GETTING PAID

TOOLS for WASHINGTON GRAPE GROWERS

A STEP-BY-STEP GUIDE
to Reducing Revenue Loss When Selling Grapes

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TERMINOLOGY
A number of terms are used interchangeably in this document within the specific context of a sale of wine grapes to a winery (or less frequently, an intermediary). To aid the reader:

A WINERY IS ALSO CALLED:
Debtor
Buyer
Producer
Processor

A GROWER IS ALSO CALLED:
Creditor
Seller
Secured Party

DISCLAIMER: Information contained herein does not constitute legal advice and should not be relied on for business or other purposes. The reader is advised to seek the counsel of a qualified professional in connection with the matters addressed in this document.
“I only want to work with people who know how to sell wine.”

DICK BOUSHEY, BOUSHEY VINEYARDS
Purpose of this Guide

This guide provides tools to offset financial and legal risks associated with grape sales, and addresses topics such as contracts, processor liens, and specific protections offered to growers under the Uniform Commercial Code (UCC) and the Perishable Agricultural Commodities Act (PACA).

Audience for this Guide

Organized primarily for growers, this guide addresses contracts, substantive issues involving the grapes, the use of liens and other tools, and best practices. The grower’s legal rights and responsibilities to use various protections in situations of delinquent or non-payment are explained. Additionally, the guide includes an overview of PACA regulations and how PACA provides additional protection should a winery or processor declare bankruptcy.

While the primary audience for the guide is growers, wineries (and anyone else involved in a grape sale transaction) will benefit from better understanding how the transaction should be conducted. Although the focus here is on statutory rights and legal matters, protecting business relationships is also a key objective. Relationships are marked by trust, financial capacity, history and familiarity between parties. Elevating business practices as described in this guide protects these relationships and helps promote the industry’s sustainability. With new and larger players entering the scene, ever-larger transaction volumes, and more sophisticated regulations and other rules, growers have more at stake than ever.

Funding for this Guide

Funded by a grant from the United States Department of Agriculture through its Risk Management Partnership, this effort has been directed toward risk management education to the benefit of growers and wineries or processors. The project commenced with a series of workshops to provide growers with crop insurance education and risk information, including a primer on the relevant regulations. Further input was solicited through in-person meetings conducted in the field at vineyards and wineries.
Before You Sell Your Grapes

IN THIS CHAPTER:

- Due Diligence
- Credit Check
- Established Policies
- Preparing for a Contract

“I write my contracts myself. I got tired of the flowery language.”

TEDD WILDMAN, STONETREE VINEYARDS
Understanding the Context

Many factors influence the business environment for growers and wineries; factors which usually are in flux. The economy plays a role by influencing the pace of wine sales, which affects every transaction up the food chain. A growing industry creates more competition for wineries, and some are better at selling their wine than others.

Wine sales fluctuate year-to-year, but wine grapes are at their best for only a moment in time. The grower cannot wait for the economy to drive up wine sales. Further, unlike other fruit, wine grapes are usually sold directly to the winery, skipping agencies and brokers. In effect, this places the burden for marketing, sales negotiation, and ensuring payment on the backs of growers. Many wine grape growers in Washington grow tree fruit as well, and that experience may make them accustomed to long payment terms. In short, many growers are not fully prepared or aware of the actions they can take to protect their interests with a perishable crop.

Business relationships also wax and wane, and are influenced by personal and professional issues, ambition, and good times and bad within families, friendships, and partnerships. Further, business relationships are secured by legal relationships under common law, by written agreement, and by statutory rights granted under state and Federal laws. Setting mutual expectations in writing ahead of time can help preserve relationships.

The timeliness of payment for goods rendered can be impacted by factors beyond the grower’s control:

- **REVENUE PROBLEMS:** the winery may be experiencing a lag in wine sales, or non-payment by wine buyers or retailers;
- **CREDIT PROBLEMS:** the winery may be dealing with limitations in credit, making it harder to bridge the gap between anticipated revenues and paying the grower at harvest;
- **PERFORMANCE DISPUTES:** there may be legitimate disagreements as to what the contract provides for in terms of the product (grapes) or delivery conditions;
- **CONTRACT PROBLEMS:** there may be problems with contract wording – or there may not be a contract in place to protect or clarify the transaction;
- **LEVERAGE:** a grower may not have leverage over the buyer (winery), particularly in the case of a sloppy – or absent – contract;
- **PRIORITY:** the winery may place the grower low or last if the contract doesn’t specify a higher priority – or if the grower hasn’t taken certain steps to preserve his or her position.
Setting Expectations – Doing Your Due Diligence

All of these factors call out the need for proper due diligence when formalizing a business relationship.

- **Become familiar with your buyer:** ask questions to learn what they’re going through, how their business is faring, how sales are doing, whether they’re having problems meeting their obligations, etc. Taste their wine.

- **What to look for:** do a Google search on your purchaser; look for news articles involving the company or its key owners/investors or leadership team; take note of payment issues affecting other growers - ask around; ask your buyer for referrals and check them; ask your banker about the buyer’s track record.

- **PACA status:** obtain PACA license status information, including complaint and license history, on prospective customers by calling (800) 495-7222 (more on PACA later).

- **Run a credit check:** selling a product on any terms other than cash-on-delivery (COD) amounts to extending your credit to the buyer. Taking the time to do a credit check can help avoid problems down the line. But there are legal obligations; for more information see Appendix A.

- **Check with the State:** the status of a winery’s license to produce and sell wine can be discovered by checking with the Washington State Liquor and Cannabis Board. The Board has a public records website listing all licensed wineries; their Customer Service staff can handle license status inquiries (call (360) 664-1600).

- **Business practices:** your company should have established policies for contracts, payments, and non-payment and a written guide or procedures manual (it doesn’t have to be onerous - just write it down and share it with your staff!) addressing your policies on:
  - bills of lading
  - invoices
  - billing and payment procedures
  - task assignment
  - task execution
  - filing liens
  - other relevant factors

Preparing for a Contract

Most experts would agree that having a signed contract is a must, but in reality, a contract does not have to be complex, lengthy, or costly to produce – but at a minimum it must address several important points. Even a minimal letter or email agreement should accomplish the following objectives:

- protect against either party ‘mis-remembering’ the points of agreement
- clarify the terms of the business deal (price, variety, vineyard source, etc.)
- set product and performance expectations (degrees Brix at harvest, etc.)
- establish payment terms
- address any additional terms requested by the winery that are not covered in law
- balance risk between the parties
- preserve the relationship and integrity of each party
Selling Your Grapes

IN THIS CHAPTER:

➡ Contracts and Agreements
➡ Sample Language
➡ Be Clear

“Only do business with people who do business good.”

TOM WALISER, BERESAN VINEYARD
Contracts and Agreements

Protecting both seller and purchaser, a contract or written agreement does more than anything else to preserve the interests of the parties, even if not authored by an attorney. **To best protect all parties, a contract should be clear on all the details and address the following issues:**

- **IDENTIFY THE PARTIES.** Take the time to know who, specifically, you are contracting with. Businesses come in many forms and types and the person you are dealing with could be involved in any number of ventures. Do the due diligence to find the actual party responsible for funding the transaction, identify their full legal name, and make the contract with that entity.

- **DEFINE THE PRODUCT/EXPECTATIONS.** Specify the amount of fruit involved, and any other details (i.e., a certain block or row) you’ve agreed to in writing. Address vintage, varietal, or any other attribute defining the product being sold, including picking method. State that the winery makes the decision on when to pick the fruit.

- **CHOOSE CONTRACT TYPE.** Decide which method works best for you and your business objectives. The basic options are a tonnage-based contract, where the buyer agrees to buy a certain number of tons at a given price per ton; an acreage contract, where the buyer agrees to buy grapes from a specific area in the vineyard at a set price, regardless of eventual weight or volume (usually preferred for transacting premium grapes); or a combination, such as an acreage contract that defaults to a set per-ton price if the amount of fruit produced falls below a specified floor. Generally speaking, tonnage contracts place the most risk on the grower and the least on the buyer. Acreage contracts reduce risk for growers. An acreage contract with a floor balances the risk between the parties.

- **CONTRACT DURATION.** Select the term of the contract, whether it is evergreen (automatically renews if neither party takes action to cancel), multi-year or annual, with a specific expiration date. Include a timeline for cancelling a contract; a grower will typically want one full harvest cycle’s worth of notice if a buyer will not be buying fruit in the future.

- **WEIGHT.** Identify if third-party weight verification is desired, and if so, specify weigh station and documentation.

- **TRANSPORT.** Identify delivery terms and allocation of delivery costs.

- **PRICE.** Identify the price in terms of the cost per unit, and any agreements on possible pricing adjustments to reflect changed conditions.

- **DATA.** Set forth data requirements the parties agree to share and whether the grower or buyer is responsible for gathering and sharing growing data (i.e., degrees Brix, pH, TA). Regardless of contract provisions, using data to find the optimal time to pick is a team effort; a winery can end up paying the price if they choose poorly. Also identify whether chemical use/application reporting is required and in what format.

- **TERMS.** Set payment terms, which can range from cash on delivery, to a single invoice, to periodic payments (some wineries pay up to 4-6 installment payments). Specify whether interest will be charged on overdue payments, and if so, at what rate.
LIENS AND SECURITY INTERESTS.
Include language stating statutory protections and include your policy with regard to placing liens.

LEGAL FINE-PRINT. To be complete, a contract should also include provisions addressing: penalties/interest, attorney’s fees in the case of dispute, cross defaults, impact on other agreements with the same buyer, delivery receipts and invoices, and key language specific to wine grape transactions.

Sample Contract Language

As noted previously, even though a suitable contract can be written by a non-attorney following these guidelines, this guide is not intended to substitute for the advice and counsel of an attorney with expertise in these subjects. Further, materials in this guide do not include everything that may be necessary to protect the parties. However, sample language is offered, giving the reader examples of what is often included in a grape purchase contract.

Performance standards/good cause language

“Grower may terminate the Agreement and its business relationship with Winery without liability under the following circumstances, which are reasonable and of material significance to the parties’ business relationship and which shall constitute “Good Cause” for termination.”

(a) Failure to receive timely payment for Grapes as provided in this contract within (X) days after Winery’s receipt of written notice and demand for immediate payment.”

Payment Terms Language

“Payment in full is due no more than [XX] days after delivery.”

“Seller will discount any invoice 2% for which (Seller will) receive payment from Buyer in full within 10 days; otherwise all payments are due in full within 30 days.” (2% 10, Net 30).

Penalties/Interest Language

“A late fee calculated at a rate of [x]% per month will be added to any amounts past due more than 30 days.”

Attorney Fees Language

“Any costs for the collection of past due balances, including reasonable attorney fees, will be added to the amount owed.”

“In any proceeding involving a dispute or collection of sums due arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its expenses of litigation, including its reasonable attorney’s fees, expert witness fees, and arbitration and court costs.”

Cross Default/Early Termination Language

“If Buyer fails to make any required payments to Seller within [X] days of the date agreed, Seller may terminate all remaining grape sales obligations under this agreement and any other agreements with the Buyer.”
Security Interest/Liens Language

“Buyer grants to Seller a continuing security interest in the grapes, any and all grape juice and wine into which the grapes are commingled or processed, and the products and proceeds of the foregoing. Seller may have certain other statutory rights to enforce payment by Buyer, including but not limited to an [Oregon Agricultural Produce Lien - or a Washington Wine Producer’s Lien or Processor’s Lien] and a claim against the statutory trust created by the Federal Perishable Agricultural Commodities Act.”

Security Agreement Language

“Processor [or Buyer] grants Grower a continuing security interest in Processor’s inventory of grapes and products (including work in progress), now existing or later acquired, in order to secure full and timely payment as required by this Agreement.”

Be Clear

As noted, a contract is the best way to preserve the interests of both parties, but clear and consistent communication is also essential.

An example of clarity is the use of an annual allocation plan. The wine business is always evolving, as varietals come in and out of favor, or as the public’s (or a winemaker’s) palette changes. Thus, multi-year contracts may not provide the flexibility desired by the parties. A contract can be written to provide the main parameters and other important provisions, but also allow for an annual process to modify exactly what grapes the buyer wants and under what conditions and price. Some growers supplement their existing contracts with an exchange of emails early in the season specifying the grapes, price terms, etc.; a reply mail is considered evidence of agreement. Several growers employ a more detailed annual allocation or assignment plan, specifying: variety, block, acres, price (by ton or acre), pick method, specific chemical ranges (i.e., degrees Brix, or total acidity) and additional notes. This document is exchanged early in the season. As an added benefit, with this tool, winemakers can anticipate the number of bins and the fermenter sizes they will need.

