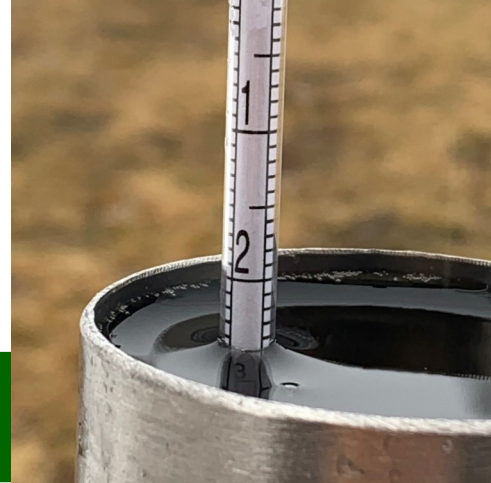


Additional Clauses for UVM Maple Sap Supply Agreement - Supplement

FBFS 053– 4/22 Acer Series: Maple Business Development
Visit www.maplemanager.org



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About This Educational Guide

This guide is for informational purposes only and does not provide legal advice or create an attorney-client relationship. You should contact an attorney to obtain advice as to any specific issue or the application of this template your unique situation. This guide also references contracts and formats that may be different in various U.S. states or under certain circumstances. Contact a professional to adapt this educational format for your business needs.

The “UVM Maple Sap Non-Exclusive Supply Agreement” template is available at www.maplemanager.org. This additional resource sheet explains specific situations that may prompt a sap supplier or sap buyer to modify clauses in the original template or to add additional clauses that better reflect the wishes of each party.

TERM (Section 1):

Sap producers: Any sap producer having recently made significant start-up investments may want a multi-year agreement to provide greater assurance of the continuation of the initial relationship with the buyer. A term of three or more years could be considered if the seller desires to have a secure buyer for sap to facilitate payback on the start-up investment. This consideration will depend on the sap seller’s ability to find additional suitable buyers.

Sap buyers: Sap buyers that have recently made new investments or are considering new investments for sap handling, processing, storage or marketing may be seeking a multi-year relationship to ensure a sufficient supply of sap can be secured in order to operate at the desired capacity. This consideration will depend on the sap buyer’s ability to source sap from additional sellers.

PRICE (Section 6.1 and Schedule 1)

Optional Price Adjustments: Based on the stipulations for sap pricing in the standard UVM Maple Sap Non-Exclusive Supply Agreement it is possible that a post-harvest season price increase in the syrup markets could produce a higher value for the syrup crop. Without a post season price adjustment, the sap buyer/syrup processor would retain all additional value manifested from sale of the syrup crop at higher prices. An alternative outcome could result by including an option for a “Price increase” to the sap seller if a higher bulk syrup price is announced by bulk buyers prior to June 15th of the production season.

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INSPECTION (Section 7 and Schedule 3)

The following best practices have been recommended by sap buyers and maple business professionals familiar with the sap selling situation.

Disputed Measurements: In the event of dispute, sellers and buyers should take an average of two agreed upon measuring devices when measuring sap volume, sugar content or other features.

Ownership: once sap has been pumped the ownership changes.

Calibration: Hydrometers and refractometers should be calibrated in the beginning of the season in front of both sap buyer and seller.

Verification: The buyer must be present for delivery to take measurements or verify measurements recorded by others. If the brix varies more than 0.2 from the buyers own brix reading, more measurements should be taken.

Sample Clause

[Working together, the Buyer and Seller shall calibrate, at the beginning of and regularly throughout each sap season (or at such time as such tools malfunction or break), hydrometers and refractometers.]

REJECTIONS (Section 7):

In the event of a rejected sap delivery, the following alternatives for handling the rejected sap can be considered:

Alternative A) The first rejected load should be disposed of at buyers cost and/or at the buyer's location. Any further loads that are rejected should be disposed of elsewhere or for a fee of \$0.02 per gallon

Alternative B) The rejected load of sap remains the property of the sap supplier. The supplier can choose what will be done with the rejected load. This includes finding another buyer. The sap supplier is responsible to remove the rejected sap load from the sap buyer's property.

EXCLUSIVITY (Section 3.6)

The standard UVM Maple Sap Non-Exclusive Supply Agreement does not automatically include exclusivity clauses in Section 3.4-3.6. Several factors can be considered for sap suppliers and sap buyers to decide if and when exclusivity is desired in the agreement.

