

# Frequently Asked Questions for Winemakers

## For Wine Producers

AGW strongly recommends that all winemakers who purchase grapes from growers should become a signatory to the Code.

Getting Started is easy:

### **I am considering becoming a Signatory to the Code. What will this mean?**

Once a winemaker becomes a Signatory, they must ensure that both their conduct and their grower agreements comply with the requirements of the Code. Specifically, winemakers should review their agreements in order to identify any inconsistencies with the Code. There is a transitional period which means that within three months of becoming a Signatory, winemakers must provide written notice to growers clearly explaining which agreements are being updated and what changes are being made to bring the agreement in line with the Code. All agreements must also contain a statement that the Code is incorporated into the agreement by reference and state that if there are any inconsistencies between the terms of the agreement and the Code, then the provisions of the Code will prevail to the extent of the inconsistency.

Where the Code mandates an issue that must be included in an agreement, winemakers may agree an alternative position with the grower provided it is negotiated in good faith and provided it leaves the grower "no worse off" overall.

## Clause 3.3 (a)

### **For agreements entered into prior to becoming a Signatory, is an email or other form of written offer likely to be sufficient to meet the requirements of this clause?**

Yes, assuming the grower agrees to the offer, any form of written communication is sufficient providing it is clear which agreements are being updated and what changes are being made to bring the agreement in line with the Code. It is in the best interest of the winemaker to ensure that all required amendments are clearly communicated, noting that inconsistencies between an agreement and the Code could result in uncertainty or ambiguity which is at odds with the intention of the Code.

### What issues does the Code cover?

The Code requires winemakers include key details in their agreements with growers, including:

- (a) the term of the agreement, including any termination provisions;
- (b) the quantity and description of the grapes (e.g. tonnage, variety, GI);
- (c) the maturity, purity and conditions standards the grapes will be assessed against, including ensuring winemakers use industry endorsed standard procedures (see [AGW's website](#));
- (d) at what point any assessments or grading will be made and when the results must be notified to the grower; and
- (e) when ownership and risk in the grapes passes from the grower to the winemaker.

The Code also states that agreements should be in writing and must not contain "unfair terms" (see more below).

### What does the Code say about timing of price announcements and payment terms?

Agreements must set out the price of the grapes (eg a fixed price) or the relevant pricing mechanism (such as the "fair market price" or "weighted district average").

If the "fair market price" is used, winemakers must notify growers of their pricing by certain dates (generally in Dec and Jan each vintage, depending on the region).

Under the Code, winemakers must pay growers using the following payment terms as a minimum:

- (a) one third by the end of the month following the month of delivery;
- (b) one third by the end of June; and
- (c) the balance by the end of September

or an alternative more favourable arrangement based on average days between harvest and payment.

### Clause 3.6

#### Where can I find further information about "unfair terms"?

The ACCC enforces consumer protection laws under the *Competition and Consumer Act 2010* including unfair contract terms. They publish information about what constitutes an "unfair term" and how they are regulated [here](#). It is now a legal requirement to ensure standard form contracts do not contain unfair terms. Examples of unfair terms include where a winemaker can unilaterally vary an agreement or terminate an agreement merely because the grapes become surplus to their requirements. Payment terms in excess of the terms set out in the Code may also be unfair. Signatories using such terms in their agreements may be in breach of the law and the Code.

## Clause 4

### How has price transparency improved?

Base prices must either be fixed or calculated using an objective formula. The only exception is "fair market price" agreements. These prices must now be genuine offers (not estimates as indicative prices were). Growers may accept, or negotiate, with no "out clauses" for the winemaker.

In October 2023 Wine Australia release an online wine grape price indicator platform that provides a suite of price indicators, which will help inform business decision-making.

Since 2023, ABARES have also been publishing quarterly independent winegrape price forecasts and commodity analysis for commercial grapes based on the price indicators and other market insights

### How is a 'fair market price' determined?

Fair market price must be determined reasonably and transparently by the winemaker. All pricing mechanisms should, to the extent practicable, be objective and remove the opportunity for a winemaker to substantially influence the price payable to the grower (except by assessments for grading or bonus payments for example). The trade-off between the security of a fixed price and a variable price agreement must be considered by both parties, noting that a variable "fair market price" can work for or against either party depending on the market forces in play at the time. For "fair market price" agreements, the Code provides that winemakers must notify growers of the price by a specific date (see Price Offer Notification Schedule). This allows the parties time to negotiate and/or enter into the dispute resolution procedure outlined in the Code if negotiations fail.