A checklist for contract preparation and a sample contract template is included in Appendix B. The reader is reminded that this example may not address all that is needed for any specific transaction.
“A frequent problem in our industry is when the weight of delivered fruit differs from the contract.”

MIKE WILLIAMSON, PRECEPT WINES
Once a contract or agreement is in place, both parties can focus on their businesses. At harvest, both parties are focused on timely delivery of quality grapes – and crush!

**Bill of Lading/Invoice**

Harvest is also the window within which the grower must be most careful about producing the correct paperwork and doing so on relevant deadlines. Confusion often arises as to the difference between a Bill of Lading and an Invoice (or for the need for a Bill of Lading). A Bill of Lading is **EVIDENCE OF DELIVERY** of product per the terms of the agreement and always “stays with the fruit” until its final delivery destination. An invoice is sent to the purchaser and **PAYMENT TERMS** consistent with the contract.

**A BILL OF LADING IS LIKE A RECEIPT** - it is an acknowledgement of the receipt of goods. The grower (or buyer) either transports grapes to the winery personally or contracts with a third party to deliver; either way, the grapes leave the vineyard with a Bill of Lading, and it stays with the fruit until satisfactorily delivered. If self-delivering, the grower prepares the Bill of Lading and hands to the winery at delivery, retaining a signed copy as evidence the grapes were property accepted for delivery. If using a third party to deliver, the grower obtains a copy of the Bill of Lading from the driver as evidence the grapes have been handed off; the driver then obtains a signature from the winery indicating time and conditions of delivery; a copy of that goes back to the grower.

A Bill of Lading specifies the quantity and type of goods being transported, as well as the final destination and the means by which the fruit will be transported. In many cases, the bill of lading reiterates contract details such as payment or other terms, including what to do if the goods are delayed, damaged or in the wrong quantity upon arrival. A **sample Bill of Lading is provided in Appendix C.**

**INVOICES** may look similar to Bills of Lading, but serve different purposes. An invoice is a document provided by the seller to the buyer in product transactions or other economic exchange activities. It is also an important business voucher for taxpayers in commercial activities; invoices serve as a record for tax purposes to back up accounting figures and can be marked to evidence payment in full if requested by a buyer.

**Bill of Lading must include:**
- Sender address
- Delivery address
- Quantity of product (and where weighed)
- Means of transport
- Required delivery time or window
- Condition of grapes upon delivery
- Signature of receiver upon delivery

**Invoices should follow established best practices including:**
- Itemization of goods sold (or services provided)
- Transaction details (dates, price, quantity)
- Total charge and payment terms
- Interest/attorney’s fees, or “the fine print”
- Regular reminder statements
Potential Delivery Issues

**WEIGHT.** On tonnage-based contracts, determining the weight of grapes is required to demonstrate that the grower has performed his or her obligations. Most vineyards have scales on-site and weigh prior to transport; they must have these scales certified regularly to remain accurate. In other cases, the grower may not wish to maintain a scale, or a buyer (and grower) may wish to have the fruit weighed by an independent third party.

Weight also can become an issue if the fruit hangs on the vines too long. A winery’s capacity to process fruit is impacted by the timing of grape ripening. Sometimes multiple varietals ripen at once, and the winery has to delay picking until after the fruit is past its peak. If left on the vine past peak ripeness, the fruit loses volume, and the eventual delivered weight may be below the contracted amount.

In this type of situation, it was the winery’s decision not to pick that resulted in lower weight; the grower is not at fault and rightfully can expect payment. At the same time, the winery has less fruit with which to make and sell wine, although they can add water during the process to restore volume. The parties have to find a way to resolve the situation. An acreage-based contract would best protect the grower in this situation. An acreage-based contract with a floor, specifying a minimum tonnage of fruit, protects both the grower and winery in this type of situation. This eventuality should be considered when crafting a contract.

**VERIFYING WEIGHT.** Many growers and wineries use their own scales to weigh fruit as it leaves the vineyard or arrives at the winery. Frequently, weights differ, due to equipment. Proper installation and maintenance and regular certification of devices can help to avoid discrepancies. The Washington Department of Agriculture’s Weights and Measures Program certifies weigh scales. More information can be found at [http://agr.wa.gov/inspection/weightsmeasures/info_own_operate.aspx](http://agr.wa.gov/inspection/weightsmeasures/info_own_operate.aspx).

If independent, third-party weight verification is desired by the parties, certified commercial weigh stations are located throughout the state. A listing of weigh stations certified by the state is included in Appendix D.

**Lien Obligations/Actions**

Delivery also triggers key contract terms for payment and timelines in the lien and PACA Trust process; further, the rules vary by state (reference Appendix E).
“If you’re not paid on time, you have just become a source of funds for the winery - essentially, you’re their bank.”

BILL SHIBLEY, NORTHWEST FARM CREDIT SERVICES
Mileposts

Thinking holistically, the route to avoiding problems has several potential mileposts, each increasingly formal:

1. Good contract
2. Effective invoices
3. Calls and letters
4. Perfected lien or trust rights notice
5. Lawyer demand letter
6. Litigation

As has been emphasized, having a good contract is the best place to start in securing interests and preserving business relationships. And properly noticing buyers, via invoice language, of UCC and PACA trust rights is essential. But even with those protections, payment sometime does not occur, and a grower has to take additional steps to get paid.

Sample Letter Language

From the Seller/Grower:

“[insert state] law provides for a lien to attach for non-payment of agricultural products as of the date those products are delivered. Unless payment is received, notice of this lien must be filed within [XX] days of the date payment was due in order to protect our priority position for collection. The statute also requires that other secured creditors (including X) be notified of our agricultural lien.

... We would welcome a swift resolution regarding the outstanding balance due before we are required to file the lien and notify your other creditors.”

If that doesn’t do it:

[From your lawyer] – “We hereby demand that the entire past-due balance in the amount of $_________ be immediately paid by delivery to: [Grower address]. If [Grower] does not receive full payment by ____________, we will pursue formal legal action to collect the entire amount, including interest and attorneys’ fees.”
Sample Invoice Language

**UCC Security Agreement:**

Processor grants Grower a continuing security interests in Processor’s inventory of grapes and products (including work in progress), now existing or later acquired, in order to secure full and timely payment as required by this Agreement.

**PACA Required Language:**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5c of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499d(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.
In Case of Non-Payment:
TOOLS TO AID THE GROWER/WINERY

“In this chapter:

- Uniform Commercial Code (UCC) Financing Statement
- PACA
- PACA Trust Notice
- Terminating the Lien

“Non-payment for grapes is by far the biggest source of problems we hear about at WAWGG.”

VICKY SCHARLAU, 
Executive Director, Washington Association of Wine Grape Growers
In addition to contractual protections, wine grape transactions also are protected by state and Federal statutes. Grape growers should carefully assess their contracts and understand their rights under state and Federal laws to insure they are adequately protected in the event of late or non-payment.

Understanding Liens

Many states, Washington included, offer an agricultural producer lien to protect growers who deliver produce to buyers (for an overview of wine grape security interests and liens, please see Appendix C). Your banker will appreciate that you took this step if legal assistance should become necessary!

What is a lien? A lien is a form of security entitling the producer to recover costs from the purchaser in the event of non-payment. Issuing liens is a common practice by those who lend money, and are used extensively in the construction field.

WHAT DOES A LIEN DO?

- Creates a security interest in grapes that have not yet been paid for
- Gives the grower a priority place in line for when late payments begin to be processed
- Creates a public notice - and gets the attention of the purchaser’s banker; in fact, their banker will most likely ask about it and help assure your lien gets paid

DIFFERENT STATES provide a process for protecting growers in the case of non-payment.

**Washington:**
- Tools are a Processor Lien and a Wine Producer Lien
- UCC-1 must be filed within:
  - 20 days of the payment due date when using a Processor Lien
  - 60 days of the payment due date when using a Wine Producer Lien
- Liens provide priority over other secured creditors
- Expires after 12 months

**Oregon:**
- Tool is an Agricultural Produce Lien (APL)
- APL must be filed within 45 days after the final invoice due date
- Secures grower priority IF other secured creditors are notified within 20 days
- Expires in 225 days

**California:**
- Tool is a Producer Lien
- No filing is required for priority
- Lien provides priority over other secured creditors
- Expires in two years if a written contract does not specify otherwise
In some cases, invoices are required to also include specific language created for transactions subject to perishable agriculture commodities laws; see p. 17 for more information on PACA, the Perishable Agricultural Commodities Act of 1930.

A lien customarily attaches to all agricultural produce, whether in raw or processed form, and entitles the grower to recover money from everything the winery made with the grapes; this means that juice, wine in casks and bottles, and the winery’s own accounts receivable are all available to help settle a non-payment. The lien attaches on the date the grapes are delivered to the producer (buyer). The value of the lien is based on the contract price of the product (or for the reasonable value of the product if there is no contract – another good reason to have a contract).

In order to be able to collect on the lien, however, the grower must file timely paperwork that creates the required notice. Failure to send notice as required causes the grower’s interests to become subordinate to all other interests.

### Using and Perfecting Liens – Uniform Commercial Code (UCC)

Instructions for proper filing of a UCC Financing Statement are illustrated in Appendix F and summarized below.

**STEP 1:** Gather the Necessary Information
- Legal name and address of the winery
- Type of corporate entity
- Grower legal name and address

**STEP 2:** Begin Online Filing
- Go to: https://fortress.wa.gov/dol/ucc/filer.aspx
- Enter contact information for the person who will maintain the filing
- Click ‘Continue to Filing’

**STEP 3:** Enter Debtor Information
- Enter the winery’s legal name and mailing address
- Choose the correct legal entity (in most cases, the debtor/winery will be a corporate entity (Inc., LLC, LP, etc.), and not an individual)
- Click ‘Save Debtor’

**STEP 4:** Enter Secured Party Information
- Enter grower legal name and mailing address (use the legal name of the owner of the vineyard, which may be an individual)
- If the owner of the vineyard is a corporate entity, so note
- Click ‘Save Secured Party’

**STEP 5:** Describe Collateral
- Enter description of collateral
- Amount and type of vinifera grapes to be delivered to debtor
- Debtor’s inventory of grapes received from grower
- Debtor’s accounts receivable owed to grower

As of the date of the filing of the financing statement, the collateral secures a true and bona fide existing debt for the value of the produce delivered as of the delivery date.
STEP 6: Additional Details

✓ Select ‘None’ under Additional Details

STEP 7: Miscellaneous

✓ Select ‘Agricultural Lien’ for Alternative Type
✓ Select ‘None’ for Alternative Designation
✓ Select ‘None’ for Request Search Reports

STEP 8: Review Statement Before Filing

✓ Click ‘Review Record’
✓ Review draft to ensure information is correct
✓ If corrections are needed, return to the filing window and make corrections

STEP 9: Submit

✓ If no further changes are required, click ‘File Initial Filing Statement’

STEP 10: Pay Filing Fee

✓ Enter credit card information
✓ Check for accuracy
✓ Click ‘Submit’

STEP 11: Terminating a Lien

✓ A lien will be valid for one year from the date of filing. If the winery does not pay before the lien expires, the grower will have to take action to foreclose the lien before the year is up.
✓ The lien must be terminated within 10 days of payment.

Upon full payment by the winery, the grower is obligated to formally remove the lien by filing a termination statement on the main filing website; follow directions there for filing a termination statement.

PACA

Another powerful tool for growers is the Perishable Agricultural Commodities Act (PACA). PACA was established in 1930 and protects growers through a code of fair trading practices covering the marketing of fresh and frozen fruit and vegetables in interstate and foreign commerce. It protects growers, shippers, distributors, retailers, and others who deal in commodities by prohibiting unfair and fraudulent practices.

The produce industry is unique in that its products are so perishable that a one or two day delivery delay or improper handling can mean the difference between profit and total loss. Further, the product cannot be retrieved later if the buyer doesn’t pay. By spelling out the responsibilities of all parties, PACA promotes prompt marketing of product and protects the rights of buyers and sellers in the event of a contract dispute. For further study of PACA, see Appendices G–I.

The law requires most all buyers and sellers in the U.S. to maintain a valid PACA license. The license costs $550 per year and provides a means of enforcement because it can be suspended or revoked. Growers, however, are exempt from the license requirement as long as they sell only products that are of their own production. Failure to comply with fair trading practices can result in civil monetary penalties, license suspension or revocation. Operating without a license can lead to fines. PACA licensing information is provided in Appendix H.

