

# GRAPE PURCHASE AGREEMENTS: WHY A HANDSHAKE STILL MATTERS

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**Carol Kingery Ritter**  
Dickenson, Peatman & Fogarty  
1455 First Street, Ste. 301  
Napa, California 94559  
ckritter@dpf-law.com  
www.dpf-law.com



# PRINCIPLE #1: NO CONTRACT CAN PREDICT MOTHER NATURE

[http://www.napavintners.com/napa\\_valley/vintage\\_charts.asp](http://www.napavintners.com/napa_valley/vintage_charts.asp)

**Strong Relationships Allow Growers and Buyers to  
Manage Market Pressures and Respond to the  
Challenges of Mother Nature**

# PRINCIPLE #2: DOES THE GRAPE CONTRACT SUPPORT YOUR BUSINESS PLANS?

- What are the parties' exit strategies?
- Can the contract support a marketing goal?
- Can the contract support an agricultural goal?

# **MECHANICS: IDENTIFY THE PARTIES WHO IS YOUR BUYER?**

**IS BUYER A NEW ENTRANT TO THE INDUSTRY?**

**IS BUYER LICENSED?**

A person shall not act as a processor or a cash buying processor unless he has first obtained a license as provided in this chapter or in [Food & Ag Code] Section 56574.

**IS GROWER PROPERLY IDENTIFIED?**

# MECHANICS: CONTRACT TERM

## GRAPE AGREEMENT DISPUTES MOST OFTEN ARISE OVER TERMINATION

The initial term of this Agreement shall commence January 1, 1990 and continue until December 31, 2000. If this Agreement is terminated by either party during the initial term of January 1, 1990 through December 31, 2000, the term will end on December 31, 2005. This Agreement shall continue in full force and effect for each additional harvest thereafter, on a rolling five year basis, unless terminated on or before December 1 of the year prior to each successive five year period.

The initial term of this Agreement is for the 2012 and 2013 harvest years. After the 2013 harvest and before April 1, 2014, Winery and Grower intend to meet in good faith and negotiate an extension to the initial term of this Agreement and to renegotiate the tonnage and price. Notwithstanding, should April 1, 2014 pass without intentions, both Winery and Grower are bound by the term and price of the previous years Agreement for another 2 years.

# TERM LANGUAGE- EXAMPLES

**Look-See**: This Agreement shall be effective as of March 1, 2014 and will continue in full force and effect, unless otherwise earlier terminated according to the terms of this Agreement, until November 30, 2014 .

**Evergreen**: This Agreement will commence on the Effective Date and continue until December 31, 2015 ("Initial Term") and, thereafter, convert to a rolling three-year evergreen term ("Evergreen Term"). On January 1, 2016, and on January 1st of each year thereafter, this Agreement will automatically renew. During the Evergreen Term, either party may cancel this Agreement by giving written notice to the other following completion of the current year's harvest and prior to January 1st of the following year. If a party elects to cancel this Agreement during the Evergreen Term, Buyer must continue to purchase and Grower must continue to supply the Grapes for the three (3) harvests following the cancellation notice. For example, if a party delivers a cancellation notice after completion of the 2016 harvest and prior to January 1, 2017, Buyer must continue to purchase, and Grower must continue to supply, the Grapes for the following 3 harvests in 2017, 2018 and 2019, and following delivery and Buyer's payment for the Grapes from the 2019 harvest, this Agreement would terminate. If, for example, the party delivers a cancellation notice on January 2, 2017, Buyer must continue to purchase, and Grower must continue to supply, the Grapes for the following 4 harvests in 2017, 2018, 2019 and 2020, and following delivery and Buyer's payment for the Grapes from the 2020 harvest, this Agreement would terminate.

# MECHANICS: PRICING

## HOW IS THE CONTRACT PRICED?

The Pricing Mechanism Can Be Used to Shift Farming Risks

-> Per Ton

- tonnage harvested from identified blocks

- fixed tonnage

-> Per Acre

- fixed price for all fruit harvested from identified acreage/ blocks

# DETAILED GRAPE IDENTIFICATION

<b>Varietal</b>	<b>Block</b>	<b>Clone</b>	<b>Rootstock</b>	<b>Estimates Tons</b>	<b>Estimates Tons/ Ac</b>
Chardonnay					
Pinot Noir					
Cabernet Sauvignon					

	<b>Minimum</b>	<b>Target</b>	<b>Maximum</b>
Brix			
Acid			
pH			



# MAP AND DEFINITIONS OF CALIFORNIA GRAPE PRICING DISTRICTS



# USING GRAPE CRUSH REPORT PRICING

## Table 8

Current prices paid to growers, by varietal, district where grown and tonnage, by processors including Brix adjustments and tons grown by processors. ***This is the primary table used for determining percentile prices.***

## Table 10

Current year weighted average prices, by varietal and district, for grapes purchased by California processors. Excludes MOG, defective grapes and grapes produced by processors. ***This is the primary table used for determining average prices paid to non-related independent growers.***

# THE BERRYHILL ACT

Clare Berryhill Grape Crush Report Act of 1976 (Food & Agric. Code §55601.5).

- Requires the processor to report tonnage and pricing to Department of Food and Agriculture.

- Requires all grape purchase contracts to provide for price determination by January 10 following harvest.

- Requires processor to pay for crop within 30 days of delivery unless different payment date set in contract.

- If violated, contract is unenforceable.

