**INSTRUCTIONS FOR USING THE**

 **APPLE GROWER AND HARD CIDERY AGREEMENT**

1. **General**. The Agreement is provided by the Wisconsin Apple Growers’ Association as a benefit to our members. It is a sample contract which was drafted to be comprehensive, but cannot address every unique circumstance or situation. The Agreement is not intended to be a substitute for legal advice, but rather, a tool in assisting you in memorializing your agreement to set forth the rights and responsibilities of each party. It is important to read the following instructions when using the Agreement. The Apple Growers’ Association does not assume any liability related to the use or misuse of this Agreement.
2. **Completing the Agreement.**
	1. Names of Parties. It is important to include the correct legal names of the parties. If a party is a legal entity such as an LLC or corporation, make sure that the correct name is included as a party, and that the signature is in the proper format.
	2. Filling in Blanks/Striking. The Agreement contains many blank lines for you to fill in. If a blank is applicable to your situation, you **MUST** fill in the blank. If a portion is not needed for your specific circumstance, you **MUST** strike it out. If something is not struck from the Agreement, it may become part of the Agreement.
	3. Section 4A&B Delivery. FOB means “free on board.” “FOB shipment” means that the owner of the goods is responsible for damage or loss until the goods are put into the possession of the carrier. “FOB destination” means that the owner of the goods is responsible for damage or loss until the goods are delivered to the place of delivery. It is important to discuss transport with the other party, including the time of delivery and place of delivery, and the FOB option.
	4. Section 6 Price. It is important to discuss all price terms. Discuss and include an interest fee of late fee for late payments.
	5. Section 7 Duration. It is important to fill in the term of the Agreement. As drafted, it is giving you an option to either fill in a specific date, or until final delivery. If you do not specify a date, the default, as written, will be final delivery.
	6. Section 8 Notification. Fill in the blanks with the name and address of the contact that you want to receive all notifications and information regarding the Agreement.
	7. Section 20 Default. The Agreement includes the right of the prevailing party to any lawsuit regarding this Agreement to its reasonable attorney’s fees.

**APPLE GROWER AND HARD CIDERY AGREEMENT**

This Apple Grower and Hard Cidery Agreement (hereinafter “Agreement”) is entered into this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “Grower”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter “Cidery”), referred to collectively as the “Parties.”

WHEREAS, Cidery wishes to purchase apples grown by the Grower, and/or the juice pressed from them, for the purpose of making “hard cider,” and Grower wishes to sell apples or the pressed juice therefrom to Cidery.

THEREFORE, the Parties enter into this Agreement subject to the following terms:

**Section 1.**

(pick one or more of the following, fill in the blanks, circle units, strike out unneeded portions)

1. **New Planting**

Grower will plant \_\_\_\_\_\_\_ acres/trees whose production will be exclusively for Cidery

Grower will topwork \_\_\_\_\_\_ acres/trees whose production will be exclusively for Cidery

And/or

1. **Apples**

Grower will supply \_\_\_\_\_\_ bushels/bins/tons of apples to the Cidery or

The yield of the custom planting

And/or

1. **Juice/Pressing**

Grower will supply \_\_\_\_\_\_ gallons of pressed juice to the Cidery or

The juice pressed from the custom grown or supplied apples

**Section 2.**

1. **Cultivars**

(list varieties, circle units, optionally specify portion of the orchard)

Variety/Clone 1: \_\_\_\_\_\_\_\_\_\_\_ acres/trees/bushels/bins/tons from Block/Rows\_\_\_\_\_\_\_\_

Variety/Clone 2: \_\_\_\_\_\_\_\_\_\_\_ acres/trees/bushels/bins/tons from Block/Rows\_\_\_\_\_\_\_\_

Variety/Clone 3: \_\_\_\_\_\_\_\_\_\_\_ acres/trees/bushels/bins/tons from Block/Rows\_\_\_\_\_\_\_\_

