



## Olive Oil Milling Services Agreement

### NOTICE:

**Scheduling:** This contract must be signed and returned before we will schedule a milling date. Fax the contract to 707-279-1972 or email to emilio@chacewaterwine.com. Please allow 24 hours after faxing the contract for it to be filed. You may then call to schedule a milling date. All scheduling will be done by Emilio dela Cruz, Mill Master, Chacewater Olive Mill. Please call M-F between 9-4 at 707-279-2995 for scheduling. Thank you.

**Payment:** Payment is due in full at the time of the Oil removal by the Customer. **OIL WILL NOT BE RELEASED WITHOUT PAYMENT.** Be sure your driver has means of paying.

**\*\*\* The mill is closed on all Saturdays and Sundays. \*\*\***

**This Olive Oil Milling Services Agreement** (the "Agreement") is made and entered into as of

\_\_\_\_\_ (date), by and between CHACEWATER OLIVE MILL., a California Corporation, (hereafter referred to as "COM") and \_\_\_\_\_ ("Customer").

**The parties agree as follows:**

### 1. Services.

**1.1.** Subject to the terms of this Agreement, and the Exhibits attached hereto, COM shall use its labor equipment to mill Customer's Olives (the "Olives") and extract the Oil therefrom (the "Services"). The Services shall be performed after the Customer has delivered the Olives to COM's facilities and COM has had an opportunity to inspect the Olives.

**1.2. Delivery Procedures.** Customer shall deliver Olives to COM, unless otherwise agreed upon in advance and in writing. Olives shall be weighed and a Weighmaster Certificate shall be completed, signed by authorized representatives of COM and Customer, and a copy thereof shall be given to the Customer. COM shall establish the schedule by which custom crushing takes place. Customer shall not deliver Olives to COM for milling except on the date and time that has been previously agreed upon by the parties. Late or cancelled deliveries may incur a surcharge. Note that the mill shall be closed on all Saturdays and Sundays. COM shall begin processing Customer's Olives within 24 hours of their delivery and acceptance. COM makes no representation and gives no guarantee as to the numbers of gallons of oil to be obtained from each ton of fruit.

**1.3. Price.** Customer agrees to sign a California Resale Certificate and to pay COM for the Services at the rate set forth in the Fee Schedule and stated on the Weighmaster Certificate. An Olive Oil Receipt will be issued at the time of removal with all charges detailed.

**1.4. Payment.** Payment is due in full at the time of the Oil removal by the Customer. See Fee Schedule for details on what forms of payment are accepted.

**2. Performance of the Services.** COM hereby represents to the Customer that it shall use its best efforts to perform the Services in a workmanlike manner, in compliance with normal industry standards for such services.

**3. Right of Refusal and Olive Fly.** Notwithstanding any other provision of this Agreement to the contrary, COM shall have the right to refuse to crush any Olives whose condition it deems, in its sole discretion, to be unsatisfactory. In the event that COM makes this determination, it shall promptly notify Customer and Customer shall promptly remove the Olives from COM's premises and neither party shall have any further obligation to the other hereunder. In particular, all customers are encouraged to be particularly vigilant about the Olive Fly. All fruit must be properly covered in transit to the Mill. Fruit that is not covered with tarps or other appropriate covering will not be accepted for milling at COM.

**4. Pesticide Application Liability.** Customer shall have full responsibility for the means by which the Fruit is cultivated and ensure practices are in accordance with all regulatory requirements. Any pesticide or chemical use must be applied according to all federal and state guidelines. FAILURE TO DO SO, MAKES THE CUSTOMER LIABLE FOR ANY CONTAMINATION INCURRED AT THE COM, AND MAKES THE CUSTOMER FINANCIALLY RESPONSIBLE FOR ALL LABOR, LOST INCOME, AND DAMAGED PRODUCT RESULTING FROM SUCH CONTAMINATION.

