identified with contracts

- Some contracts do not define specifically where title is transferred (eg “weighbridge” or “crusher head”)
- Some contracts do not deal with transfer of risk, transfer of title and acceptance of grapes in a logical way that would be most effective in practice

Concerns identified with the Code

- The Code does not offer any guidance on the nature or fairness of the process of determining harvest time – only that a process be specified.
 - The Code does not provide guidelines on specifying transfer of risk – as opposed to title.
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19 out of 20 contracts contained a clause stating how harvest would be determined. However, there was considerable variation in the clauses related to harvest – some of which were fair and transparent, whereas others were very one-sided and/or gave very short notice periods to the grower.

Delivery point for grapes

Only one contract did not specify the delivery point for grapes (2.9.1) and identify the party responsible for the cost of freight. However, some contracts left the delivery point open “to be advised” to the grower, and some gave the purchaser the right to change the delivery point if desired but many did not then provide for any adjustment if the grower was required to pay for the extra freight.

Most contracts required the grower to pay freight costs. Risk associated with freight was not usually explicitly addressed; however it is implied that the grower takes this risk when title has not yet passed to the purchaser.

Transfer of risk and title

17 out of the 20 contracts specified when title passes to the purchaser (2.10.1), while 15 specified the point at which the purchaser accepts or rejects the grapes (2.10.1). The majority of contracts effectively combine the two, with the point of transfer being the weighbridge.

Only one contract deferred the transfer of title to the time at which full payment should be received by the Grower, while transferring risk at the time of acceptance of the Grapes.

4.5 Variations and clauses related to potential problems

Concerns identified with contracts

- No contract contained a provision explicitly preventing variations from being made without the written consent of both parties⁶.
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Concerns identified with the Code

- The Code of Conduct does not protect growers from force majeure clauses that are one-sided or from excessive restrictions on transfer of ownership or assignment of rights.
 - The Code does not require contracts to include a force majeure clause
 - The Code does not address the extent to which purchasers can make decisions at their “sole discretion”.
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Force majeure

17 of the 20 contracts contained force majeure clauses.

Transfer of ownership of vineyard

The Code requires Agreements to specify “Any restrictions imposed by the winegrape purchaser on the rights to transfer possession or ownership of the relevant vineyard” and “Any obligations on the winegrape grower upon the sale or disposal of possession of the relevant vineyard”.

In this case, the absence of such clauses was not considered to be unfair contracting practice, as this would mean no restrictions/obligations could be enforced by the purchaser on the grower. In fact, nine (9) of the contracts, including all six annual agreements, did not specify any obligations or restrictions.

4.6 Dispute resolution

Concerns identified with contracts

- Nearly 50% of contracts reviewed did not have any dispute resolution clause

Concerns identified with the Code

- The Code does not appear to allow for an alternative form of dispute resolution outside of that prescribed in the Code (or does not clarify what is meant by “consistent with”).
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Seven (7) of the contracts contained a dispute resolution clause consistent with the Code (2.14.1). Another four contracts contained a different dispute resolution clause. These were judged as non-compliant with the Code, as it was not possible to compare dispute resolution clauses for their equivalence.

⁶ This provision may in fact be covered by common law as a variation would in all likelihood not be legally enforceable if not part of an agreement – in which case such a clause would not need to be included and the Code would not need to make reference to it. Further research is required to determine whether this is the case.

Nine of the contracts did not contain any kind of dispute resolution clause – which represents nearly 50% of the contracts.

4.7 General contract terms

Concerns identified with contracts

- Many contracts did not clearly specify a commencement date as distinct from a signing date.
- Some contracts did not specify an actual expiry date – only a term defined as a number of years/vintages.
- There was considerable variation in contracts in their provisions for termination in different situations – with many having one-sided clauses favouring the purchaser. Notice periods also varied considerably.
- Many contracts had no provision for early “voluntary” termination of the contract by the grower (or in some cases either party).