Examples of unfair trade practices include:

» Failure to pay promptly the agreed prices on fruit that complies with contract terms

» Failure or refusal to account truly and correctly or to make full payment promptly for produce shipped on consignment or on joint account

» Rejecting without reasonable cause produce bought or contracted to be handled on consignment
Failure to deliver the contracted produce in a timely manner and at the price and quality level specified in the purchase agreement
Discarding, dumping, or destroying without reasonable cause any produce received to be sold on behalf of another firm

PACA also provides procedures for resolving disputes outside the legal system, and establishes a trust consisting of a winery’s grape-related assets. If one sells grapes to wineries, the PACA trust provides financial security in the event the winery files for bankruptcy or goes out of business. If a winery goes bankrupt, growers that have preserved their trust rights can recover money owed to them before trust assets are made available to general creditors (including banks). However, the grower must add specific language on the invoice (see further information on page 19).

Growers licensed under PACA can protect their trust rights in two ways:

- By giving notice to debtors on their invoices, or
- By mailing a letter of trust notice to the buyer (see Appendix I for a sample notice)

Growers who choose not to be licensed or those who opt not to include statutory invoice language can file a letter expressing their “intent to preserve trust benefits;” this notice must include the following:

- Names and addresses of the seller, commissionable merchant/agent (if relevant), and the buyer
- Date of the transaction and the commodity involved
- Invoice price and payment terms
- Amount past due and unpaid

Notice must be given within 30 days from the date payment was due (or from when a timely payment was dishonored; for example, if a credit card is declined or the check bounces).

**PACA Considerations**

- An exemption exists for grower-only sellers (i.e., growers who only sell their own fruit)
- Assumes payment terms will be 10 days - longer terms must be spelled out in contract; contract cannot specify longer than 30 days
- To preserve rights, the grower must either file a notice within 30 days or include statutorily-required language on the invoice (see Sample Invoice Language below)
- PACA creates a statutory trust – the grower (beneficiary) has priority in trust assets held by the winery (grapes, wine, and accounts receivable)

**PACA Invoice Language**

If the transaction meets the considerations listed above, the grower must include the language provided on page 17.

If a grower has preserved their PACA trust rights but after these steps still gets no response from the winery, the PACA trust helps them to get paid.

After a grower properly preserves its rights under the PACA trust provision, the winery is deemed by Federal law to hold the proceeds from the resale of that product ‘in trust.’ A grower can file an action in the U.S. District Court seeking to enforce payment under the contract. Typically a trust enforcement action seeks a temporary restraining order on the bank assets of a winery until the first creditor (the grower) is paid. Many produce sellers have found this a very effective tool to recover payment.

As a reminder, further information on PACA can be found in Appendices G through I.
How to Credit Check Prospective Customers

SOURCE | Stephanie Meier, Attorney-at-Law, Stoel Rives
How to Credit Check Prospective Customers

Because selling a perishable product on terms other than COD in effect extends credit to the buyer, it is best practice to check the prospective customer’s credit history before entering the relationship. A bad credit history can indicate that the purchaser may not repay in a timely fashion, or worse, default on the debt completely. With a credit check, you can gauge the level of risk involved in extending credit — and decide whether the benefit of extending credit is worth the risk.

Evidence of bad credit doesn’t have to end the relationship, however. You can always consider an alternate payment strategy, like paying up-front. A credit check informs your approach.

Financial and legal experts say to follow these steps to get the most out of your credit checks:

1. **RUNNING A CREDIT CHECK: HAVE A PERMISSIBLE USE**

The Fair Credit Reporting Act dictates what constitutes a permissible use for obtaining credit reports: in connection with a credit transaction; employment purposes; underwriting of insurance; professional licensing; account review or other legitimate business needs.

Credit checks are common for landlords who are screening potential tenants; some companies also use them before entering into long-term financial contracts with clients.

2. **RUNNING A CREDIT CHECK: GET PERMISSION**

A person or a business’s credit history is private. Federal law requires you always disclose when you are seeking to run a credit check on someone. You need to get their permission in writing. An efficient way to get permission is to have the other party complete a credit application. A credit application generally includes:

- Business name and DBA names
- Name of owner(s)
- Business structure: Sole proprietor, LLC, C-Corp, S-Corp, or Nonprofit
- Contact information, such as: address, email, phone and fax
- Taxpayer ID number or social security number
- Number of years in business
- Trade references
- Bank references
- The amount of credit requested
- An authorization to access a credit report
3. RUNNING A CREDIT CHECK: FIND A SERVICE TO USE

Once you have permission, seek out one of the several credit-reporting agencies and websites, including the three main reporting agencies: Equifax, TransUnion, and Experian, or a credit agency like Dunn & Bradstreet. There is generally a fee involved. Alternatively, you can ask the credit applicant to provide a copy of their credit report with their completed application.

Checking credit is an important step before issuing credit, and allows you to make an informed decision about the level of risk associated with extending credit to the person or business. Don’t skip this important step, or you might be more likely to need help from a debt collection agency in the future.

4. RUNNING A CREDIT CHECK: INTERPRET THE RESULTS

Simply having a credit report is not enough – you want to be able to understand the report’s findings and determine if anything you might see would be a potential deal-breaker for your business. This starts with having a sense going in what will be your standards for weighing the results. The report may include information on judgments, collections accounts or business liens that can provide you with details on how the company transacts business.

If you go through one of the main credit reporting agencies, you’ll receive a document that is straightforward and easy to understand. Most use a ranked system: such as a rating of one is the best and means debt is paid on time, all the time; a nine means tons of bad debts and late payments.

Financial experts warn against jumping to a conclusion, no matter what the report says. Up to 75 percent of all reports contain incorrect information, from the wrong address to inaccurate bankruptcy details. Also, it is important to allow the subject of the report to respond to any problems identified. They should be able to authenticate any debt payment plan or other major financial points appearing on the report.

In essence the credit report should be the start of a conversation, not the end. There are good reasons as to why a particular account is not paid on time. And there may be ways to structure the payment terms to allocate risk to each party’s satisfaction. A credit report is an important step in formalizing a business relationship build on open communication.
Contract Preparation Checklist and Sample Contract
WHEN DO I NEED A WRITTEN CONTRACT AND WHY?

CHECKLIST OF QUESTIONS TO ANSWER:

1. If You Answer YES To Any Of The Following Questions, You Should Consider a Written Contract And May Be Required To Have One.
   - Are there two or more parties involved?
   - Are the parties promising to do or not to do something?
   - Does the promise encompass time in excess of one year?
   - Does the promise involve a guarantee of the debts of another?
   - Does the promise involve a sale of goods over $500?
   - Does the promise involve the sale of an interest in real estate?

2. Why Do I need A Contract?
   - Written contracts provide good evidence of what was agreed to between all parties. In addition, the Statue of Frauds requires that certain types of contracts must be in writing to be enforceable.
     - To be performed in a period exceeding one year.
     - Guarantee of the debts of another.
     - Sale of goods over $500.
     - Sales of an interest in real estate.
     - The contract is a tool for achieving business objectives.
       - Good pricing and terms.
       - Good value to the other party.
       - Fair (i.e. both parties are satisfied).
       - Does not create adversary parties.
       - Clear understanding of the parties’ agreement.

3. What Questions Do I need to Answer As I Prepare the Contract?
   - What is the business risk the contract is intended to address?
     - Is the risk internal or external?
     - What is the probability of the risk?
     - What is the exposure to the risk?
   - What is my plan for mitigating the risk?
     - Will a contract be the vehicle for managing/minimizing the risk?
     - Do I want to share or shift the risk involved?
     - Will the contract allocate the risk to the party best able to control or manage the risk?
   - With whom am I dealing?
     - Have I evaluated the other party/parties?
       - Overall reputation
       - Reliability
       - Ethics
       - Financial health
     - Have I considered contracting with alternative parties?
     - Will a contract create or lead to a long-term relationship?

Special thanks for their contributions:
   - Geoffrey G. Revelle, Stoel Rives, LLP, Seattle, Washington
WHAT ARE THE COMPONENTS OF A GOOD CONTRACT?

CHECKLIST OF QUESTIONS TO ANSWER:

1. Is my contract in writing?
   - Written contract provides good evidence of what was agreed to between all parties.
   - Statute of Frauds: Certain types of contracts must be in writing to be enforceable.
   - Is the contract clear and complete?
   - Are the industry terms of art defined so that a judge who is unfamiliar with the business can understand the contract?

2. Does the contract address all that it could and should?
   - Have all the what-if scenarios been addressed and answered?
   - Does the contract cover more than the most likely or hoped-for outcomes?
   - Does the contract cover potential disagreements — and identify a process for seeking resolution?
   - Does the contract say what I intend for it to say?

3. Have the parties been accurately identified? Does each party have a legal entity and is it being used?

4. Have I considered applying for a Grower’s License?

WHAT SHOULD I INCLUDE IN A GRAPE SALE CONTRACT?

1. Vendors
   - Who is the purchaser of the grapes?
   - Who is the seller of the grapes?
   - Is there to be a vineyard designation?

2. Purchase/Sale of grapes
   - Which grapes are involved in this transaction?
   - Vineyard designation
   - Block designations
   - Varieties
   - What is the maximum/minimum quantity to be purchased/sold?
     - Stated amount
     - Entire output of grower
     - Output of grower up to a cap
   - What are the quality standards for the items being transacted?
     - Measurable factors (e.g. sugar content, acidity)
     - What are the sampling procedures?
     - Who has authority to conduct the sampling and measurements?
     - When will measurement take place?
     - What are the grounds for rejection?
   - What are the fruit standards?
     - To what extent do either/both parties have a say on cultural practices? Am I excused for force majeure (i.e. events that occur outside the control of the grower)?
• Crop drop issues
• Who has harvest authority – date, procedures?
• How will maturity be defined?
• What are the guidelines for MOG (materials other than grapes) and leaves?

3. Price (fixed or formula)
• How is price to be determined (e.g. fixed dollars per ton or formula)?
  • Tonnage.
  • Acreage.
• What adjustments are allowable for quality issues?
• When will the seller be paid?
• Will interest be accrued and paid if payment is not received when due?
• Are there taxes involved?

4. Form of Money (e.g. cash)

5. Payment Terms
• Is all or a portion of payment to be made in advance of delivery?
• Is all or a portion of payment to be made at the time of delivery?
• When will the balance of payments be made?
• Will interest be paid when payments are staggered?

6. Transportation and Delivery
• What is the delivery date or window of time for delivery?
• Will advance information be provided to the buyer/seller about grapes’ maturity and expected harvest date?
• How and where will the grapes be delivered?
• Who pays delivery costs?
• At what point will title and risk of loss pass to the buyer?
• How are the grapes to be packaged and handled?
• Who will purchase insurance for what aspects?

7. Duration of contract
• Will the contract be for one sale, one year, or multiple years? (If multiple years, the contract needs to be notarized per the Statute of Frauds).
• What is the value of the contract being long-term? Short term?
• What are the risks of the contract being long-term? Short term?

8. Termination of contract
• Is the contract set up to expire after a set period of time?
• Is the contract set up for automatic renewal? If yes, what are the options for either party to get out of the contract?
• Can the contract be terminated early for breach of contract, if not cured after notice?
• Can the contract be terminated early under any other special conditions?
• Can the contract be terminated early for convenience, if a long notification period takes place?

9. Representations and Warranties
• Does the contract include a statement of fact about the quality and/or title of the goods?
• Express warranty – Is it communicated by affirmation, promise, description, or sample?
• Implied warranty – These warranties are implied in the contract by law.
  • Merchantability – This is implied if the seller is a merchant (i.e. deals in the goods).
  • Title – It is implied that title to the goods is clear.
  • Purpose – It is implied that the goods will be fit for buyer’s particular purpose if such is known in advance.
• Warranty disclaimers – If an implied warranty is being disclaimed, has it been done conspicuously?
• Have remedies been identified should there be a Breach of Warranty?
  • Is a specific remedy defined in the contract (e.g. price reduction)?
  • Can product be rejected?
  • Can product be replaced?
  • Can a party collect for damages? This is typically the default remedy if the contract does not specify another remedy.

10. Liability limitations
• Have consequential damages been excluded?
  • Direct damages refer to the difference in value between what was contracted for and what was received.
  • Consequential damages are more remote and can be significantly large (e.g. buyer’s lost profits from not being able to resell goods).
• Have damages been limited to a specific dollar amount or to a function of dollars spent to date on the contract?
• Has a time limit shorter than the statute of limitations been imposed during which any lawsuit must be brought?

11. Security Interest
• Will the buyer grant the seller a security interest (per Article 9A of the Uniform Commercial Code)?
• With respect to the “issue of perfection,” has a UCC-1 been filed with the UCC Division of the Department of Licensing in the state where the buyer is organized?

12. Indemnifications
• Is there an agreement to/not to compensate the other party for loss or damage, or to pay/not pay a claim brought against the other by a third party?

13. Have boilerplate logistical issues been addressed?
• What is the choice of law?
• Which courts will have jurisdiction?
• Where is the venue of any litigation?
• Who will pay attorneys’ fees?
• Is the contract assignable or non-assignable?
• Can product be substituted?
• Has a merger clause been included?