**5. No Ground Harvesting.** To ensure the sanitation of the mill facility no Olives will be processed that have been in direct contact with the ground. (Harvesting onto clean tarps is acceptable.) The Customer shall have full responsibility for the means in which their Olives are harvested. Olives that have come into contact with the ground are not acceptable. FAILURE TO DO SO, MAKES THE CUSTOMER LIABLE FOR ANY CONTAMINATION INCURRED AT THE COM OLIVE MILL, AND MAKES THE CUSTOMER FINANCIALLY RESPONSIBLE FOR ALL LABOR, LOST INCOME, AND DAMAGED PRODUCT RESULTING FROM SUCH CONTAMINATION.

**6. Olive Oil Containers.** At the time of delivery the Customer may provide empty olive oil storage containers for their oil to be stored in. COM ACCEPTS NO RESPONSIBILITY FOR ANY PREVIOUS CONTAMINATION OF CONTAINERS PROVIDED BY THE CUSTOMER FOR THE STORAGE OF THE CUSTOMER'S OLIVE OIL.

**7. Oil Sample Retention.** For quality control purposes an oil sample from each Customer's Olive Oil from each day of milling will be retained by COM. This oil will not be sold or distributed. The sample will be in the amount of 160z (1/2 quart).

**8. Storage and Removal.** Customer shall pick up their Olive Oil within twenty-four hours after completion of the Services, unless otherwise agreed upon in advance and in writing. COM is under no obligation to store the oil. COM, in its sole discretion and assuming space is available, may store the oil. If it chooses to store the oil if the Customer does not remove the oil, Customer shall pay COM a storage cost of two hundred dollars (\$200) per day until the Oil is removed. In the event that Customer fails to provide containers of sufficient volume to contain their Oil, COM will provide containers and charge Customer for those containers. COM will choose the type and size of container depending on availability (see schedule of the size and costs of the containers attached to this contract in the Fee Schedule). If necessary, COM may, at its sole discretion, place Customer's Oil in COM storage tanks and charge Customer a racking fee of \$350 for subsequent transfer of Oil to Customer's containers.

**9. Risk of Loss.** The parties agree that at all times the Customer shall bear the risk of any loss to the Olives or to any Oil that is extracted there from that is not the result of negligence on the part of COM

**9.1.** The Customer is aware that this includes, but is not limited to, the loss of Olives or Olive Oil, due to an electrical power failure. The Customer is aware that COM does not maintain a backup power supply. The Customer accepts this risk.

**10. Force Majeure.** No party will be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligation (other than the payment of money) results from an event arising beyond the reasonable control of such party or its contractors, subcontractors or agents that delays or prevents the performance of any obligation under this Agreement, such as, without limitation, acts of God, labor disputes, strikes, vandalism, fires, floods, earthquakes, electrical power failures, or acts of terrorism.

**11. Governing Law, Consent to Jurisdiction, Venue.** This Agreement is made and entered into in California and shall be governed by and construed in accordance with California law. Each party hereby expressly consents to the jurisdiction and venue of the Superior Court for the County of Lake purposes of any legal or equitable action or proceeding arising out of this Agreement.

**12. Modifications.** Any modification of this Agreement will be effective only if it is in writing and signed by both parties.

**13. Use of Name.** Use of the Chacewater Olive Mill name requires the express written consent of Chacewater Olive Mill, Inc.

**14. Effect of Waiver.** The failure of either party to insist on strict compliance with any of the terms or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant or condition, nor shall Chacewater Olive Mill any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right for any other times.