Concerns identified with the Code

- The Code does not refer to the range of termination clauses that should be included in a contract aside from termination of ongoing contracts.
 - The Code does not provide guidance on reasonable notice periods that should be included in termination provisions.
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Contract duration

All contracts were found to specify the contract duration in some form; however, there was some variation in the way in which this information was provided in the contracts. Some contracts did not specify a commencement date or an expiry date, and identified the duration of the contract as one or more vintages or years.

Mechanism for terminating agreement

There are three different circumstances for termination to be considered:

1. Where a contract would otherwise be ongoing (rolling or automatically renewing terms)
2. Where a party to the contract has breached a term of the contract
3. Where a party wishes to terminate the contract before the expiry of the term

Contracts that had rolling terms were found to have clearly defined mechanisms for terminating these contracts; in most cases the termination was automatic unless one or other party gave notice of wishing to extend the contract.

The majority of contracts included a provision for termination of the contract by the purchaser in the event of a breach of contract by the grower. Some force majeure clauses included consequent termination provisions and a number of contracts included a provision for termination by either party if the other party should become insolvent or commit a “material breach” of any of its obligations under the contract and not remedy them within a set timeframe.

Very few contracts contained a provision for “voluntary” termination of the contract.

4.8 Other aspects: fairness, accuracy and readability

Issues of concern with contracts

- Some contracts contain harsh, one-sided provisions
- Some contracts contain errors or important omissions
- Many contracts were not considered to be easily readable

Issues of concern with the Code

- The Code does not provide sufficient guidance on how contracts should comply with the provision to be “in plain English”
 - The Code does not require clauses such as confidentiality clauses
 - The Code does not require that there should be NO harsh or unreasonable clauses in an agreement
 - There is no provision in the Code for contracts to be audited to ensure that the contracts prepared by Code signatories are in fact compliant with the Code
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In addition to the provisions considered in previous sections, the Code also requires that:

- all agreements include a statement that the contract is covered by the Code (2.1.1)
- all agreements include a prominent statement that the grower signing should seek independent advice, which statement must appear just above the grower’s signing provisions (2.13.1)
- all contracts should be clear and concise and in plain English (introductory provision)

Fairness and coverage by Code provisions

Five contracts were found to include the first statement. Therefore it is reasonable to conclude that these contracts were prepared by Code signatories. However, only one of these five contracts contained the second statement. Therefore strictly speaking this is the only contract to be fully compliant with the Code.

A number of contracts contained provisions that could be considered harsh or unreasonable. For example – allowing the purchaser to make decisions “at their sole and absolute discretion”.

Readability of contracts

The contracts varied from one page in length to over 20 pages (excluding schedules). They varied considerably in terms of readability and “user-friendliness”. For example, many of the longer contracts were structured with a list of definitions up front, followed by the numbered clauses, followed by schedules. The numbered clauses make reference to the terms used in the definitions and/or cross-reference the schedules and other clauses. This makes them very difficult to read straight through without constantly having to refer to other sections of the document.

Overall there appears to be significant room for improvement in readability, accuracy and completeness of the contracts, which would benefit both parties.

5 Recommendations for further action

Based on the above analysis, the following suggestions are made for further research by way of legal opinion and/or industry consultation:

- Clarify whether the clauses identified in 4.1 as possibly not complying with the Code requirements for price notification are in fact non-compliant
- Determine whether it is necessary or would be useful to include clauses stating penalties for late payment where state legislation imposes these penalties anyway
- Determine whether there is a common understanding in industry for how quality parameters such as level of sunburn or damage are assessed
- Determine whether a unilateral variation could be made in practice that would be legally enforceable
- Clarify any difference in practice between the assignment of rights by the grower under an agreement and transfer of ownership of the vineyard and its implications for the Code
- Determine whether annual agreements should be expected to include dispute resolution clauses (particularly where the price is fixed)
- Determine whether confidentiality clauses would provide additional protection for parties to a contract