14. Dispute resolution
• Has a process been identified for striving to reach resolution?
  • Talk first (i.e. before suing)
  • Mediation
  • Arbitration

15. Signature block
• Did everyone sign in a representative capacity (i.e. name and title)?
• Did everyone date the contract?
### Potential Risks For Grape Sellers
- Crop failure
- Low quality
- No buyer
- Price falls
- Buyer does not pay
- Unavailability of labor (e.g. inadequate supply, strikes)
- Rising costs of production

### Potential Risks For Grape Buyers
- No sellers
- Low quality
- Price rises
- Wine market falls

<table>
<thead>
<tr>
<th>Key Terms &amp; Acronyms</th>
<th>Definitions/Explanations</th>
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<tbody>
<tr>
<td>Arbitration</td>
<td>An alternative dispute resolution method by which an independent, neutral third person(s) (“arbitrator”) is appointed to hear and consider the merits of the dispute and renders a final and binding decision called an “award.” This mini-trial process is similar to the litigation process as it involves adjudication, except that the parties choose their arbitrator(s) and the manner in which the arbitration will proceed. The arbitration may be agreed to by the parties, may be required by a provision in a contract for settling disputes, or may be provided for under statute. Usually contract-required arbitration may be converted into a legal judgment on petition to the court, unless some party has protested that there has been a gross injustice, collusion or fraud.</td>
</tr>
<tr>
<td>Assignability</td>
<td>The opportunity to transfer to another person any asset such as real property or a valuable right such as a contract or promissory note.</td>
</tr>
<tr>
<td>Contract</td>
<td>An agreement between persons that obligates each party to do or not to do certain things. Technically, a valid contract requires an offer and an acceptance of that offer, and consideration. An “express” contract is one in which all elements (offer, acceptance, consideration) are specifically stated and the terms are stated, as compared to an “implied” contract in which the existence of the contract is assumed by the circumstances.</td>
</tr>
</tbody>
</table>
| **Damages** | The amount of money a plaintiff (the person suing) may be awarded in a lawsuit. Some of the more common types of damages include:  
- Special damages are those actually caused by the injury and include medical and hospital bills, ambulance charges, loss of wages, property repair or replacement costs or loss of money due on a contract.  
- General damages, which are presumed to be a result of the other party's actions, are subjective both in nature and determination of value of damages. These include pain and suffering, future problems and crippling effect of an injury, loss of ability to perform various acts, shortening of life span, mental anguish, loss of companionship, loss of reputation (in a libel suit, for example), humiliation from scars, loss of anticipated business and other harm.  
- Exemplary (or punitive) damages combine punishment and the setting of public example. Exemplary damages may be awarded when the defendant acted in a malicious, violent, oppressive, fraudulent, wanton or grossly reckless way in causing the special and general damages to the plaintiff, but are not allowed in some states, including Washington.  
- Liquidated damages are those pre-set by the parties in a contract to be awarded in case one party defaults as in breach of contract.  
- Direct damages refer to a cash compensation ordered by a court to offset losses or suffering caused by another's fault or negligence.  
- Consequential damages are damages claimed or awarded in a lawsuit, that were caused as a direct foreseeable result of wrongdoing. |
<p>| <strong>Express Warranty</strong> | A written statement or guarantee of good quality of merchandise, clear title to real estate, or that a fact stated in a contract is true. An “express warranty” is a definite written statement. |
| <strong>Implied Warranty</strong> | A guarantee implied by law even when not stated in the contract of good quality merchandise or clear title to real estate, for example. An “implied warranty” is based on the circumstances surrounding the sale or the creation of the contract. |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indemnification</td>
<td>Refers to a guarantee against specified loss that another might suffer. Example: If a contract between two parties has an indemnification clause, then, in settling a dispute over a contract, one of them may agree to pay any claims made by third parties that may arise from the contract, holding the other harmless.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Refers to a court’s authority to judge over a situation usually acquired in one of three ways: 1) over acts committed in a defined territory, 2) over certain types of cases, or 3) over certain persons.</td>
</tr>
<tr>
<td>Mediation</td>
<td>Refers to the attempt to settle a legal dispute through active participation of a third party (mediator) who works to find points of agreement and convince those in conflict to settle their dispute. Mediation differs from arbitration, in which the third party (arbitrator) acts much like a judge and decides the case. A mediator has no authority to make a decision in the matter. The result of a successful mediation is called a “settlement.”</td>
</tr>
<tr>
<td>Merchantability</td>
<td>Refers to a product being of high enough quality to make it fit for sale. To be merchantable an article for sale must be usable for the purpose it is made. It must be of average worth (not necessarily special) in the marketplace and must not be broken, unworkable, damaged, contaminated or flawed.</td>
</tr>
<tr>
<td>Merger and Integrated Clauses</td>
<td>This is the entire agreement between the parties concerning its subject matter. This agreement supercedes all prior discussions and can only be modified in a writing signed by all parties to this agreement.</td>
</tr>
<tr>
<td>Perfected Security Interest</td>
<td>Security interest granted via specifically defined collateral (e.g. cash proceeds, non-cash proceeds, accounts receivable, etc per (RCW 62.9A)). In addition the Uniform Commercial Code (UCC-1) has been filed in the state in which the buyer is organized.</td>
</tr>
<tr>
<td>Remedy</td>
<td>A remedy provides the means to achieve justice in any matter in which legal rights are involved. Remedies may be ordered by the court, granted by judgment after trial or hearing, by agreement (settlement) between the person claiming harm and the person he/she believes has caused it, or by the automatic operation of law. Some remedies require that certain acts be performed or prohibited, others involve payment of money to cover loss due to injury or breach of contract, and still others require a court’s declaration of the rights of the parties and an order to honor them.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Title</td>
<td>Ownership of property that stands against the right of anyone else to claim the property.</td>
</tr>
<tr>
<td>WSLCB Grower’s License</td>
<td>“A grower’s license authorizes the agricultural product grower to contract for the manufacturing of wine from the grower’s own agricultural product, store wine in bulk made from agricultural products produced by the holder of this license, and to sell wine in bulk made from the grower’s own agricultural products to a winery or distillery in the state of Washington or to export in bulk for sale out-of-state.” (RCW 66.24.520 Grower’s license) In the case of a grower ‘repossessing’ wine from a buyer in default of a contract, the license permits the grower to take title to the wine.</td>
</tr>
</tbody>
</table>

Note: additional definitions can be accessed via on-line law dictionaries. Two examples include:
- Duhaime’s Law Dictionary
  http://www.duhaime.org/diction.htm
- Law.com dictionary
  http://dictionary.law.com/

Special thanks for their contributions:
- Geoffrey G. Revelle, Stoel Rives, LLP, Seattle, Washington
- Albert Coke Roth, III, Coke Roth, Kennewick, Washington
SAMPLE DOCUMENT

GRAPE PURCHASE AGREEMENT

1. **Parties.** Agreement made this ___ day of ______________, 2003, by [Grower, Address and Telephone Number] ("Grower") and [Winery, Address and Telephone Number] ("Winery").

2. **Purchase and Sale.** Grower agrees to sell and deliver, and shall sell and deliver, and Winery agrees to purchase upon the terms and conditions set forth in this agreement and the Schedules hereto which are hereby incorporated by reference ("Agreement"), the quantity of grapes which meet the standards set forth herein, of the specified varieties, from the specified blocks of the vineyard commonly known as "*Name* Vineyard" ("Property").

Notwithstanding anything in this Agreement to the contrary, the relationship of the parties hereto is that of independent contractors; nothing herein is intended to create or imply any partnership, joint venture, employment, agency or any other relationship between the parties.

3. **Price.** The price per ton paid for each red grape varietal sold hereunder will be the average price for such varietal for the year of harvest, as shown in the [Name of Publication/Source used to determine price] ("Publication/Source") multiplied by one and thirty-three one-hundredths (1.33), adjusted as described herein. For purposes hereof, the price of grapes purchased hereunder shall be excluded from the calculation of the average price in each harvest year. If, for any harvest year, a red grape varietal is not specifically listed in the Publication/Source, then the price for such varietal shall be the same as the Publication/Source price for "other."

The price per ton paid for each white grape varietal sold hereunder will be the average price for such varietal for the year of harvest, as shown in the Publication/Source multiplied by one and twenty one-hundredths (1.20), adjusted as described herein. For purposes hereof, the price of grapes purchased hereunder shall be excluded from the calculation of the average price in each harvest year. If, for any harvest year, a white grape varietal is not specifically listed in the Publication/Source then the price for such grape varietal shall be the same as the Publication/Source price for "other."

All grape prices hereunder are subject to adjustments as specified in Schedule C, and are sold CIF Winery’s delivery point as further specified below. Grapes shall be delivered in Grower’s containers which shall be compatible with Winery’s receiving equipment.

The sum of the price per ton times the number of tons for each varietal sold hereunder shall be referred to as the “Purchase Price.” For purposes hereof, the price of grapes purchased hereunder shall be excluded from the calculation of the average price in each harvest year.

(a) **Time of Payment.** For each harvest, Winery shall pay to Grower 80 percent of the product of the number of tons of each varietal accepted by Winery hereunder times the average price per ton for such varietals as set forth in the Publication/Source for the year prior to the year of harvest; such payment shall be paid to Grower by December 15 of the harvest year. Within 45 days of publication of the Publication/Source for the harvest year, Winery shall pay to Grower an
amount equal to the Purchase Price, as calculated above, minus the December 15th harvest year payment. If the December 15th payment is more than the Purchase Price, Grower shall refund to Winery any excess payments within 45 days of publication. Any past due balance shall accrue monthly interest, from December 15th of the harvest year, at a rate of one and one-half percentage points above the prime rate per annum charged by Winery’s bank on December 1st of the year of harvest.

(b) **Weight for Payment.** Weight for payment will be determined at a scale certified to be in compliance with the weights and measures standards of the National Institute of Standards and Technology.

4. **Grape Quantity.** Each harvest year, Winery agrees to purchase, from each listed block, the quantity of grapes that meet the specifications and standards set forth in this Agreement, up to the quantities set forth in Schedule A. Winery is obligated to purchase from Grower, at the Purchase Price, only those grapes that meet the specifications and standards set forth in this Agreement.

The maximum yields specified on Schedule A should not be construed by Grower to be the desired target by Winery in all years, and Winery’s recommendation for cropping levels may vary from this amount depending on the climatic constraints of a given harvest year. These limits are for full-bearing blocks (five years or older) with at least 95 percent of the trellis filled; maximum yields for blocks not meeting these requirements may be adjusted downward by appropriate percentages determined by Winery. Such adjustments, if necessary, will be communicated in writing by Winery to Grower on or before August 1 preceding the harvest, and Grower shall follow all such reasonable adjustments and recommendations.

The parties acknowledge that wine grape quality and yield per acre are, after a certain point, inversely correlated, with excessive tonnage resulting in degradation of the grapes and resulting wine product; accordingly, the parties agree that Grower should not receive an incentive to produce crops in excess of the per acre tonnage limits set forth on Schedule A. Therefore, notwithstanding anything to the contrary herein, Grower agrees not to sell, transfer or convey any grapes produced on acres covered by this Agreement to any third party, unless released by Winery. In the event that any yield maximum for a specific block is exceeded and the additional tonnage meets all quality standards set forth herein, Winery will consider purchasing part or all of the additional tonnage at a renegotiated price, but is under no obligation to do so.

5. **Grape Quality.** Grower warrants that the grapes sold hereunder shall be, at the point and time of delivery: (1) whole, sound, fully-matured wine grapes of the stated variety, that have been grown by Grower upon the blocks identified herein in accordance with the best viticultural practices for premium wine grapes, conforming in all respects to the specifications set forth herein; (2) in good and merchantable condition, free from commercial defects, and suitable for the production of premium wine, (3) in compliance with all applicable Federal and state laws and regulations, and (4) not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act ("FDCA").
6. **Rejection of Defective Grapes.** Any container of grapes containing in excess of 3 percent defects by weight will be subject to rejection or to purchase at a negotiated price, at Winery’s option. Defects include, but are not limited to, decomposition or decay induced by fungi or bacteria, damage caused by exposure to subfreezing temperatures, grapes not of the stated varietal, sunburn, raisining, water stress, and breaks in the skin not caused by mechanical harvesting.

   (a) **Pesticides.** Grower warrants there are not in or on said grapes pesticide residues prohibited, or in excess of tolerances established, for human consumption by the FDCA or other applicable law or regulation. Grower shall provide to Winery, upon request, a written record of all pesticide or other applications (compounds, rates, dates, and acres) made to the Property.