Disruption to Processing Capacity: During the development of the Sap Supply Agreement a question arose , “what happens if the sap buyer/syrup processor faces a catastrophe that prevents from the boiling sap or buying sap?” Does the sap supplier require protection from loss of income in this situation? It is recommended that suppliers and buyers review all existing insurance policies and consult with professionals if additional insurance products are appropriate. A variety of “Surety Bonds” might be considered to mitigate financial risks that arise from a catastrophic event that prevents fulfillment of a contract.

Exclusivity, it Depends: Both the sap supplier or sap buyer could experience either more or less risk if an exclusive agreement is established.

Sap suppliers who are not located in proximity to enough sap buyers to offer multiple sales options will be motivated to secure a sap sales outlet that can take the full amount of sap that is produced. In this case the sap supplier may wish for the sap buyer to commit exclusively to purchase this sap, and prohibit the option for the buyer to procure sap from a different source in any way that limits the amount of sap accepted from the original supplier. Sap suppliers may then find themselves obligated to meet the established “level of supply” and could be required to notify the sap buyer in advance if there is to be an interruption or deviation from the expected supply.

Sap Buyers will consider different factors to determine if exclusivity is in their best interest. In a particular locale where multiple syrup processors are seeking to acquire purchased sap, a sap buyer may seek an exclusive sap seller to ensure a sufficient volume of sap is available to meet their processing targets. A potential problem arises if the exclusive supplier begins to deliver more sap than the receiving sap buyer has the capacity to accept. If that situation occurs, the supplier and seller would need to have an agreement that explains how the supplier will recognize the value of this extra sap from either the exclusive buyer or potentially through an additional buyer.

See the following additional clauses that can be modified and included if the agreement becomes exclusive. Please note the potential challenge of adapting these legal clauses in a way that reflects the unpredictability of sap flow throughout the day and season.

Sample Clauses

3.5 **Notice of Supply Change.** Seller shall provide Buyer no fewer than [#####] days prior written notice of any change or anticipated change to the supply conditions which may or shall affect any terms in this Agreement (e.g., as applicable, the minimum purchase quantities or exclusivity provisions).]

3.6 **Exclusivity.** Without the prior written approval of Buyer, Seller shall not sell Products to any party other than Buyer, it being understood that Buyer shall be the exclusive purchaser of Products from Seller during the Term (as defined at Section 1 above).]

3.7 **Inventory.** Seller shall provide Buyer with a detailed list of inventory, with a three-day outlook of availability, daily.]

Maximum or Minimum Purchase Requirements (Section 4)

Maximum Processing Capacity: The buyer should be able predict the maximum amount of sap that they can process in a 24-hour period and therefore the maximum amount of sap they could receive in a 24-hour period. In a situation where the sap supplier has a larger amount of sap and the buyer is unable to accept the full amount, the supplier/seller will seek to be free to find another buyer.

Minimum Purchase Requirements: The seller may seek to specify the minimum amount of acceptable sap that will be purchased throughout the entire season to ensure that the relationship is feasible. (see sample clause below). Most sap buyers have access to their own sap or sap from other suppliers so that there is less concern that a small sap delivery will not be enough to “start-up” the processing equipment. However, in rare cases, a sap buyer may seek to establish a minimum delivery load size in order to match the sap volume with the processing systems in their facility.

Sample Clause

4.4 **Minimum Purchase Quantities.** Buyer shall purchase from Seller no fewer than [QUANTITY] [gallons/volume] of the Products on or before [DATE] at the prices set forth on **Schedule 1.**]

Additional Clauses

The section below includes additional clauses that can be considered in the agreement.

Late Payment Charges- Section 6.2

Sample Clause

In addition to any other rights and remedies each party may have with respect to the other party's failure to fully and timely pay any amounts due hereunder, any amounts not paid when due shall be subject to [(i)] an interest charge of one-half percent (0.5%) per month computed from the applicable due date or the maximum rate legally permitted, whichever is less [, and (ii) a late payment fee of [####] per invoice].

Option to Include Insurance Requirements – Section 9

Sample Clause

Both Parties shall carry and maintain [(a) commercial general liability insurance, (b) casualty insurance up to the full replacement value of the Products, and (c) product liability and product recall insurance], in amounts sufficient to satisfy their obligations under this Agreement. Such policies shall each have a minimum of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in general aggregate coverage. Each Party shall provide the other with certificates of insurance representing policies in the amounts stated in the preceding sentence and shall name the other as an additional insured upon request.]