The following recommendations are made with reference to the Code:

- Include requirements in the Code for contracts to contain:
 - Penalties for late payment
 - Explicit methods for vineyard assessment
 - Force majeure clauses
 - Explicit expiry dates
- Provide clarification for clauses and terms including:
 - Price offer or negotiation
 - Dispute resolution clause consistent with the Code
 - In plain English
- Provide guidance on fair and reasonable clauses relating to:
 - Determination of harvest time
 - Force majeure
 - Use of “sole discretion”
 - Termination of contracts for various reasons – including notice periods
- Develop a mechanism for auditing contracts of signatories to ensure they are compliant with the Code
- Conduct an awareness campaign advising industry of the benefits to both parties of having accurate and complete contracts
- Prepare a sample template contract or set of individual clauses to assist industry in developing compliant and best practice contracts.

Code provision	Code ref	Annual	Annual	Annual	Annual	Annual	Annual	NSW	NSW	NSW	NSW	NSW	NSW	NSW	SA	SA	SA	SA	VIC	VIC	VIC	VIC		
		?	NSW	NSW	SA	SA	SA																	
1 Specify price	2.3.1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
1.3 Statement about price notification (regional pricing)	2.4.1	-	-	-	-	-	N	N	-	Y	Y	-	Y	Y	Y	Y	-	Y	N	Y	N			
1.4 Price adjustment provisions	2.5.1	-	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
2.1 Terms of payment stated	2.6.1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
2.4 Terms of payment for adjustment stated	2.6.2	-	Y	Y	Y	Y	Y	Y		Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
2.5 Penalties for late payment stipulated	2.6.3	-	-	Y	-	-	-	-	Y	Y	-	-	Y	-	-	-	-	-	-	-	-			
3.01 Quality standards stated if applicable	2.8.1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
3.02 Method for assessment described (if not "Winegrape Assessment" book)	2.8.2	N	Y	N	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
3.1 Process for determining harvest time specified	2.8.3	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
3.2 Delivery point for grapes specified	2.9.1	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	?	Y	Y	Y	Y	Y	Y	Y	Y	Y			
3.3 Party responsible for freight costs specified	2.9.1	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
3.4 When title passes to purchaser specified	2.10.1	N	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y			
3.5 Point of rejection/acceptance specified	2.10.1	N	Y	Y	Y	Y	N	N	Y	Y	N	?	N?	Y	Y	Y	Y	Y	Y	Y	Y			
4.1 Force majeure clause specified - if applicable	2.11.1	N	Y	Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
4.2 Restrictions on transfer of ownership specified if applicable	2.12.1	-	-	-	-	-	-	-	-	-	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
4.3 Obligations on grower upon sale of vineyard specified if applicable	2.12.2	-	-	-	-	-	-	-	-	-	Y	Y	Y	Y	Y	Y	Y	Y	-	Y	Y			
4.4 Variations specified and agreed in writing	2.16.1	-	Y	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-			
4.5 NO provision allowing for unilateral amendment	2.16.1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
4.9 Dispute resolution clause consistent with Code	2.14.1	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y	Y	Y	Y	N	Y	N	Y		
5.1 Specify duration of contract	2.2.1	Y	?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
5.2 Commencement date	2.2.1	Y	Y	Y	Y	?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
5.3 Expiry date	2.2.1	-	N	-	Y	N	?	Y	Y	Y	Y	Y	-	-	Y	Y	-	Y	-	Y	Y			
5.4 Mechanism for terminating agreement	2.2.1	N	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
5.5 Identify all parties to agreement	2.2.1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
5.6 Grapes to be purchased are identified	2.7.2	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
5.7 Quantity of grapes specified	2.7.1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			
9 Statement about seeking independent advice	2.13.1	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N		
9.3 Statement - covered by Code	2.1.1	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	Y	Y	N	N	Y	N	Y		
Total score of "No"s			8	8	4	4	6	6	4	3	3	7	4	4	1	0	1	2	3	2	3	2		
										Key	-	Indicates not applicable or where the absence of a provision is not a negative												
											N	Contract not compliant with Code												
											Y	Contract compliant with Code												