   (b) **Material Other Than Grapes (MOG).** Any container of grapes otherwise acceptable containing more than 3 percent MOG by weight may be accepted at a negotiated price or rejected, at Winery’s option. Grower will be liable to Winery for damage to winery equipment caused by MOG. Winery will exert reasonable efforts to prevent damage to its equipment caused by MOG.

   (c) **Notice of Defects and MOG.** Inspection for defects and MOG shall take place at Winery’s designated point of delivery. Winery will give verbal notice of rejection due to defects or MOG within eight hours of delivery and written confirmation of rejection within ten days. Grower may remove rejected grapes from Winery upon Winery’s verbal notice of rejection. Failure of Winery to give at least verbal notice of rejection for excess MOG within eight hours of delivery waives Winery’s right to reject grapes for excess MOG.

7. **Rejection.** Grower agrees that Winery shall have the right to reject any and all grapes delivered or tendered which do not fully comply with the standards set forth in this Agreement. The rejection of any partial delivery or deliveries shall not relieve; the Grower from the obligation to deliver the balance of grapes contracted for herein.

8. **Production/Harvest.** Grower shall, at Grower’s expense, do the acts customary or necessary to the production of the grapes in the manner customarily considered best suited to production of premium quality grapes. Winery reserves the right to advise Grower as to the time and method of harvest as provided herein, but any such advice shall not be binding in any way upon Grower, nor shall such advice subject Winery to liability for any harm or damage caused thereby nor shall it constitute acceptance of the grapes or waiver of any standards or warranties hereunder, unless Winery requests Grower to harvest prior to the grapes having developed to the standards set forth in Schedule B or unless Winery request Grower to delay harvest past the time that the grapes have developed to the standards set forth in Schedule B. Grower shall bear the cost of harvesting the grapes and delivering the grapes to __________________________, or such other __________________________ winery as Winery may direct.

   (a) **Time Of Harvest.** For each harvest year, Winery and Grower shall in good faith discuss a time for harvest of the crop during the regular harvest season that is as close as is practicable to optimal maturity of the grapes for the specified level of sugar content and titratable acidity. Grower shall monitor crop maturity and advise Winery of Grower’s estimate of the time at which the grapes will reach optimal ripeness. If the grapes do not meet the standards set forth
in Schedule B by November 15th of that harvest year then Winery has the right to refuse those grapes.

(b) **Cooperation.** Grower will cooperate with Winery and Winery’s vineyardists and viticultural representatives with respect to production and harvest of the grapes, and will, without limiting the generality of the foregoing, permit such reasonable inspections, sampling and testing and provide such information as Winery may request to evaluate the grapes and the viticultural practices of Grower, but Grower shall have sole responsibility for and bear all risks of farming. Grower will use commercially reasonable efforts to keep Winery informed at all times of all material facts affecting the vineyards, the grapes, and the harvest thereof.

(c) **Delivery.** Grower agrees to deliver grapes to __________________________, or such other __________________________ winery as Winery may direct, as soon as possible after commencement of harvest, and in no case later than 24 hours from the beginning of handpicking or ten hours from the beginning of machine picking. All risk of loss and damage remains with Grower until delivery to, and acceptance by Winery.

(d) **Method of Harvest.** Winery will inform Grower of its preferred method of harvesting by August 1st each harvest year. If Winery does not specify a method of harvest by August 1st, the method of harvesting shall be machine harvesting. Grower will consult with Winery to determine acceptable containers for machine harvesting. Mild steel containers must be painted with food grade paint where contact with fruit is made. If Winery requests handpicking, the Winery shall pay Grower an amount per ton in addition to the Price, such amount shall be agreed upon in writing prior to September 15th of the year of harvest. If no amount is agreed upon then the grapes shall be machine harvested. Any deviation from these specifications must receive prior written approval of Winery before harvest.

9. **Title.** Grower represents and warrants that it is the sole owner of the grapes, that it has the full and unrestricted right to sell them, and that it has not sold, nor will it sell, them to any third party during the term hereof. Winery acknowledges that the grapes for any harvest year may be encumbered by security interests or by other liens securing loans made to Grower for its operating expenses. In such case, Grower and lienor shall deliver payment instructions to Winery, and Winery shall follow such instructions until such time as it receives written instructions, signed by lienor and Grower, to change such payment procedure. Otherwise, Grower shall deliver all grapes hereunder free and clear of all liens or other security interests. Grower will pay all debts secured by a security interest in or a lien on the grapes promptly when due. Grower will obtain or execute all documents necessary or convenient to carry out the purposes of this paragraph, including without limitation subordination agreements, and instruments suitable for recording as public notice.

10. **Force Majeure.** If any party is prevented from performing any of its obligations hereunder by an occurrence beyond its reasonable control such as, but not limited to, acts of God, fire, flood, war, insurrection, government regulations, frost, hail storms, vineyard diseases, raw material shortage, strikes, road closures or road construction or lack of common carrier facilities, then the affected party shall be excused from performance for so long as such occurrence exists. However, the affected party shall exert its best efforts to remove such disability and to perform fully hereunder.
SAMPLE DOCUMENT

11. **Name.** Winery may identify the Property by the name "**Name** Vineyard" on labels as "vineyard designated wine" under regulations of the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms; and Grower agrees to cooperate in such designation and to execute all documents necessary or convenient to carrying out such labeling by Winery. Grower shall retain all rights in the name "**Name** Vineyard" and variations thereof incorporating the name "**Name**" (together, "Grower Marks"). Grower grants Winery a perpetual, limited, non-exclusive license to use the Grower Marks to designate wine made from grapes at least 95 percent of which are grown on the Property and purchased under this Agreement, without fee or royalty or other costs owed to Grower if Winery chooses to do so for labeling and advertising purposes. Winery may not use the Grower Marks as a brand name for wine. Winery agrees that its use of all Grower Marks must be consistent with any reasonable use guidelines of Grower intended to preserve the distinction and quality of goods and services marked with the Grower Marks. Grower and Winery agree to consult concerning such guidelines.

12. **Arbitration.** In the event of any dispute between the parties concerning the interpretation or application of this agreement, the parties shall endeavor to resolve the dispute between themselves. If any dispute is not settled within 30 days after it arises, either party may submit the matter to ________________________ Court for appointment of an arbitrator. Unless otherwise agreed, the arbitration shall be conducted under procedures recommended by the American Arbitration Association. The decision of the arbitrator shall be binding and final. No duty of performance under this agreement shall be diminished or suspended on account of any pending arbitration, it being recognized that failure to deliver or accept delivery of grapes would cause irreparable harm of a value that would be difficult or impossible to assess. The parties agree that any dispute under this Agreement may be submitted to arbitration regardless of the issues involved or the amount in controversy. The arbitrator shall have authority to award expenses and attorney’s fees to the prevailing party. The arbitrator shall not have the power to amend clear provisions of this Agreement.

13. **Term.** The term of this agreement is ten harvest years, beginning January 1, 2001, and expiring December 31, 2010, with the first delivery of grapes beginning in harvest year 2001. If written notice to terminate is not given prior to December 31, 2007, of harvest year 2007, pursuant to the terms of this Agreement, the term shall automatically extend for one additional harvest year. Any extended term of this Agreement may not be terminated except by written notice of intent to terminate given by one party to the other, which notice shall not be effective until December 31st of the third harvest year following the year such notice was given. For example, if written notice to terminate is given on January 20, 2008, this agreement terminates on December 31, 2011.

14. **Termination.** This Agreement may not be terminated before December 31, 2010, unless the Winery exercises its right to purchase the Property pursuant to that certain option to purchase given to Winery by Grower dated of even date herewith, except that if one party materially breaches this Agreement the non-breaching party may terminate this Agreement by giving the breaching party written notice of termination, which notice shall not be effective until December 31st of the first calendar year following the year such notice was given. Material breach shall include, among other things, failure to make payment within 30 days of receipt by Winery of written notice that payment was not received by Grower on the payment due date.
15. *Indemnification by Grower.* Grower shall indemnify Winery against and hold it harmless from all loss, damage, injury, charge or cost (including, without limitation, reasonable attorneys' fees) incurred by Winery in obtaining grapes from third parties to replace grapes not supplied hereunder as the result of (a) the negligent farming of the Property by Grower, or (b) any breach by Grower of a term of this Agreement.

16. *Integration.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous understandings, oral or written. There is no inducement material to the decision of any party to enter into this Agreement that is not set forth expressly in this Agreement.

17. *Governing Law.* This Agreement, and all matters or issues collateral hereto shall be governed by and construed and interpreted in accordance with the laws of the State of [State Name] applicable to Agreements made and to be performed entirely within said state.

18. *Attorneys' Fees.* In any dispute concerning or arising under this Agreement or any transaction relating hereto, the prevailing party shall be entitled to reasonable attorney's fees, whether or not the dispute becomes the subject of litigation.

19. *No Waiver.* Failure or omission by a party to require any performance or object to any breach or default, including without limitation defects in loads of grapes or any part thereof, shall not result in waiver of any undertaking, warranty or duty of a party under this agreement. No waiver of any provision of this Agreement shall waive any other provision of this Agreement.

20. *Successor and Assigns.* This Agreement binds and benefits the successors and assigns of the parties.

21. *Time.* Time is of the essence concerning grape harvest, delivery and payment.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first above written.

GROWER

By: ____________________________
Name: __________________________
Title: __________________________

WINERY

By: ____________________________
Name: __________________________
Title: __________________________
## SCHEDULE A
### MAXIMUM YIELDS AT MATURITY

<table>
<thead>
<tr>
<th>Red Varieties</th>
<th>Block #</th>
<th>Acres</th>
<th>Planting Year</th>
<th>Maximum Tons/Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cabernet Franc</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabernet Sauvignon</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malbec</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merlot</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Syrah</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>White Varieties</th>
<th>Block #</th>
<th>Acres</th>
<th>Planting Year</th>
<th>Maximum Tons/Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chardonnay</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sauvignon Blanc</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<th>Planting Year</th>
<th>Maximum Tons/Acre</th>
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<td></td>
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<td>Cabernet Sauvignon</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merlot</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>White Varieties</th>
<th>Block #</th>
<th>Acres</th>
<th>Planting Year</th>
<th>Maximum Tons/Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chardonnay</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTE: Allowable yields for blocks in their third season (first crop) are 40 percent and in their fourth season (second crop) are 80 percent of the above maximum yields.
SAMPLE DOCUMENT

SCHEDULE B
HARVEST STANDARDS

Minimum standards for ripeness:

<table>
<thead>
<tr>
<th>Variety</th>
<th>Minimum Brix</th>
<th>Maximum T/A g/liter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cabernet Franc</td>
<td>22.5</td>
<td>.9</td>
</tr>
<tr>
<td>Cabernet Sauvignon</td>
<td>22.5</td>
<td>.9</td>
</tr>
<tr>
<td>Malbec</td>
<td>22.5</td>
<td>.9</td>
</tr>
<tr>
<td>Merlot</td>
<td>22.5</td>
<td>.9</td>
</tr>
<tr>
<td>Syrah</td>
<td>22.5</td>
<td>.9</td>
</tr>
<tr>
<td>Chardonnay</td>
<td>22.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Sauvignon Blanc</td>
<td>22.0</td>
<td>1.0</td>
</tr>
</tbody>
</table>

* It is acknowledged that Winery may, from time to time, require Grower to deliver the Grapes at higher brix levels depending on Winery's needs. It is acknowledged by Winery that, if Grapes do not reach the desired brix levels, but do reach the foregoing minimum brix levels, Winery will pay full price for such Grapes.
SAMPLE DOCUMENT

SCHEDULE C
PRICE ADJUSTMENTS

PRICE ADJUSTMENTS: For grapes received below the minimum Brix there shall be a 1.5 percent price reduction for every 0.1 Brix deviation down to 1.0 Brix below the minimum Brix (15 percent reduction) as specified in Schedule B. Payment will be made by calculating the weighted average price accorded to all loads of said variety from the same block that are no more than 1.0 Brix below the minimum. For grapes below the 1.0 Brix deviation, Winery has the option to reject said grapes entirely or to accept some or all of the substandard grapes at a negotiated price subject to postcrush sampling.

PRE-CRUSH SAMPLING: Sampling for acceptance, which terminates Winery's further right to reject grapes for insufficient Brix, shall be made at the time of delivery to the location specified by Winery. If the Brix level is insufficient, a post-crush sampling shall be performed.

POST-CRUSH SAMPLING: Analysis for payment will be made by subjecting the grapes to a post-crush (tank) sampling. Grapes at or up to one brix below the minimum Brix standards will at that time be accorded an adjusted price as specified above.