**15. Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being invalidated in any way.

**16. LIMITATION OF LIABILITY.** THE CUSTOMER AGREES TO RELEASE COM FROM ALL LIABILITY ARISING FROM OR RELATED TO THE MILLING AND EXTRACTING OF OIL FROM CUSTOMER'S OLIVES. THIS INCLUDES, BUT IS NOT LIMITED TO, ALL LIABILITY FOR DAMAGES RESULTING FROM THE ACTIVE OR PASSIVE NEGLIGENCE OF COM OR ITS AGENTS. IF COM IS FOUND LIABLE FOR LOSS OR DAMAGE DUE TO ITS FAILURE TO PERFORM IN ANY RESPECT, COM'S LIABILITY SHALL BE LIMITED TO THE AMOUNT COM IS TO RECEIVE FROM CUSTOMER FOR ITS SERVICES UNDER THIS AGREEMENT; THIS LIABILITY SHALL BE EXCLUSIVE.

**17. Headings.** The headings appearing at the beginning of the several paragraphs contained herein have been inserted for identification and reference purposes and shall not themselves determine construction or interpretation of this Agreement.

**18. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

**19. Mediation.** The parties hereto agree to mediate any dispute between them arising out of this Agreement prior to any court action or arbitration. Mediation is a non-binding process in which the parties to the dispute meet with a mediator (selected by the parties) who will try to work out a mutually acceptable resolution. The mediator does not impose a settlement upon the Parties. If the parties cannot agree on a mediator, the Superior Court of Lake County shall appoint a mediator. The mediator may conduct more than one session and the mediation fee shall be paid equally by the participating parties. If one of the parties refuses to or resists mediation, such party shall not be entitled to recover prevailing attorney fees.

**20. Arbitration.** Any dispute arising out of this Transaction shall be decided by neutral binding arbitration in accordance with Chapter 3, Title 9 of the California Code of Civil Procedure (CCP section 1283.05) including, but not limited to, the right of discovery, and not by court action except as provided by California Law for Judicial Review of Arbitration Proceedings. The arbitrator shall be a retired Superior Court Judge or a licensed California attorney with at least five years experience. The arbitration shall be conducted before JAMS/ENDISPUTE (hereinafter "JAMS") 1-800-352-5267 or Jamsadr.com, or such other arbitrator as the parties may mutually agree upon. If the parties cannot agree upon an arbitrator, the Superior Court of Lake County shall appoint an arbitrator from the JAMS panel of retired judges. The filing of an action in a court of competent jurisdiction to enable the recording of a notice of pending

action, for an order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediation or arbitration under this Contract regardless of whether said complaint includes causes of action not necessary for the recording of the notice of pending action. The parties agree that in the event of such court filing, it would be appropriate for the court to issue an order staying the court proceedings pending the completion of the mediation or arbitration under this Contract. The filing of such judicial action shall not constitute a waiver of mediation or the arbitration rights or the prevailing party's rights to attorney fees and costs under this Agreement. The prevailing party in the arbitration shall recover attorney fees and the losing party shall also pay the arbitrator's fees.

**21. Attorney's Fees.** If any legal action or arbitration, including any action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, which may be set by the Court and/or Arbitrator in the same action or in a separate action brought for that purpose in addition to any other relief to which the said party may be entitled. The parties further agree that any arbitration or court action shall be conducted in Lake County, State of California, or such other place as the parties may agree in writing.

**22. Entire Agreement.** Each Weighmaster Certificate and Olive Oil Receipt now or hereafter executed by the parties, within the time frame stated at the head of this Agreement, shall form part of this Agreement (whether or not physically attached hereto). This Agreement (including each Resale Certificate, Fee Schedule, Weighmaster Certificate, and Olive Oil Receipt) sets forth the entire agreement and understanding between the parties regarding all matters covered herein. All prior oral or written agreements, discussions, understanding, commitments and/or practices of any and every nature between COM and Customer about the subject matter of this Agreement are superseded by this Agreement.

Accordingly, the parties have executed this Agreement as of the date first set forth above.