The Variety list may be included as an attachment

(example attached)

1. **Scion**

(for new plantings)

Cidery will provide the Grower with any necessary scion wood and rootstocks

Grower will provide the Cidery with the scion specifications:

Caliper: \_\_\_\_\_

Length: \_\_\_\_\_

Piece/Bud Count: \_\_\_\_\_\_

Rootstock: \_\_\_\_\_\_

Delivery Date: \_\_\_\_\_\_

1. **Orchard Practices**

All fruit will be grown using good commercial practices

For new plantings, Grower and Cidery will mutually agree on a training system and any practices different from common good orchard practice, including but not limited to:

(optional: fill in or strike out as agreed upon)

1. **Current Grower Practices**

Row Orientation\_\_\_\_\_\_\_\_\_\_

Row-Row Spacing\_\_\_\_\_\_\_\_\_\_ In-Row Spacing\_\_\_\_\_\_\_\_\_\_\_

Floor Management / Cover Crop\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Support/Wires/Trellising\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Irrigation\_\_\_\_\_\_\_\_\_\_ Fertilizing\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Training/Pruning\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pollinators\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Thinning\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Shade Management\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pest Management: Organic/IPM/Conventional (circle one)

Other Pest Control Options\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Visits/Inspections**

(recommended: adjust or strike out as agreed upon)

Cidery may visit Grower each quarter to inspect the orchard/crop/facilities

Cidery may visit more frequently close to harvest to help gauge ripening

Visits shall be scheduled at mutually agreed dates and times.

1. **Record Keeping**

Grower shall keep records required by regulators

Grower will make the records available to the Cidery upon request

(optional: strike out as agreed upon)

Grower will keep additional records required by the Cidery, such as:

Planting records

Spray applications, especially pre-harvest periods

Orchard scouting and weather station records

Harvest records sufficient to establish to trace crop from tree to delivery (bin IDs, etc)

Pressing records if delivering juice

1. **Harvest Parameters**

Grower shall harvest sound, ripe fruit

(recommended: adjust or strike out as agreed upon)

Grower will mingle / segregate the apples by cultivar

Cidery may specify a ripeness standard for each variety other than common commercial practice, with the agreement of the grower, including metrics like:

Brix: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Firmness: \_\_\_\_\_\_\_\_\_\_\_\_

Starch Patterns: \_\_\_\_\_\_\_\_\_\_\_

Percent Fall: \_\_\_\_\_\_\_\_\_

Visual / Organoleptic: \_\_\_\_\_\_\_\_\_\_\_\_

Single / Multiple pickings: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cidery will supply any equipment needed for determining special harvest parameters

Harvest parameters may be revised by mutual agreement by July 31 each year

Grower will inform the Cidery \_\_\_\_days before the estimated harvest date for each cultivar

1. **Handling/Storage**

Grower will not include any ground apples

Grower will collect crop in clean, sound crates/bins, or bins supplied by the Cidery.

Grower will store apples in accordance with good commercial practice

(optional: describe or strike out as agreed upon)

Cidery and Grower may agree on any special post-harvest sweating methods

1. **Processing**

Grower will do any processing according to good manufacturing practices for raw, unadulterated sweet cider

(recommended: fill in or strike out as agreed upon)

Grower will mix the apples prior to pressing or mix the juices

Cidery and Grower will agree to cull specifications during processing\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cidery and Grower will agree to any special milling procedures (pressing aids, maceration, etc)

Grower will pasteurize/CiderSure/not treat pressed juice (circle one)

(optional: fill in or strike out as agreed upon)

Grower will only add preservatives provided by the Cidery and as instructed by the Cidery

Cidery will provide any additives it requests the Grower to use

1. **Excess/Shortage**

(recommended: adjust or strike out as agreed upon)

Grower will estimate the crop by July 31 of each year and inform the Cidery

Cidery will purchase at least \_\_\_\_\_% of the target amount each year.

