

AGREEMENT

This Agreement, dated _____, shall apply to the production of wine for the benefit of others (“Custom Crush”) between X Winery, Inc., address, (“X”) and <customer> (also using the name <customer2>), <address> (“<customer>”); together known as “The Parties.”

WHEREAS, X has the capability to perform Custom Crush activities on behalf of <customer>, and

WHEREAS, <customer> has requested that X provide Custom Crush services on its behalf,

THEREFORE, The Parties agree as follows:

1. General terms: X shall use reasonable efforts to produce wine from grapes delivered by <customer>. It is expressly understood by The Parties that some grapes may not ferment into wine, and that some wine produced from grapes may not be commercially acceptable. Specifically, while X shall use reasonable efforts to correct deficiencies and prevent problems, The Parties agree that no guarantee is expressed or implied by X that commercially acceptable wine will result.
2. Ripeness of grapes: <customer> shall use reasonable efforts to determine the degree of ripeness of its grapes and shall advise X on a weekly basis of ripening progress, beginning no later than September 1 of each year. Grapes arriving at the winery shall be deemed to be acceptably ripe if the juice from them measures at least 22.0 degrees brix and not more than 25.0 degrees brix.
3. Quality of Grapes: Grapes shall be reasonably clean, free of foreign material and shall contain not more than 3 percent of grapes affected by any significant microbiological defect, including but not limited to botrytis (“bunch rot”) and mildew, in the sole judgment of X. Grapes shall contain no pesticide or chemical residue in excess of the level specified in the labeling for any agent applied to the vineyard. No pesticide or chemical agent shall have been applied to the vineyard more recently from the time of harvest than the interval specified in the labeling of the agent.
4. Quantity and delivery of grapes: A maximum of **XX** tons of grapes shall be delivered to X by <customer>. In the event that the true net weight of the grapes has not been measured using a certified scale and provided to X, a standard wooden grape bin shall be deemed to contain 1,000 pounds of grapes, and a standard plastic grape bin shall be deemed to contain 800 pounds of grapes. The grapes to be processed on a given day shall all be delivered on that day, the last container to arrive no later than 2:00 P.M. Grapes arriving after 2:00 P.M. shall be subject to refusal by X.
5. Delivery notice: Notice shall be given to X at least 72 hours in advance of the delivery of grapes. In the event 72 hour notice is not provided, X shall have the option of delaying the arrival of grapes for up to 72 hours from the time of notice.
6. Charges for winemaking
 - 6.1 Case volume measurement and loss: A “Case” of wine shall be defined as 2.37754 gallons of liquid obtained after settling the pressed juice for not less than 24 hours (“Clarified Juice”). It is expressly understood by The Parties that some loss of wine during fermentation, racking, maturation, filtering and bottling will occur. A loss of up to 10% of the initial volume of Clarified Juice by the conclusion of bottling shall be deemed acceptable to The Parties. Charges for winemaking shall be reduced only if the final volume is reduced by more than