Appendix 2

Wine Industry Code of Conduct Part 2 – Winegrape Purchase Agreements

As a minimum, all Agreements must:

1. Be in writing, contain the elements set out in clauses 2.1 to 2.15 and be entered into and, if applicable, varied in accordance with clauses 2.16 and 2.17;
2. Appropriately refer to any other important elements of the Agreement; and
3. Be clear and concise and in plain English.

2.1

Application of the Code

2.1.1

Each Agreement must contain a statement that the parties to the Agreement agree that it is governed by the Code and that, in the event of any inconsistency, the provisions of the Code in force on the date that the Agreement was entered into will prevail and will apply as if they formed part of the Agreement. If there is a change to the Code, each Signatory must make an offer to its winegrape grower(s) to amend existing Agreements to reflect that change within three months of the date of endorsement of the change in accordance with clause 5.1.6.

2.2

Parties to an Agreement and Term of the Agreement

2.2.1

All parties involved in the winegrape purchase arrangements are to be identified in the Agreement including the winegrape purchaser, the winegrape grower and any landowner or lessee (if applicable).

All Agreements must specify the duration of the Agreement including commencement date and expiry date, or the termination mechanism (including applicable notice periods) where there is no fixed expiry date.

2.3

Pricing Methods

2.3.1

All Agreements must contain a fixed price and/or a clear statement as to how the final price payable will be determined.

2.4

Price Notification

2.4.1

Where the Agreement requires a price offer or a negotiation as part of the calculation of the price for the winegrapes, the winegrape purchaser must, unless prevented due to unforeseen and extraordinary reasons:

2.4.1.1

by 15 December each year - provide to its winegrape grower(s) in the Hunter Valley, Riverina, Murray Darling/Swan Hill and Riverland regions Indicative Regional Prices for each variety of winegrape.

2.4.1.2

by 15 January each year - use its best reasonable endeavours to provide to its winegrape grower(s) in all other regions Indicative Regional Prices for each variety of winegrape.

If an Agreement does not exist on the relevant date but is subsequently entered into prior to the vintage period (for example, an Agreement entered into in February), then the winegrape purchaser must provide the Indicative Regional Prices referred to above to the winegrape grower at the time the Agreement is entered into, unless the actual price offer is made at that time.

2.4.2

Notwithstanding clause 2.4.1, in all regions where the relevant Agreement requires the price to be agreed between the parties, any winegrape price offer required under the Agreement must be made:

- a) if the winegrape purchaser undertakes a pre-vintage vineyard inspection prior to making a final winegrape price offer - as soon as practicable and, at the latest, prior to the anticipated harvest date for those winegrapes; and
- b) in all other cases - at least 10 Business Days prior to the anticipated harvest for those winegrapes.

2.5

Price Adjustment

2.5.1

Any provision for price adjustment must be clearly spelt out and specify in a transparent manner any bonuses or penalties and the mechanism(s) used to determine bonuses/penalties.

2.6

Terms of Payment

2.6.1

The terms of payment are to be clearly stated and, unless otherwise agreed by the parties to the Agreement, shall be consistent with the industry standard of:

2.6.1.1 1/3 at the end of the month following the month of delivery;

2.6.1.2 1/3 at the end of June; and

2.6.1.3 balance at the end of September of the year that the first payment commenced.

2.6.2

The payment terms for any price adjustment or payments based on wine assessment shall be specified in the Agreement.

2.6.3

Any penalties for late payments shall be stipulated in the Agreement.

2.7

Tonnage and Vineyard Details

2.7.1

The Agreement must state whether the amount of winegrapes to be purchased is "area-based" or "specified tonnes" and must stipulate the area and/or the tonnes as the case may be.