NOTIFICATION: Winery will verbally notify Grower after delivery and pre-crush sampling of rejection of grapes if grapes are more than one Brix below the minimum standards specified in Schedule B or if the grapes otherwise do not meet the standards set forth in this contract. In the event of a Brix price adjustment following post-crush sampling, Winery will verbally notify Grower of the price accorded the grapes based upon the deviation from the minimum Brix within 48 hours after crushing. In all cases, Winery will give Grower written confirmation of rejection or any price adjustment accorded to grapes within ten days of delivery.

INSPECTION PROGRAM: If Winery institutes at Winery's expense either Federal or State grape inspection programs for the determination of sugar levels, MOG and defects as outlined above, such determinations would become final and binding on both Winery and Grower and would pre-empt testing as outlined above.
Sample Bill of Lading

SOURCE | Anonymous Washington Grower
List of Certified Commercial Weigh Stations
Vehicle Scales in Washington State

Below is a partial list of scale houses in Washington. These scale houses will charge a fee to weigh your vehicle and some will take payment in cash only. Before visiting a scale house, please call them to confirm hours of operation and ask about fees.

If you can’t find a scale house near you on this list, please look in your telephone directory under “scales” or call your local vehicle licensing office for a recommendation.

For full list, go to www.dol.wa.gov/vehicleregistration/scales.html

ADAMS COUNTY LOCATIONS

CJ Cubers
1166 S Highway 24
Othello, WA 99344
360.488.9437

Harvest Fresh Produce
1246 So. Broadway
Othello, WA 99344
509.488.5655

Benton County LOCATIONS

Aggregates West Inc.
80 E Elm Rd
Eltopia, WA 99330
509.297.4336

DelHur Industries, Inc. - Horn Rapids
2935 Kingsgate Way
Richland, WA 99354
509.371.0682

Kennewick Transfer Station and Recycling
2627 S Ely
Kennewick, WA 99336
509.586.7555

Horse Heaven Hills Truck Stop
101 Merlot Dr
Prosser, WA 99350
509.786.1440

CHELAN COUNTY LOCATIONS

Trout-Blue Chelan, Inc.
8 Howser Rd
Chelan, WA 98816
509.682.2591

CLALLAM COUNTY LOCATIONS

Angeles Concrete Products
76 Buchanan Dr
Port Angeles, WA 98362
360.457.0443

CLARK COUNTY LOCATIONS

Columbia Rock and Aggregate
913 NE 172nd Ave
Vancouver, WA 98684
360.892.0510

JW Public Scales
2901 NW Lower River Rd
Vancouver, WA 98660
360.737.8068

Rinker Materials
8705 NE 117th Ave
Vancouver, WA 98662
360.254.7770
DOUGLAS COUNTY LOCATIONS

BJ's Auto Truck Plaza
100 Rock Island Dr
Rock Island, WA 98850
509.886.0230

FRANKLIN COUNTY LOCATIONS

3 Rivers Potato Services Inc.
911 Selph Landing Rd
Pasco, WA 99302
509.547.8488

Broadway Flying J Truck
2216 E Hillsboro
Pasco, WA 99301
509.547.5561

Harms Pacific Transport Inc.
3220 Glade N Rd
Pasco, WA 99301
509.547.0018

King City Truck Stop
2100 E Hillsboro
Pasco, WA 99301
509.547.0373

Zen-Noh Hay, Inc.
2444 E Dock St
Pasco, WA 99301
509.545.8894

GRANT COUNTY LOCATIONS

George Scales
300 Washington Way
George, WA 98824
509.785.3505

KITTITAS COUNTY LOCATIONS

Broadway Flying J Truck
2300 Canyon Rd
Ellensburg, WA 98926
509.925.6161

Eckenberg Farms Inc.
24064 SW Rd L
Mattawa, WA 99349
509.932.4600

Ernie's Fuel Stops LLC
1810 E Kittleson Rd
Moses Lake, WA 98837
509.765.7370

Whitby AG Enterprise LLC
4820 N Frontage Rd NE
Moses Lake, WA 98837
509.765.3227

Agri-Pac
253 Camelia St
Royal City, WA 99357
509.346.2124

Royal Slope Scales
12837 Rd P SW
Royal City, WA 99357
509.346.2368

Skone & Connors Produce
112 E Evan Hall
Warden, WA 98857
509.349.2391

Greenbank Sand and Gravel
27364 S State Route 525
Coupeville, WA 98239
360.678.4622

Krieg Construction Inc.
70 W Sleeper Rd
Oak Harbor, WA 98277
360.679.4151

Gast County Locations

DOUGLAS COUNTY LOCATIONS

Vancouver Warehouse and Distribution Co.
1101 W 11th Street
Vancouver, WA 98660
360.693.1487

DOUGLAS COUNTY LOCATIONS

BJ's Auto Truck Plaza
100 Rock Island Dr
Rock Island, WA 98850
509.886.0230
Okanogan Seattle Transport
1331 W University Way
Ellensburg, WA 98926
509.962.2005

Wesco International Inc.
691 Badger Pocket Rd
Ellensburg, WA 98926
509.968.9600

WALLA WALLA COUNTY LOCATIONS

Transtate Asphalt
1430 Dell Ave
Walla Walla, WA 99362
509.529.1622

Klickitat County Locations

Mid Columbia Asphalt Company
135 Tidyman Rd
Dallesport, WA 98617
509.767.1103

Spokane County Locations

Central Pre Mix
302 No Park Rd
Spokane, WA 99212
509.536.8344

American Recycling Corp.
6203 E Mission
Spokane Valley, WA 99212
509.535.4271

Central Pre Mix Concrete
N 1902 Sullivan Rd
Spokane Valley, WA 99216
509.534.6221

Bekins Northwest - Spokane
10115 E. Knox Ave
Spokane, WA 99206
509.922.1500

Buchanan Warehouse LLC
115 West D St
Yakima, WA 98902
509.248.6841

For full list, go to www.dol.wa.gov/vehicleregistration/scales.html
Overview:
Wine Grape Security Interests and Liens
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basics:</strong></td>
<td><strong>Washington:</strong></td>
<td><strong>PACA Basics:</strong></td>
</tr>
<tr>
<td>• Must have mutual written agreement about:</td>
<td>• Processor's Lien (RCW 60.13.020)</td>
<td>• Produce Buyer and Seller Licensing (optional for grower-only sellers)</td>
</tr>
<tr>
<td>o Debt secured</td>
<td>• Wine Producer Lien (RCW 60.13.038)</td>
<td>• Fair Trading Regulations</td>
</tr>
<tr>
<td>o Collateral identified (wine inventory, A/R?)</td>
<td>• Both liens cover inventory and A/R</td>
<td>• Prompt Payment Presumption: 10 days; longer must in writing.</td>
</tr>
<tr>
<td>• Perfected by filing UCC Financing Statement</td>
<td>• File Processor's Lien within 20 days after default. File Wine Producer Lien within 60 days after default.</td>
<td>• Statutory Trust for Payment</td>
</tr>
<tr>
<td>• Priority depends on timing of perfection for each category of collateral</td>
<td>• File two notices, one for each type of lien.</td>
<td>• <a href="http://www.ams.usda.gov">http://www.ams.usda.gov</a> (Search “PACA”)</td>
</tr>
<tr>
<td>• Effective for 5 years</td>
<td>o Use UCC-1 form; check “agricultural lien” inbox 6.b.</td>
<td><strong>PACA’s Statutory Trust:</strong></td>
</tr>
<tr>
<td><strong>Sample UCC Security Agreement Language:</strong></td>
<td>o Attach UCC 1Ad form, to set out additional facts required by RCW 60.13.040(2))</td>
<td>• Agreed payment terms not &gt;30 days</td>
</tr>
<tr>
<td>“Processor grants Grower a continuing security interest in Processor’s inventory of Grapes and Products (including Work in Progress), now existing or later acquired, in order to secure full and timely payment as required by this Agreement.”</td>
<td>o Forms are at <a href="http://www.dol.wa.gov/business/UCC/uccforms.html">http://www.dol.wa.gov/business/UCC/uccforms.html</a></td>
<td>• Preserve rights by notice within 30 days or by invoice language (only if PACA licensed seller)</td>
</tr>
<tr>
<td><strong>Oregon:</strong></td>
<td>• Priority over other secured creditors</td>
<td>• Trust beneficiaries have priority in trust assets: grapes, wine, and A/R</td>
</tr>
<tr>
<td>• Agricultural Produce Lien (ORS 87.700)</td>
<td></td>
<td><strong>PACA Invoice Language:</strong></td>
</tr>
<tr>
<td>• Inventory and proceeds</td>
<td>• Expires after 12 months</td>
<td>“The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5c of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.”</td>
</tr>
<tr>
<td>• File APL-1 within 45 days after final due date</td>
<td><strong>Filing a UCC-1 Financing Statement in WA:</strong></td>
<td><strong>PACA Trust Notices Must Include These Provisions:</strong></td>
</tr>
<tr>
<td>• Priority if other secured creditors are notified within 20 days.</td>
<td>• Key items to complete:</td>
<td>• Debtor/Merchant information</td>
</tr>
<tr>
<td>• Expires in 225 days</td>
<td>o Debtor information</td>
<td>• Transaction Terms</td>
</tr>
<tr>
<td></td>
<td>o Secured Party information</td>
<td>• Amount Due</td>
</tr>
<tr>
<td></td>
<td>o Description of Collateral</td>
<td>• Reservation of PACA Trust Claim</td>
</tr>
</tbody>
</table>

**THIS IS NOT LEGAL ADVICE.** Please contact us with questions or for an electronic version with live links—Jesse D. Lyon of Davis Wright Tremaine LLP, jeselyon@dwt.com or 503.778.5268.
Filing a UCC Producer Lien Statement
Filing a Producer Lien Statement in Washington
Step 1 – Gather information

• **Debtor name and address:** Debtor is the entity that is buying the grapes and producing the wine; this will be a winery, and you will need the winery’s exact legal name (Ex: ABC Winery, LLC)
  - If Debtor is a corporate entity, confirm **type of entity** (Inc., LLC, LP, etc.)

  Look up the winery’s corporate entity information:
  Confirm winery is licensed by looking up license status here:
  [http://bls.dor.wa.gov/LicenseSearch/](http://bls.dor.wa.gov/LicenseSearch/)

• **Secured party name and address:** Secured party is the entity that grew and is selling the grapes; you will need the grower’s exact legal name
Step 2 – Begin online filing

• Go to https://fortress.wa.gov/dol/ucc/filer.aspx (the Washington Department of Licensing UCC filing site)

➤ Enter the contact info for the person who will maintain (and terminate) the filing; usually this will be the same person who is submitting this filing

➤ Click Continue to Filing
Step 3 – Debtor

• Enter the debtor’s legal name you found in Step 1 and its mailing address
Step 3 continued

- NOTE: in most cases, the debtor/winery will be a corporate entity (Inc., LLC, LP, etc.) and not an individual.

• Click **Save Debtor**

Uniform Commercial Code
FILE AND SEARCH ONLINE

FILE AN INITIAL FINANCING STATEMENT

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice.

* indicates required field

**Debtors**

Individual  ○
Organization  ○

*Org. Name
Mailing Address
*City
State **Washington
Postal code
Country United States

Save Debtor  Clear Debtor
Step 4 – Secured Party

- Enter the grower’s legal name you gathered in **Step 1** and its mailing address
  - NOTE: the legal name of the seller/grower of the grapes may be an Individual...

![Secured Parties](image)
Step 4 continued

…or a corporate entity.

- Click **Save Secured Party**

  Secured Parties

  Organization

  Org. Name
  Mailing Address
  City
  State
  Postal code
  Country

  Save Secured Party  Clear Secured Party
Step 5 — Collateral

• Describe collateral: below is the exact language you should use to describe the collateral in the next slide. Copy and paste the following text and provide the information in the [brackets]...

Collateral includes:

a. [amount and type] vinifera grapes delivered to Debtor,
b. Debtor's inventory, and
c. Debtor's accounts receivable

As of the date of filing of this financing statement, the Collateral secures a true and bona fide existing debt in the amount of approximately [$xx], which debt was due on [date]
Step 5 continued
...and paste that text here:

Complete the following optional fields if appropriate:

Collateral
You may enter a collateral statement in the box below and/or attach one PDF file, maximum 2MB. An extra fee of $1.00 per equivalent page will be added for attaching a PDF file.

NOTICE: Filed records and ALL information in them are permanent public records available for public viewing and purchase. Please do not submit anything containing Social Security Numbers or other sensitive information.

