

# Checklist for growers entering into a grape supply contract

## Why do I need a contract?

Whenever you agree to sell some of your grapes to someone else, and they agree to pay you a certain price for them, you are entering into a contract. A contract doesn't have to be in writing but it is *strongly recommended* that you have a written contract so you can be sure (and can prove) exactly what has been agreed to. This helps if there is a dispute later over the terms of the agreement.

## What should I check before negotiating with a potential buyer?

- ✓ Are they a reputable business?
- ✓ Can you expect that they will be able to pay their bills? (What's their track record?)
- ✓ Are they a signatory to the **Australian Wine Industry Code of Conduct**?
- ✓ What is communication like between you?
- ✓ What involvement are they going to expect in how you grow your grapes?

## What are some tips for effective negotiation?

- ✓ Prepare thoroughly. Know what you have to offer, what it is worth and how much you need to be paid to make a reasonable return.
- ✓ Be professional – ie business-like, respectful and thorough.
- ✓ Keep notes of all the discussions you have – including dates and names.
- ✓ Make sure you understand everything and that you both agree on what every term means.
- ✓ Get language assistance if necessary, so you are negotiating on an equal footing.
- ✓ Don't rush into it! If you have any doubts – take time to think or seek advice. If you are being pressured to sign on-the-spot, it's probably a bad deal for you.

## 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 the contract
- ✓ Exactly what is being offered for sale – ie how many tonnes, from what block, what variety, what quality specifications etc
- ✓ What price – or how will price be determined? What about excess fruit?
- ✓ Payment terms: how and when will you get paid? Are there penalties for late payment?
- ✓ A dispute resolution process

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

- ✓ Is the contract straightforward and easy to understand?
- ✓ Are the terms all fully spelt out – not vague like “fair market price” or “reasonable grounds”
- ✓ Do any variations always require BOTH parties to agree (rather than being at the “sole discretion” of the purchaser)
- ✓ Is there a specified minimum price?
- ✓ Are you protected from penalties in the case of unforeseen and uncontrollable events such as hail, machinery breakdown or serious illness?
- ✓ Does the contract allow reasonable flexibility – eg on how you manage your vineyard or your ability to sell the vineyard?

## What happens if I have a dispute with the purchaser?

A good contract will specify how disputes should be handled. Use the specifications of your contract wherever possible. Good ways to handle a dispute successfully are:

- ✓ Raise any issues immediately with the purchaser and attempt to solve it directly (this is by far the cheapest and quickest option as well as the best for your long-term relationship)
- ✓ Document and keep evidence to support your claim. eg emails, text messages and letters, photos, grape samples, notes including dates of relevant events, meetings or actions taken
- ✓ Engage an independent person to make an assessment – eg in a case of rejection of grapes on quality grounds
- ✓ Use the informal dispute resolution procedure available to growers through the Australian Wine Industry Code of Conduct
- ✓ Explore alternative dispute resolution procedures such as mediation, expert determination and arbitration before going to court

## What happens if I don't get paid?

1. Send a letter of demand outlining in writing the amount owed and the timeframe for payment (eg ten days). Make sure you sign and date the letter.
2. If there is no response, send a second letter of demand outlining a final period for payment (eg 21 days) after which you will undertake winding up proceedings.
3. Make an application to the courts for a winding up order (through a solicitor).

If the business goes into voluntary administration, liquidation or receivership, grape purchasers are unsecured creditors and will only receive payment if all secured creditors have been paid.

## Where can I get more information or advice?

### PUBLICATIONS

*A Guide to Negotiating the Sale of Wine Grapes in the Barossa*

**Barossa Grape & Wine Association** 08 8563 0650

Very comprehensive resource recommended for all grapegrowers. Can be ordered from [www.mybookingmanager.com/grapebooklet](http://www.mybookingmanager.com/grapebooklet) (\$15 for WGGA members before March 2012)

*Contracts made simple*

Published by the Australian Government. Contact 1300 667 850 or [business.gov.au](http://business.gov.au)

*Looking at a Contract?*

Checklist for growers considering entering into a grape supply agreement - originally published by Murray Valley Winegrape Growers' Inc. and available from them or the Riverina Wine Grapes Marketing Board.

WGGA wishes to acknowledge the use of these publications as source material for this checklist.

### WEBSITES

<b>business.gov.au/contractors</b>	(comprehensive information for independent contractors)
<b>wgga.com.au</b>	(Winegrape Growers Australia – see page on Contracts)
<b>acc.gov.au</b>	(information on unfair contracts under Australian Consumer Law)
<b>wineindustrycode.org</b>	(Australian Wine Industry Code of Conduct)
<b>iama.org.au</b>	(Arbitrators and Mediators Australia website)
<b>fedcourt.gov.au</b>	(for information on obtaining a winding up order)
<b>www.asic.gov.au</b>	(information for creditors of business becoming insolvent)

**Independent Contractors Hotline 1300 667 850**  
**ACCC Small Business Helpline 1300 302 021**