- 10% of the original volume (i.e., equals less than 90% of the original volume), and shall be reduced on a pro rata basis only by the amount of loss that exceeds 10%. For clarity and the avoidance of doubt, if the initial measurement of liquid volume were 1000 gallons (420 Cases), and the final volume after bottling were determined to be at least 900 gallons (378 Cases), there would be no reduction in charges. If the same initial volume were determined to have been reduced after bottling to 850 gallons (357 Cases), the charges would be reduced by a factor of 0.05, or 5 % (900 gallons minus 850 gallons, divided by 1000 gallons).
- 6.2 Charges for winemaking from grapes meeting all the requirements of Paragraphs 2 and 3 shall be \$22.00 per Case plus charges for materials used, at prices charged to X plus 15%. Charges for winemaking from grapes not meeting all the requirements of Paragraphs 2 and 3 shall be \$25.00 per Case plus charges for materials used, at prices charged to X plus 15%.
- 6.3 Payment Schedule: Payment of 40% of total charges shall be made within 30 days of the delivery of grapes. Additional payments of 20% of the total charges shall be due the first day of each successive calendar quarter, i.e., on January 1, April 1 and July 1 of the following year, unless winemaking and bottling are completed at an earlier date, at which time all remaining charges shall be due. Payment shall be made within fifteen days from the date of submission of an invoice to <customer>.
- 6.4 Other costs
- 6.4.1 At <customer>'s expense, X shall apply for a _____ County Fictitious Business License, and a Letterhead request for a 'DBA' permit from the ATF. The name to be used for this business shall be selected by discussion between The Parties.
- 6.4.2 Activities requested by <customer> which are, in X's sole judgment, beyond the scope of normal winemaking activities, shall be billed to <customer> at the rate of \$80.00 per hour.
- 6.4.3 Owing to pre-payments made on <customer>'s behalf by X during bottling, payment for estimated bottling costs shall be made to X at least ten days prior to the scheduled bottling date.
- 6.5 Quality evaluation: During the winemaking process prior to bottling, X shall periodically assess the quality of the wine produced. If, in X's sole judgment the wine will not be commercially acceptable, X shall so notify <customer> in writing. If <customer>, after conducting its own evaluation, concurs in this judgment, all winemaking activities shall cease, and no further charges shall be incurred beyond the date of notification; however, all charges incurred up to the date of notification shall remain payable. If <customer> elects to continue with winemaking activities for the wine about which such notice has been received, X shall continue reasonable efforts and charges shall continue to accrue as specified in Paragraphs 6.2, 6.3, 6.4 and 6.5.2.
- 6.6 Stylistic decisions: Decisions regarding the style of wine to be made from the grapes shall be recommended, prior to acceptance of grapes, by X and approved by <customer>, both in writing. Style of wine which can be produced is dependent on fruit quality and ripeness, and on final chemistry evaluations.
7. Other Provisions
- 7.1 <customer> shall retain title to the wine made by X on his behalf, but The Parties acknowledge that such wine can only be removed from X via a taxable sale under

X's Basic Permit to sell alcoholic beverages (following bottling and labeling with approved labels), or via transfer in bond to another Permittee.

- 7.2 Termination: This Agreement shall remain in effect until the later of <date certain>, the completion of removal of <customer>'s case goods from X, or the payment of all charges arising from this Agreement. Regardless of the date of termination of other provisions of this Agreement, Paragraph 7.5 shall survive in perpetuity to govern the resolution of any and all disputes arising from this Agreement or activities between the parties related to this Agreement.
- 7.3 In the event that the listed charges are not paid within thirty days of the submission of an invoice, X may inform <customer> in writing of its intent to sell the wine made on behalf of <customer> to satisfy such outstanding charges. If such charges are not paid within 10 days from such written notice, X may, at its sole discretion, sell any or all of the wine made on <customer>'s behalf at wholesale or retail at a price of its own choosing until such outstanding charges are satisfied.
- 7.4 Severability: In the event that any provision of this Agreement is found to be invalid or unenforceable under the process of Paragraph 7.5, all other provisions shall remain in full force and effect until the termination of this Agreement under Paragraph 7.2.
- 7.5 Arbitration: Any and all disputes arising from this Agreement shall be resolved by submitting the matters under dispute to Binding Arbitration. The parties shall agree to select an Arbitrator who is an attorney licensed by the _____ State Bar Association, located within 50 miles of The Parties. If within 30 days the parties cannot agree on the selection of an arbitrator, The Superior Court, County of _____, shall appoint one without further recourse by The Parties. The decision of the Arbitrator in the resolution of any dispute shall be final and legally binding on both parties, including any financial remedies as may be decided. Cost of the Arbitration shall be borne equally by the parties, unless a financial remedy is decided by the Arbitrator, in which case the party required to pay the financial remedy shall also pay all costs of arbitration. By signing this Agreement, The Parties explicitly stipulate that neither litigation nor any form of resolution of disputes arising under this Agreement other than arbitration shall be valid.

Whereby, The Parties wishing to be bound by the provisions of this Agreement have so indicated by signing as follows:

For <customer>

For X Winery

by _____
<customer>

by _____
_____, President

Date

Date