Attach a PDF file as the collateral:

Upload Selected PDF

COLLATERAL: This financing statement covers the following:

Collateral includes:
A. [amount and type] vinifera grapes delivered to Debtor,  
B. Debtor's inventory, and  
C. Debtor's accounts receivable  
As of the date of filing of this financing statement, the Collateral secures a true and bona fide existing debt in the amount of approximately [$xx], which debt was due on [date]

☐ The collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.
Step 6 – Additional details

- Select “None” under Additional Details

Complete the following optional fields if appropriate:

- **Collateral**
- **Additional Details**
  
  Select an option: Collateral is
  
  - held in a Trust
  - being administered by a Decedent's Personal Representative
  - None

Select an option for Filing Type:

- Public-Finance Transaction
- Manufactured-Home Transaction
- A Debtor is a Transmitting Utility
- None

- **Miscellaneous**
Step 7 – Miscellaneous

- Select “Agricultural Lien”
- Select “None”
- Select “None”

Request SEARCH REPORT(S) to reflect this record [ADDITIONAL FEE $10.00 per debtor name. Results will be mailed.]

- All Debtors
- Debtor 1
- Debtor 2
- None
Step 8 – **Review**

- Add the following text to the miscellaneous box: “Secured party preserving wine producer lien and agricultural lien”
Step 8 continued

- Review draft to ensure information is correct, and if corrections are needed, return to the filing window and make corrections.
UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 13 or 15 on financing statement; if line 16 was left blank because individual debtor name did not fit, check name:

10. ORGANIZATION'S NAME

Winery ABC, LLC

11a. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)(SYNTHETIC)

SUFFIX

Date of Filing: 01/01/0001

Time of Filing: 12:00:00 AM

File Number: PREVIEW

Lapse Date:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11b. DEBTORS' NAME: Provide (one or two) any other additional debtor name or debtor names that are not fit in line 16 or 20 of the Financing Statement (Form UCC 1). If both exist, list names, do not omit, modify, or abbreviate any part of the debtor's name and enter the mailing address at line 10c

12. ORGANIZATION'S NAME

12a. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)(SYNTHETIC)

SUFFIX

13a. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

13b. ORGANIZATION'S NAME

13c. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)(SYNTHETIC)

SUFFIX

13d. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

14. ADDITIONAL SPACE FOR ITEM 16 (Continued):

15. THIS FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS (if applicable)

16. This financing statement:

☐ross lienifer to be cut ☐ross as extralated collateral ☐is filed as a future filing

17. NAME AND ADDRESS OF EACH ORBOARDER OF REAL ESTATE DESCRIBED IN ITEM 16

18. Description of real estate:

19. MISCELLANEOUS:

Secured party preserving wine producer lien and agricultural lien

FILING OFFICE COPY — UCC FINANCING STATEMENT ADDENDUM (Form UCC154d) (Rev. 04/28/11) International Association of Commercial Administrators (IACA)
Step 9 – Submit

- If everything is in order, Click

File Initial Financing Statement

Complete the following optional fields if appropriate:

- Collateral
- Additional Details
- Miscellaneous

Select an option for Alternative Type:
- Agricultural Lien
- Non-UCC Filing
- None

Select an option for Alternative Designation:
- Lessor/Lessor
- Consignee/Consignor
- Seller/Buyer
- Bailor/Bailor
- Licensee/Licensor
- None

Request SEARCH REPORT(S) to reflect this record (ADDITIONAL FEE $10.00 per debtor name. Results will be mailed.)
- All Debtors
- Debtor 1
- Debtor 2
- None

OPTIONAL FILER REFERENCE DATA:

MISCELLANEOUS:
- Secured party preserving wine producer lien and agricultural lien

Preview Record  File Initial Financing Statement  Cancel
Step 10 – Pay filing fee

- Enter credit card information to pay $11.00 filing fee
- Click
Step 11 – Calendar, Follow up and Termination

- The lien filing will be valid for one year from the date of filing.
- If the debtor/winery does not pay before the expiration of the filing, the secured party/grower will have to take action to foreclose the lien before the year is up.
- When the debtor/winery pays the debt, the secured party/grower must file a termination statement within 10 days of payment. Go to https://fortress.wa.gov/ucc3.aspx and follow directions for filing a termination statement.
PACA Information

The Perishable Agricultural Commodities Act (PACA) facilitates fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. PACA helps ensure dealers of fresh and frozen fruits and vegetables get what they pay for and get paid for what they sell, including when their customers go out of business, declare bankruptcy, or simply refuse to pay for the fruits and vegetables received.

Much like you need a driver’s license to operate a vehicle, the law requires a PACA license as proof to your customers and suppliers that you are a serious business person who can be trusted to honor the terms of your contracts. The PACA license is the key to ensuring traders meet contractual obligations under the law and abide by fair trading practices or face possible suspension or revocation of their license. This includes meeting contract specifications, paying all contracts promptly, and maintaining trust assets. A person knowingly operating without a license may face a penalty of up to $1,200 for each violation and up to $350 for each day the violation(s) continue.

PACA protections benefit a range of parties who are both buyers and sellers, including processors and brokers. It is generally agreed that fruit and vegetable traders need more protection than traders in other industries because the product is very perishable, and a one or two-day delay can mean the difference between profit and loss…so growers must ship the quantity and quality of produce specified in their contracts and wineries must accept shipments that meet contract specifications including payment.

PACA also provides procedures for resolving disputes outside the civil court system, and establishes a trust consisting of wineries’ grape-related assets. If a winery goes bankrupt, growers that have preserved their trust rights can recover money owed to them before trust assets are made available to general creditors (including banks).

When PACA Applies…

The law requires most buyers and sellers in the U.S. to have a PACA license in order to trade in fruits and vegetables. However, growers are exempt from the license requirement as long as they sell only products that they have grown. Growers can be licensed if they so choose, on a voluntary basis, and must then comply with the PACA law. A broker negotiating contracts involving fresh and frozen fruits and vegetables between a buyer and a seller must be licensed under PACA.

PACA applies to a winery if it purchases more than 2,000 pounds of grapes (in any given day) that were grown outside the state (or country) where the winery is located. A winery is not subject to PACA if it processes only on-site, estate grown grapes or any grapes grown in Washington.

Remember, wineries that are subject to PACA are allowed the protections provided by the law but are also required to abide by the law’s legal requirements.

License Fee and Mediation…

A PACA license costs $995 a year and provides a means of enforcement because it can be suspended or revoked if a buyer (winery) or seller (grower) is found to commit unfair trading practices.

Practices may include:
rejecting grapes bought or contracted to be handled on consignment without reasonable cause
failure to pay the agreed price of grapes that complies with the contract terms
failure to pay promptly
misbranding/mislabeling of grapes shipped in interstate commerce
misrepresentation of grapes shipped in interstate commerce

PACA specialists are trained in mediation procedures to help parties resolve disputes outside the court system. Buyers and sellers are able to call in a PACA expert to help resolve any issues or disputes.

PACA Trust…

In 1995, PACA was amended to allow licensees to protect their trust rights by giving notice to debtors on their invoices as an alternative to the traditional notification by mailing a trust notice to the buyer.

Simply, if you sell grapes to wineries, the PACA trust provides financial security in the event your customer (winery) files for bankruptcy or goes out of business. Produce assets of a debtor (the winery) are not available for general distribution to creditors (including secured creditors like banks) until all valid produce trust claims have been paid. (Note: produce assets include wine or wine in process.) Growers that file for trust protection have a far greater chance of recovering money owed them.

Growers who decide to purchase a PACA license may preserve their trust rights by giving notice to the winery on their invoice. However, the grower must have the exact wording on the face of the invoice:

_The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received._

Growers who choose not to be licensed under PACA, or those licensees that do not want to include the statutory wording on their invoices may use the following method:

A written notice must be provided to the winery and must include a statement that it is a “notice of intent to preserve trust benefits,” and must include the names and addresses of the seller, commission merchant, or agent, and the debtor; the date of the transaction, commodity, invoice price, payment terms, and the amount past due and unpaid. Notification must be given within 30 days from the day payment was due (i.e., payment must be made within 30 days from the due date of payment), or from receiving notification that a timely submitted payment was dishonored (i.e., bounced check or declined credit card). To qualify for trust protections, terms for payment cannot exceed 30 days from the date of acceptance of the product. Payment terms other than PACA prompt payment terms (usually 10 days) must be agreed upon by the parties to the transaction in writing before entering into the transaction.

If a grower has preserved their trust rights but gets no response from a winery, how does the PACA trust help them get paid? After a grower preserves their rights under PACA trust provisions, the winery should be holding the proceeds from the resale of that product 'in trust.' A grower can file an action in U.S. District Court seeking to enforce payment under the trust. It is common for a trust enforcement action to seek a temporary restraining order freezing the bank accounts of a winery until the trust creditor (grower) is paid. Many produce sellers have found this a very effective tool to recover payment.

PACA Licensing Information

**APPLICATION FOR LICENSE**
(Under the Perishable Agricultural Commodities Act, 1930)

The information requested on this form is required under the Perishable Agricultural Commodities Act (7 CFR 46.4) for the issuance of a license. The information contained in this form will be used by Federal, State, local, or foreign agencies when relevant to civil, criminal, or regulatory investigations or procedures. Failure to provide the information required will result in delay or suspension of the processing of this form.

**ALL QUESTIONS MUST BE ANSWERED**

1a. Name of Business (Full Legal Name of Business registered under EIN)  
1b. If Sole Proprietor, enter Owners Full Name

2. Federal Employer Identification Number (EIN)  
3. Web Site

4a. Physical Business Address (Post Office Box NOT ACCEPTABLE)

<table>
<thead>
<tr>
<th>Street Address</th>
<th>City</th>
<th>State</th>
<th>Zip Code+4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4b. Mailing Address  
(Mark an “X” here if same as Business Address): [ ]

<table>
<thead>
<tr>
<th>Street Address (Post Office Box Number)</th>
<th>Attention:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5a. Does the business have any branch locations other than your physical business address?  
[ ] Yes  
[ ] No  
How many? ______

5b. Does the business have additional trade names?  
[ ] Yes  
[ ] No

5c. Please list Trade Names and/or Branch Locations Below.  
(Attach a separate page for additional entries)

<table>
<thead>
<tr>
<th>Trade Name</th>
<th>City</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6a. Legal Structure  
(see page 4 for explanations)  
(CHECK ONE BOX ONLY)

- [ ] Sole Proprietor  
- [ ] Corporation (see 6b)  
- [ ] Limited Liability Company (LLC) (see 6b and 6c)  
- [ ] Partnership  
- [ ] Limited Partnership  
- [ ] Limited Liability Partnership (LLP)  
- [ ] Association  
- [ ] Trust  
- [ ] Estate

6b. Complete only if you checked Corporation or LLC

<table>
<thead>
<tr>
<th>State</th>
<th>Date of Incorporation/Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Month Day Year</td>
</tr>
</tbody>
</table>

6c. Complete only if you checked LLC

- [ ] Articles of Organization is included with application  
- [ ] Operating Agreement is included with application

7. Types of Fruits and Vegetables Handled by Applicant  
(CHECK ONE BOX ONLY)

- [ ] Fresh  
- [ ] Frozen  
- [ ] Fresh and Frozen

8. Primary Nature of Business:  
(see page 4 for explanations)  
(CHECK ONE BOX ONLY)

- [ ] Broker  
- [ ] Processor  
- [ ] Retailer  
- [ ] Commission Merchant  
- [ ] Shipper  
- [ ] Grocery Wholesaler  
- [ ] Food Service  
- [ ] Trucker  
- [ ] Grower  
- [ ] Wholesaler  
- [ ] Growers’ Agent
9. List below the required information for Individual Owner; All Partners; All Members and/or Managers of LLCs; All Officers (Including Titles), Directors, and/or Stockholders holding more than 10 percent of outstanding voting stock. If any person listed is a minor, furnish the name of His/Her guardian. If any person listed is a trust, furnish the name of the trustee. If any person listed is an estate, furnish the name of the Executor/Executrix.

(Attach a separate page for additional entries)

<table>
<thead>
<tr>
<th>Name</th>
<th>Social Security Number</th>
<th>Home Address</th>
<th>Title</th>
<th>Percentage of Stock or Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith</td>
<td>123-45-7890</td>
<td>123 Main Street, Anytown, DC 12345-7890</td>
<td>President</td>
<td>75%</td>
</tr>
</tbody>
</table>

10. Has the applicant or any person listed in Question 9 filed bankruptcy, been discharged as a bankrupt, or been an officer, director, shareholder, partner, member/manager (LLC), or owner of a firm that has filed bankruptcy or been discharged as bankrupt?

Yes [ ] No [ ]

If Yes, identify the firm or individual (PACA license number, if possible), the name and address of the firm involved, and details about bankruptcy. Submit a copy of the bankruptcy petition, schedules, disclosure statements, and all other relevant documentation. (Attach a separate sheet for additional space)

11. Has any person listed in Question 9 been convicted of a felony in any State or Federal Court?

Yes [ ] No [ ]

If Yes, furnish the name, date of birth, and alias (if any), of the individual(s). FOR ALL CONVICTIONS, provide the name and location of the court, date convicted, nature of the felony, sentence imposed, where served; if paroled, give date terminated or will terminate. (Attach a separate sheet for additional space)

12. Has any person currently employed by the applicant been the individual owner, partner, officer, director, or holder of more than 10 percent of the outstanding voting stock of a firm, association, or corporation, or a member/manager (LLC) whose PACA license is under suspension; been revoked; found to have committed any flagrant or repeated violation of the PACA, or against which there is an outstanding unpaid reparation award?