If Grower production exceeds the targets, Cidery has first right of refusal to buy excess

If Grower production falls short of targets, other than by over thinning at the instruction of the Cidery, Grower will purchase market apples of the same approximate cultivar ratios on behalf of the Cidery.

Any outsourced apples shall not exceed \_\_\_\_\_% of the total delivery.

**Section 3. Quality**

(recommended: adjust or strike out as agreed upon)

1. **Apple Metrics**

Field Run /Sorted Grade\_\_\_\_

Maximum\_\_\_\_wt% material other than apples

Maximum\_\_\_\_wt% fruit culled as too damaged for pressing

1. **Juice Metrics**

\_\_\_\_\_F temp at delivery

<3.7pH at delivery

No signs of microbial growth

**Section 4. Delivery**

(recommended: adjust or strike out as agreed upon)

1. **Apples**

FOB :

Shipment; or

Delivered.

Grower will ship/deliver apples at mutually agreed times for Cidery to receive them

 Cidery will arrange for return shipment of bins supplied by the orchard

Grower may request apples be transferred to Cidery bins and Grower containers returned immediately, but must specify that before delivery

Cidery and Grower may set a mutually agreeable delivery schedule if the entire crop is not delivered shortly post-harvest

1. **Juice**

FOB:

Shipment; or

Delivered.

Cidery will arrange a mutually agreeable time with the Grower to collect the juice

Cidery will supply transportation juice containers if the Grower cannot supply them

Cidery will arrange for return shipment of IBCs/tanks supplied by the orchard

Grower may request juice be transferred to Cidery tanks and Grower containers returned immediately, but must specify that before delivery

Cidery and Grower may set a mutually agreeable delivery schedule if the entire crop is not delivered shortly post-harvest

**Section 5. Certificate of Assurance**

Grower will provide a Certificate of Assurance with each delivery stating:

Statement that only approved chemicals were used

Statement that pre-harvest intervals were adhered to

Date and content of last spray application

Statement that detailed spray records are available upon request

Statement that no ground or windfall apples were included

(optional: adjust or strike out as agreed upon)

Amounts of each cultivar and container markings or

Volume of juice, statement of blend and container markings

WI DATCP Food Plant Permit # and Expiration Date if juice delivery

(required)

Date, Authorized Grower Name, Title and signature

(example attached)

**Section 6. Price**

1. **Base Price**

$\_\_\_\_\_\_ Per new tree and/or

$\_\_\_\_\_\_ Per Acre, not to exceed (or)

$\_\_\_\_\_\_ Per Bushel/Bin/Ton

(optional: adjust or strike out as agreed upon)

1. **Adjustments Raising Price**

+$\_\_\_\_\_ Cidery Specified growing practices that limit crop yield or inordinately raise cost

+$\_\_\_\_\_ Cidery Specified harvest point that causes unusual fall amount

+$\_\_\_\_\_ Cidery Specified special handling/storage/processing conditions or delivery schedule

+$\_\_\_\_\_ Grower provided delivery

+$\_\_\_\_\_ Cidery unable to receive agreed upon delivery

+$\_\_\_\_\_ Grower requested bad harvest year minimum

+$\_\_\_\_\_ Other

(optional: adjust or strike out as agreed upon)

**C. Adjustments Lowering Price**

-$\_\_\_\_\_ Grower delivers unripe fruit, low Brix juice

-$\_\_\_\_\_ Grower delivers poor quality fruit, not due to Cidery specified practices

-$\_\_\_\_\_ Grower cannot meet agreed upon delivery

-$\_\_\_\_\_ Cidery purchase of bountiful harvest exceeding targets

-$\_\_\_\_\_ Other

**D. Annual Update**

(recommended: adjust or strike out as agreed upon)

Amounts and Prices may be revised by mutual agreement each year within 1 month of petalfall

Base Prices shall not be reduced from the prior year amount

1. **Payment Schedule**

(recommended: adjust or strike out as agreed upon)

Prepayment $\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_ (date)

Net \_\_\_\_ days from each delivery or

$\_\_\_\_\_ monthly/quarterly

Overdue payments subject to \_\_\_\_% interest

**Section 7. Duration**

This Agreement will last until \_\_\_\_\_\_\_\_\_\_\_\_\_ (fill in date) or until final delivery of the apples/juice

This Agreement may be renewed each year or term.