### In the case that a Grower wishes to raise a formal dispute regarding a price offer, how will an independent expert determine what is considered to be 'fair market price' for the grapes.

If a grower disagrees with the winemaker's determination of "fair market price" they are able to lodge a dispute under the Code. The Code secretariat then appoints an independent pricing expert to determine the fair price for the particular variety, region and (where specified in the agreement), the agreed grade as well. The expert is likely to draw upon their professional experience, research and industry insights to assess prevailing market conditions and to determine what a fair market price would be for grapes of similar variety, quality and volume.

## Clause 5.2

### **Can subjective measures such as sensory assessment be used for price affecting decisions?**

Subjective measures must not be used to determine price where objective measures are available. Objective measures have been developed by the AWRI, in consultation with AGW, to assist winemakers and growers to make assessments as accurately as possible. Importantly, they are impartial and are able to be reliably carried out in the same way by different parties. In contrast, subjective assessment techniques which rely partly or fully on personal judgement may be considered ambiguous when they are not consistently and reliably reproducible by different assessors. Signatories should clearly outline their methodology for subjective assessments (such as the grading of grapes or wine) and include it in their agreements. If they do so, the assessment by reference to more subjective analysis is acceptable.

## Clause 5.3

### **Where a Grower Supply Agreement contains a fixed price or a base price, under what circumstances can price deductions or downgrades be applied?**

Unless grapes have failed to meet the maturity, purity and condition standards or other agreed specifications set out in the agreement, price deductions must not be imposed and grapes must not be rejected. The methods used by the winemaker to assess the grapes against the relevant standards or specifications must be clearly communicated along with the timing for the assessment. Methods must follow objective [Industry Endorsed Standard Procedures](#) where they are available.

### **What is considered acceptable in terms of notifying a grower of a price deduction or rejection?**

The Code is built on a foundation of good relationships and trust. A decision to impose a price deduction or rejection may have serious financial implications for the grower so it is important that this is communicated in a way that is clear, transparent and timely. Winemakers should all retain appropriate evidence which may include retention samples, documentation relating to sampling or assessment procedures, digital images, diary records or other documentation supporting their analytical procedures.

**Does the decision to impose a price deduction need to be made within 4 hours of delivery – what if other factors are yet to be considered?**

Yes, however the dispute resolution procedure allows for a period of negotiation whereby parties may negotiate a decision to impose a price deduction. If the parties then determine that the dispute is non-time sensitive, they have some additional time to negotiate the result before an independent expert must be appointed. Notwithstanding this, the notification must be made to the grower within the time frames set out in Clause 5.3.

**Are latent defect clauses for the purpose of deductions and rejections allowed under the Code?**

Clauses dealing with latent defect may be considered necessary when certain specifications are not obvious or readily observable at the time of delivery or assessment of grapes (such as smoke taint). The decision to accept such clauses are a commercial decision for the grower when entering into a supply agreement. As long as the clause is reasonable and is not otherwise inconsistent with other provisions of the Code such as those in Clause 5, then these clauses are acceptable. Agreements must also state the point in time when assessments will be made. Winemakers should be aware that pricing mechanisms that contain latent defect clauses may be found to be in breach of the Code (and/or the agreement) where a winemaker's influence over the resulting wine has contributed to those grapes failing to meet the specifications of the agreement.

**Resources**

**To fulfil the requirement that all agreements must be in writing, is there a template available to assist with this?**

Yes, code signatories may download a template for recording verbal agreements or spot Grower Supply Agreements by clicking [here](#).

**What other resources are available?**

AGW website hosts a suite of resources to assist both winemakers and growers including [templates](#) for disputes or for integrating the Code into agreements as well as [Industry Endorsed Standard Procedures](#) and other [guidance materials](#) for winegrape quality assessments.