# MECHANICS: PAYMENT

## HOW CAN A GROWER SECURE TIMELY PAYMENT?

- **Confirm that Buyer has a CDFA Processor's License**
- **No Free Financing**
- **Never Waiver Producer's Lien Rights**
- **Record a UCC-1**

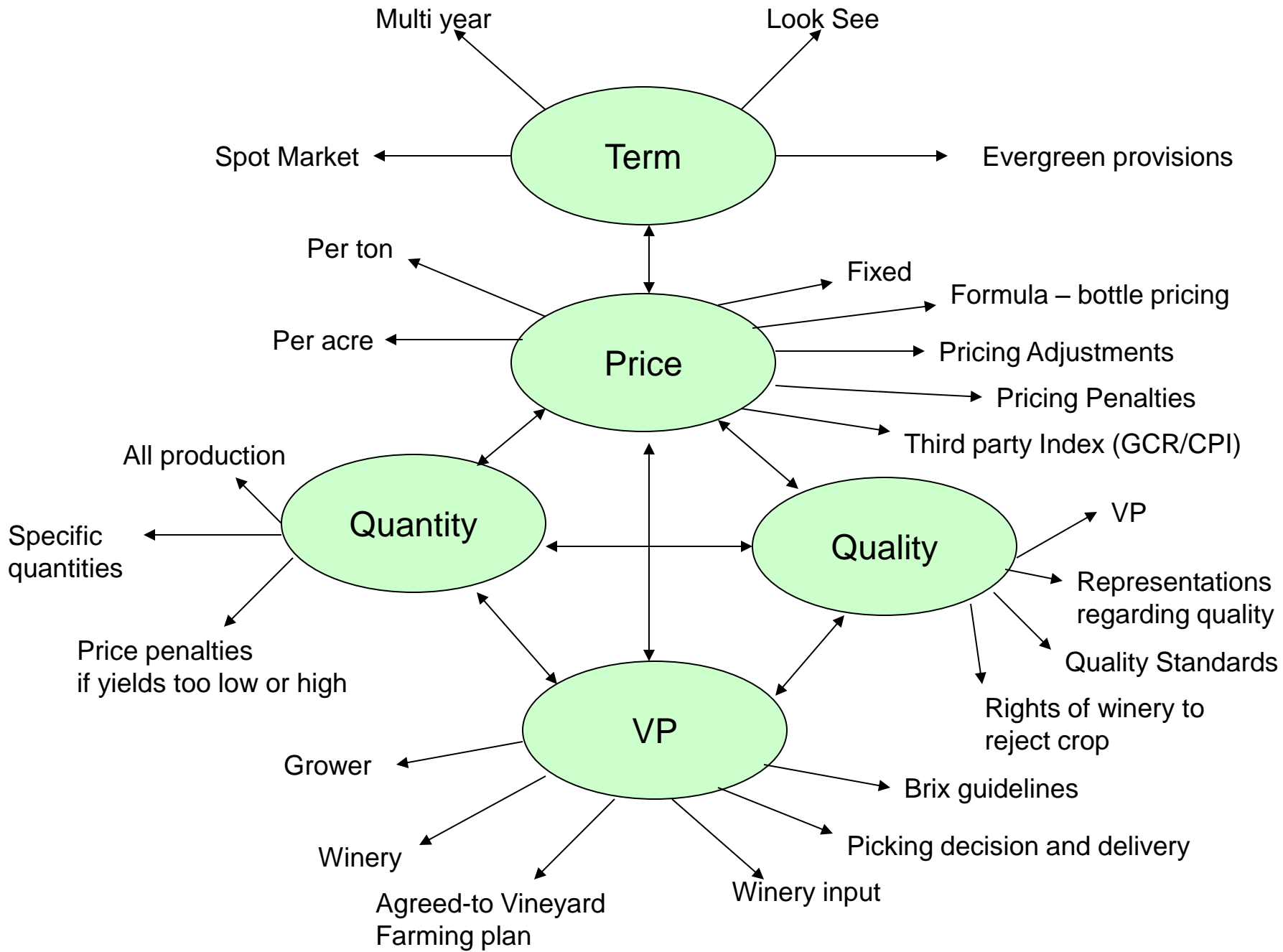
# WHY WOULD A GROWER NEED A UCC-1 LIEN?

## Producer's Lien (Grower's Lien):

- Any farmer delivering crop to an agricultural processor obtains a lien on products made from the crop (Cal. Food & Agric. Code §55631).
- The lien is automatic; no filing required.
- Lien is superior to other liens against the wine.

## BUT Producer's Lien (Grower's Lien):

- Does not follow wine if the wine is sold.
- Can be lost or compromised if the wine is blended with grapes/ wine from another grower.
- Requires filing a lawsuit to enforce and obtain an injunction.
- Only applies to a processor – holder of a CDFA processor's license.



# MECHANICS: ADDED VALUE ESTATE BOTTLED LABELING (27 C.F.R. § 4.26)

- 100% of the wine must come from grapes grown on land owned or controlled by the winery.
- “Controlled” defined as performance of all acts common to viticulture under the terms of a lease or similar agreement with at least three years duration.

# MARKETING AND BRAND-BUILDING OPPORTUNITIES

## Vineyard Designation (27 C.F.R. § 4.39(m))

At least 95% of the wine must be produced from grapes grown on the named vineyard.

- Winery may pay a licensing fee for use of Grower name on label usually in context of a trademark licensing agreement.
- Grower can leverage winery reputation to increase value of the vineyard.
- Winery can capitalize on reputation of famous vineyard property.
- Beware of post-termination name rights.

## Promotional Use of Names

Obtain express consent to use the name of the winery/ vineyard in promotion and marketing.



# CONCLUDING REMARKS

**\*Grape Contacts are as Diverse as the Parties**

**\*Success in the Fiercely Competitive Wine Industry  
Requires Strong Relationships, Tireless Marketing and a  
Little (or a Lot of) Luck**

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