2.7.2

The Agreement must clearly describe the winegrapes to be purchased.

2.7.3

Where relevant, the Agreement must specify the vineyard details such as patch/block number identification, identification of clones and rootstocks when required, or a vineyard map showing vineyard details for the vines to which the Agreement pertains.

2.8

Winegrape Standards, Assessment and Harvest

2.8.1

The Agreement must state any quality standards which apply to the winegrapes being purchased, including specifying any minimum requirements for maturity, purity and condition, relevant to the region and variety.

2.8.2

The Agreement must describe any method for vineyard or weighbridge winegrape assessment which will apply under the terms of that Agreement if that method is directly inconsistent with the methods described in "Winegrape Assessment in the Vineyard and the Winery, compiled by Wendy Allen" (as amended from time to time and endorsed by WGGA and WFA).

2.8.3

The Agreement must specify the process for determining the harvest time(s) for the winegrapes.

2.9

Delivery and Freight

2.9.1

The Agreement must state the delivery point for the winegrapes and identify which party bears the costs and associated risks of freight.

2.10

Title in Winegrapes

2.10.1

The Agreement must state when title in the winegrapes passes from the winegrape grower to the winegrape purchaser. The Agreement must also specify the point at which the winegrape purchaser accepts or rejects the winegrapes.

2.11

Force Majeure

2.11.1

If there is a force majeure clause in the Agreement, it must be clearly specified.

2.12

Assignment and Sale of Vineyard

2.12.1

The Agreement must clearly specify any restrictions imposed by the winegrape purchaser on the rights to transfer possession or ownership of the relevant vineyard.

2.12.2

The Agreement must clearly specify any obligations on the winegrape grower upon the sale or disposal of possession of the relevant vineyard.

2.13

Professional Advice

2.13.1

An Agreement must contain a prominent statement that the winegrape grower signing the Agreement should seek independent legal, financial and taxation advice. This statement must appear just above the winegrape grower's signing provisions.

2.14

Dispute Resolution Clause

2.14.1

The Agreement must include a Dispute resolution clause that is consistent with Part 3 of the Code.

2.15

Reasonable Time

2.15.1

A Signatory may only enter into an Agreement with a winegrape grower after providing the Agreement and any Associated Documents to that winegrape grower and allowing the winegrape grower a "reasonable period" to read and understand the document and obtain independent advice before entering into the Agreement. For an Agreement which incorporates an obligation to buy and sell winegrapes from more than one vintage, a "reasonable period" is 15 Business Days from the date of receipt by the winegrape grower. For all other Agreements other than Spot Market Purchases, a "reasonable period" is 7 Business Days from the date of receipt by the winegrape grower. For Spot Market Purchases, a "reasonable period" will depend on the circumstances and may be a relatively short period (for example, less than one Business Day if harvest is imminent).

2.16

Variations

2.16.1

It is recognised that variations to Agreements from time to time may need to be negotiated. Any variation to an Agreement must be:

2.16.1.1 clearly specified, and

2.16.1.2 agreed, confirmed in writing and signed by all parties to the Agreement.

Agreements must not contain a provision which allows one party to unilaterally amend the Agreement without the other parties' written consent to the specific amendment.

2.16.2

A Signatory may only vary an Agreement by providing that variation to the winegrape grower in writing and allowing the winegrape grower a "reasonable period" to read and understand the variation and obtain independent advice before signing their acceptance of the variation. For an Agreement which incorporates an obligation to buy and sell winegrapes from more than one vintage, a "reasonable period" is 15 Business Days from the date of receipt by the winegrape grower. For all other Agreements other than Spot Market Purchases, a "reasonable period" is 7 Business Days from the date of receipt by the winegrape grower. For Spot Market Purchases, a "reasonable period" will depend on the circumstances and may be a relatively short period (for example, less than one Business Day if harvest is imminent).