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**CUSTOMER** Signature

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Printed Name and Title (if applicable)

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Company (if applicable)

Date \_\_\_\_\_

**Additional Contact Info:** Please fill out.

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

Mailing Address:

Fax: \_\_\_\_\_

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

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**CHACEWATER OLIVE MILL** Signature

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Printed Name and Title

Date \_\_\_\_\_

Chacewater Olive Mill: 5625 Gaddy Lane, Kelseyville, CA 95451

Phone (mill): 707-279-2995 Fax (mill): 707 -279-1972 Email:emilio@chacewaterwine.com

\*\* Please fill out the California Resale Certificate on the next page. \*\*

### California Resale Certificate Food Exempt Status

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(Name of Purchaser)

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(Address of Purchaser)

**I HEREBY CERTIFY:** That the tangible personal property described herein which I shall purchase from:

CHACEWATER OLIVE MILL, 5625 Gaddy Lane, Kelseyville, CA 95451, is exempt from the Sales and Use Tax Law because the property described herein is either food for consumption or containers that will be used to store food for consumption.

Description of property/services to be purchased: Olive oil, Olive oil storage containers, Olive milling services.

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

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(Signature of Purchaser or Authorized Agent)

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(Title)

## Olive Oil Milling Services and Equipment

### Fee Schedule

- Variances from this Fee Schedule must be agreed upon in writing.
- Payment is due in full at the time of the Oil removal by the Customer. OIL WILL NOT BE REALEASED WITHOUT PAYMENT, be sure your driver has the means of paying.
- Please pay by check, payable to **Chacewater, Inc.**
- Credit cards will be accepted but a surcharge of 4% of the Total Amount Due may be applied to cover transaction fees. (Visa, MC, & Discover are accepted.)

#### **Milling Charges** \*Prices based on all fruit being delivered at one time\*

All prices are for English tons (2,000 lbs.)

Net Weight of Olives	Fee
Less than 300 lbs.	\$ 210
300-500 lbs.	\$ 235
501-750 lbs.	\$ 260
751-1000 lbs.	\$ 285
1001-1500 lbs.	\$ 320
1501 lbs. or more	\$ 0.21/per lb.(\$410/ton)

\*Note that all amounts less than ½ ton are subject to special scheduling considerations, as these smaller amounts by themselves are not enough to start up the mill. As with all Customers, Chacewater Olive Mill will establish the date and time that such fruit can be delivered (see Agreement, Section 1.2.)

#### **Olive Oil Storage Charges**

- After 48 hours: \$25/day, unless agreed upon in writing.
- Racking Fees: \$25 if it is necessary to store the oil in our tanks or containers if no container is provided by Customer.

#### **Equipment Prices**

*\*Equipment prices subject to change without notice.*

\*If you plan on purchasing containers from us please arrange with us ahead of time to make sure that we have stock on hand. We do not guarantee having containers in stock.

- Food grade 1-gallon container w/cap: \$4.00
- Food grade 5-gallon container w/cap: \$15.00
- Food grade 55-gallon container: \$130.00
- Food grade spigot for containers: \$5.00

**DIRECTIONS:**

*CHACEWATER OLIVE MILL, 5625 Gaddy Lane, Kelseyville, CA 95453, (707) 279-2995*

From the Napa Valley (plan for 2 hours drive from Calistoga):

Take Hwy 29 North.

Stay on 29 through Calistoga.

29 goes up over Mt St Helena, down through Middletown.

In Lower Lake, 29 makes a sharp left turn at intersection.

Stay on 29 to Kelseyville.

Exit at first Kelseyville exit.

Follow road onto Main Street.

Turn right on Third St.

Turn right onto Gaddy Lane.

Olive Mill is on left hand side, just a little past the Post Office.

From Mendocino County:

Take Hwy 20 into Lake County.

Take Hwy 29 towards Lakeport and Kelseyville.

Go past Lakeport.

Exit on Merrit Road by making a left. \*

\*Stay on Merrit Road; it becomes Gaddy Lane after crossing Kelsey Creek.

Olive Mill is on Left hand side, just a little past the Post Office.