Yes [ ] No [ ]

If Yes, furnish the full name of the person, name of the firm involved (PACA License number if possible), and details of such connection, including the dates thereof. (Attach a separate sheet for additional space)
13. Is the applicant currently operating at volumes requiring a PACA License? (See Page 4 for Nature of Business)

Yes [ ] No [ ] If Yes, provide the date applicant first met that volume.

<table>
<thead>
<tr>
<th>Month</th>
<th>Day</th>
<th>Year</th>
</tr>
</thead>
</table>

**SCHEDULE A** Applicants - Wholesalers, Brokers, Commission Merchants, Food Service, Growers, Grower’s Agent, Processors, and Shippers

(A1) **Current License Fees**

Annual License Fee $995.00

Branch Fee, if applicable: $600.00 X __________ branches (maximum of $7,005) $__________ $__________

**TOTAL AMOUNT DUE FOR CURRENT FEES (A1)**

(A2) **Accrued fees for previous operations** based on the date provided in question 13. (Maximum of 24 months)

October 1, 2010 to Present

Annual License Fee = $82.92 per month X ___ months $__________

Annual Branch Fee = $50.00 per month X ___ months X ___ branches $__________

Prior to October 1, 2010

Annual License Fee = $45.83 per month X ___ months $__________

Annual Branch Fee = $16.67 per month X ___ months X ___ branches $__________

**TOTAL AMOUNT DUE FOR PREVIOUS OPERATIONS (A2)** $__________

**TOTAL AMOUNT DUE FOR CURRENT (A1) & PREVIOUS OPERATIONS (A2)** $__________

**SCHEDULE B** Applicants - Retailers and Grocery Wholesalers ONLY (all others use Schedule A)

**TOTAL AMOUNT DUE** $100

**PAYMENT**

TOTAL AMOUNT DUE $ ______________

**CHECKS:** Make payable to USDA - PACA

**CREDIT CARDS:** Type of Card:

- [ ] VISA
- [ ] MASTERCARD
- [ ] DISCOVER
- [ ] AMERICAN EXPRESS

Account Number: ________________________________

Exp. Date: Mo:______ Year ______

Card Holder’s Name: ________________________________

---

Application must be signed by the Owner, all Partners, all General Partners, Member/Manager (LLC) or a Corporate Officer.

**CERTIFICATION STATEMENT**

I (We) certify that the answers given to the foregoing questions are true to the best of my (our) knowledge. Applicant agrees not to loan or transfer possession of the license certificate to any person or firm whatsoever.

<table>
<thead>
<tr>
<th>Signature(s):</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

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If Paying Fees by Credit Card, completed application can be faxed to 202-260-8575 or email PACALicense@ams.usda.gov.

---

RETURN COMPLETED APPLICATION AND FEES TO:

USDA, PACA Branch, National License Center
1400 Independence Avenue, SW
Stop 0242, Room 1510-S
Washington, DC 20250-0242
DEFINITIONS AND TERMS

Dealer (includes wholesalers, jobbers, distributors, and growers who market produce grown by others) means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce. A person who buys potatoes for canning or processing is a dealer whether the potatoes are purchased within the state or in interstate or foreign commerce.

Interstate or Foreign Commerce means all transactions involving fresh and frozen fruits and vegetables which move between states, and/or other countries and the U.S.

Wholesale or Jobbing Quantities means aggregate quantities of all types of produce totaling one ton (2,000 pounds) or more in weight in any day shipped, received, or contracted to be shipped or received

Branch or Additional Business Facility means an office or outlet in a location other than that of the principal or main office of a firm, out of which or through which the firm purchases, sells, negotiates contracts, solicits, or handles consignments, or otherwise contracts in perishable agricultural commodities including seasonal, part-time and full-time operations.

NATURE OF BUSINESS: (See Question 8)

The following are definitions of the types of dealers, brokers and commission merchants that are required to have a PACA license.

| Wholesaler, see Dealer (above) |
| Foodservice is a dealer that purchases and sells fresh and/or frozen fruits and vegetables in interstate or foreign commerce for distribution to restaurants, institutions, convenience stores, etc. These operations commonly also sell non-subject items as well. |
| Processor is a dealer that purchases fresh and/or frozen fruits and vegetables in interstate or foreign commerce for canning or processing or sells product in interstate or foreign commerce that has not had its kind or character changed (i.e., salad mixes, sliced fruit, vegetables, frozen or packed in ice or consists of cherries in brine, etc.). However, a processor is not subject if the purchasing and processing which changes the kind and character are both accomplished within the State where the produce is grown, even if the processed product is shipped out of the State. |
| Shipper is a dealer who operates at shipping point and is engaged in the business of purchasing produce from growers or others and distributing such produce in commerce by resale or other methods, or who handles such produce on joint account with others. |
| Grocer is a dealer that purchases and sells fresh and/or frozen fruits and vegetables in interstate or foreign commerce from its truck not as a retailer. |
| Retailer is a dealer when it purchases wholesale and jobbing quantities, but is only subject to a PACA license when the invoice cost of all purchases of produce (including frozen potato products such as French fries) exceeds $230,000 during a calendar year. In computing dollar volume, all purchases of fresh and frozen fruits and vegetables are to be counted, without regard to quantity involved in the transaction or whether the transaction was intrastate, interstate or foreign commerce. |
| Grocery Wholesaler is a dealer primarily engaged in the full-line wholesale distribution and resale of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. This term does not include persons primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items. Specifically, for an entity to be considered a grocery wholesaler, 50 percent or more of its annual gross sales must be from the full-line distribution and resale of grocery and related nonfood items, and it cannot have more than 50 percent of its sales in perishable agricultural commodities. “Full-line” means that an entity must be supplying the retailer with a wide range of products such as the grocery and related nonfood items specified. |
| Broker means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively. The 2000 pound quantity limitations do not apply to brokers. They are subject to PACA licensing with their first interstate or foreign commerce transaction. It is common in the industry to have fresh produce brokers and frozen produce brokers. Frozen produce brokers who negotiate contracts for frozen commodities exclusively for the vendor and the invoice value of the vendor’s product does not exceed $230,000 in a calendar year are not subject; however, frozen produce brokers that are negotiating contracts for the buyer are subject to PACA licensing. |
| Commission Merchant means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another. For example, a person who receives a truckload of tomatoes; sells the product for a grower, charges a commission; and remits the net proceeds to the grower. The 2000 pound quantity limitations do not apply. |
| Grower is a business that grows its own fruits and vegetables and is not required to be licensed. However, a grower can be licensed on a voluntary basis and must comply with the PACA law while licensed. |
| Growers’ Agent means any person operating at shipping point who sells or distributes produce in commerce for or on behalf of growers or others and whose operation may include the planting, harvesting, grading, packing, and furnishing containers, supplies, or other services. The 2000 pound quantity limitations do not apply, because this type of business is considered a type of commission merchant. |

LEGAL STRUCTURES: (See Question 6a)

| Individually owned or Sole Proprietorship means one person has complete ownership and is fully responsible for all activities. |
| Corporation is authorized by state law to act as a single entity and is registered with the secretary/corporation commission of a state. The corporation can have elected officers and directors, an appointed registered agent and shareholders. Shares can be individuals, other corporations, LLC’s, partnerships, etc. |
| Limited Liability Company or “LLC” is a form of a legal entity where the state law provides for a firm to be treated as a partnership for tax purposes, while receiving the benefits from personal liability usually associated with a corporation. LLC’s are also registered with the secretary/corporation commission of a state. NOTE: LLC’s are required to submit a copy of their Articles of Organization and Written Operating Agreement with the application. |
| Partnership is a voluntary contract between two or more persons who agree to carry on any business or venture together, upon the terms of mutual participation in its profits and losses, this can be a verbal or written agreement. NOTE: Any change in partners will require a new license. |
| Limited Partnership is a partnership consisting of one or more general partners, jointly and severally responsible for all debts of the partnership, and by whom the business is conducted, and one or more special (limited) partners, contributing in cash payments a specific sum as capital, and who are not liable for the debts of the partnership beyond the funds contributed. Limited partnerships are required to be registered with the secretary/corporation commission of a state. |
| Limited Liability Partnership or “ LLP” is a form of a legal entity where the state law provides for a firm to be treated as a partnership for tax purposes, while its individual partners receive protection against personal liability of certain partnership liabilities. LLP’s are also registered with the secretary/corporation commission of a state. |
| Association is commonly referred to as a Cooperative Marketing Association; a body of persons united and sometimes acting together without a charter in the pursuit of some common enterprise; basically a large partnership, but differs from a partnership in that it is not bound by the acts of individual partners, but only by those of its manager(s) or trustee(s). the NOTE: While PACA exempts growers from the licensing requirements, cooperative marketing associations must be licensed, even if the produce being handled is solely of its members. |
| Trust is a right of property, real or personal, held by one party for the benefit of another; any arrangement whereby property is transferred with intention that it will be administered by a trustee for another’s benefit. |
| Estate is the property, real or personal, which a person has a right or interest and descends by law to heirs at that person’s death. |

The following are definitions of the types of dealers, brokers and commission merchants that are required to have a PACA license.

| NOTE: The following statements are made in accordance with the Privacy Act of 1974 (U.S.C. 552a) and the Paperwork Reduction Act of 1995. The authority for requesting this information to be supplied on this form is the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. 499a-499p) (499c, 499d). Furnishing the requested information is necessary for the administration and enforcement of the Perishable Agricultural Commodities Act. |

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0031. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA’s TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PENALTY:

Any person who operates without a valid and effective license shall be liable to a penalty of not more than $1,200 for each such offense and not more than $350 for each day it continues.
Sample PACA Trust Notice
NOTICE OF INTENT TO PRESERVE BENEFITS UNDER
THE PERISHABLE AGRICULTURAL COMMODITIES
ACT STATUTORY TRUST (7 USC §499e)

THE UNDERSIGNED hereby gives notice of the Trust Beneficiary/Seller Supplier’s intent to preserve benefits under the statutory trust established authorized by Section 5(c) of the Perishable Agriculture Commodities Act, 1930 (7 USC § 499e(c)). The following information is provided in regard to such notice of intent:

1. **Trust Beneficiary/Seller-Supplier:** [Insert name/ address/ contact information for Grower.]

2. **Debtor/Merchant:** [Insert name/ address for purchasing Merchant and delivery location (if any).]

   ___________________________   ___________________________
   ___________________________   ___________________________
   ___________________________   ___________________________

3. **Terms of Transaction:** [Reference and attach invoices and/or contract.]

4. **Amount Due and Unpaid:** $_____

5. **Claim:** The Trust Beneficiary/Seller-Supplier retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

   **DATED** this _____ day of ____________________, 2009.

   -------------------------------------------------------------
   [Name/title for authorized signature]
ACKNOWLEDGMENTS

Washington Wine Industry Foundation wishes to formally thank the following individuals for their assistance in preparing this document:

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Bergevin Lane Winery

**RICHARD BOUSHEY**
Boushey Vineyards

**ROGER GAMACHE**
Gamache Vineyards

**RICHARD HOFF**
Mercer Canyons

**JULIA KOCK**
Klipsun Vineyard

**DANA LANE**
Pepper Bridge and Amavi Wineries

**MARCUS MILLER**
Airfield Estates Winery and Vineyards

**LARRY PEARSON**
Tapteil Vineyards Winery

**VICKY SCHARLAU**
Washington Association of Wine Grape Growers

**ANDREW SCHULTZ**
Elephant Mountain Vineyards

**KENT WALISER**
Sagemoor Farms, Bacchus, Dionysus and Weinbau Vineyards

**TOM WALISER**
Beresan Vineyards and Winery

**TEDD WILDMAN**
StoneTree Vineyards and Saddle Mountain Vineyards

**MIKE WILLIAMSON**
Precept Wines
This project was funded through a grant from the USDA RMA Risk Management Education Partnership.

The grant seeks to prevent sales revenue losses to wine grape producers due to slow or nonpayment through education about (and implementation of) contracts for formalizing sales terms and UCC filing statements to protect a grower’s first priority lien position.

This grant was carried out by the Washington Wine Industry Foundation whose mission is to strengthen the future of the Washington wine industry by advancing education, research and leadership.

PHOTOS

All photos (except cover and image on page 19) courtesy of Washington State Wine Commission, www.washingtonwine.org