**Section 8. Indemnification**

The Parties hereby agree to indemnify, hold harmless, and defend the other from and against any and all actions, claims, suits, damages, costs, and expenses whatsoever, including reasonable attorneys’ fees, resulting from this Agreement except for those claims and expenses caused by or resulting from either party’s own willful acts of negligence or tortious conduct.

**Section 9. Acts of God**

Neither party is responsible for reasons beyond its control, such as hail, flooding, tornado, and fire.

**Section 10. Regulatory and Legal Compliance**

Both parties shall comply with all local, state, and federal rules and regulations which apply to the growing, handling, and processing of apples.

**Section 11. Confidential Information**

Grower will treat all apple blends discussed between the Parties as confidential information. Grower will treat all growing or harvesting conditions outlined in this Agreement as confidential at the request of the Cidery. This is not meant to exclude sharing information with the University Extension or other academic/research/professional services for the purpose of improving orchard health or yields.

**Section 12. Notification**

Communications and any notice required by this Agreement will be addressed to:

Grower Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Grower Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Grower Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Grower Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cidery Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cidery Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cidery Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cidery Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Receipt of electronic messages will be acknowledged by return email or verbally.

**Section 13. Amendment**

Any amendment to this Agreement shall be in writing, and signed by the Parties.

**Section 14. Successors**

This Agreement shall be binding on, and shall inure to the benefit of the Parties and their respective heirs, successors, executors, personal representatives, trustees, beneficiaries, and assigns.

**Section 15. No Partnership Intended**

It is understood and agreed that this Agreement shall not give rise to, not shall be interpreted as a partnership relationship.

**Section 16. Right to Counsel**

 Both Parties have had an opportunity to consult an attorney with regard to the terms herein.

**Section 17. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. This Agreement may be executed by scanned copy, photocopy, and such shall be valid and binding to the same extent as if it were an original.

**Section 18. Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to the subject matter herein and supersedes and preempts any and all prior discussions, agreements, representations, and warranties by or among the Parties, whether written, oral or otherwise.

**Section 19. Governing Law**

This Agreement is governed by the laws of the state of Wisconsin.

**Section 20. Waiver and Severability**

A party’s consent to any variation of a term of this Agreement, or the receipt of payment with knowledge of any breach, shall not be deemed as a waiver as to any breach of any covenant or condition contained herein, nor shall any waiver be claimed as to any provision of this Agreement unless the same is in writing, signed by the parties.

**Section 20. Default**

In the event that either party breaches any provision of this Agreement, the non-breaching party shall give written notice to the other of the breach. The breaching party shall have thirty (30) days to cure the breach from the date that notice is received. If, after thirty (30) days’ notice, the breaching party has not cured the breach, the non-breaching party shall be entitled to any and all remedies, at law or in equity, and the prevailing party in any such suit shall be entitled to its costs, including reasonable attorney’s fees, and the non-breaching party may also elect to terminate this Agreement and recover any and all damages.

IN WITNESS WHEREOF:

(name printed and signed)

For Grower:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For Cidery:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***DISCLAIMER***

***This sample contract is for illustrative purposes only and shall not be merely duplicated without consideration of each circumstance. Various alternative provisions have been provided and may be considered for inclusion when appropriate. Failure to remove provisions and modify this sample contract to fit individual needs may lead to confusion and the inclusion of undesired terms to your contract.*** ***This is not intended to cover each situation nor can it anticipate specific needs, and should not be considered a substitute for appropriate legal counsel.***