

**EXHIBIT B**  
**STANDARD TERMS AND CONDITIONS**

In addition to provisions identified in the Agreement, the following standard provisions also apply:

1. **Sales Rights.** Oppenheimer, as agent for Grower, has the authority to arrange the sale of the Grower Crop on a commercially reasonable basis, including (i) soliciting and identifying Customers, (ii) determining and limiting the quantity of Grower Crop to be sold, (iii) determining or adjusting the price, quantity, timing, delivery, payment and other terms of each sale of Grower Crop to a Customer, and (iv) collecting all Sale Proceeds. Notwithstanding any other term in this Agreement, Oppenheimer makes no representation, warranty or guarantee that all of or any particular portion of the Grower Crop will be sold, will be sold for a specific price, or will be sold for prices comparable to or higher than prices realized from sales of similar Produce sold by other growers. Grower waives notice of any term or manner of the sale of the Grower Crop by Oppenheimer, including without limitation, any adjustment to price or any other term of such sale, whether with respect to condition, quality or reduction in quantity of the Grower Crop, in whole or in part, or for any other reason or cause. Grower and Oppenheimer acknowledge and agree that “FOB sales price” or “gross sales price” means the price invoiced to a Customer at “shipping point” for the Grower Crop. Grower and Oppenheimer further acknowledge and agree that prices, declared values, or other related INCOTERMS stated on import, export, proforma, commercial, customs, or consular invoices or other customs documents, are for customs purposes so that Grower Crop can be imported into the U.S. or Canada, and that those values or prices are not guaranteed by Oppenheimer nor are they FOB Sales Proceeds or Gross Sales Proceeds. All Commissions are earned by Oppenheimer at such time the Grower Crop is ready for delivery to a Customer, regardless of the terms of the sale of the Grower Crop. Grower authorizes Oppenheimer to deduct, retain and withhold, and/or setoff all amounts owed to Oppenheimer or the Affiliates (a) under this Agreement, the Advance Agreement, or the other Transaction Documents or (b) owed by Grower or any of its affiliates before remitting any Net Sale Proceeds to Grower. Grower agrees that all amounts owed by Grower or its affiliates to Oppenheimer, Grandview, and the Affiliates are without setoff, deduction, recoupment, or withholding of any kind.

2. **Sale Terms.**

(a) **General.** Oppenheimer will arrange the sale of the Grower Crop on behalf of Grower under the rules of the Perishable Agricultural Commodities Act (P.A.C.A.) and, to the extent relevant, similar laws. Oppenheimer’s standard terms for sales of the Grower Crop are “USDA Good Arrival;” however, Oppenheimer has the right to modify and negotiate different terms of sales of the Grower Crop with Customers in Oppenheimer’s sole discretion.

(b) **Marketing Methods.** Oppenheimer may market and sell the Grower Crop on such terms and pursuant to such methods as Oppenheimer may select including any of the following:

(i) Selling the Grower Crop on “freight on board,” open, price after sale, price after arrival, or delivered basis;

(ii) Selling the Grower Crop on fixed terms;

(iii) Selling the Grower Crop on a consignment or joint account basis;

(iv) Entering into arrangements with local or destination brokers or commission merchants to sell the Grower Crop;

(v) Selling the Grower Crop through terminal markets;

(vi) Transferring title to the Grower Crop on behalf of Grower to a Customer;

(vii) Granting credits or discounts in favor of Customers to be applied to the purchase price of a sale of the Grower Crop;

(viii) Handling, settling and compromising claims relating to the sale of Grower Crop with Customers, agents on behalf of Customers, or insurers of Customers;

(ix) Abandon shipments without the necessity of a state or federal USDA inspection;

(x) Marketing the Grower Crop for sale in conjunction with the sale of other Produce or other product grown or provided by other growers by shipment, grade, variety, pack style or other standards;

(xi) Discontinuing selling Grower Crop, selling only a certain portion of Grower Crop, or converting or directing the conversion of the Grower Crop to Freezer Product, Juice Product, or other product form other than Fresh Produce, due to market conditions or the quality of the Grower Crop as reasonably determined by Oppenheimer;

(xii) Taking any actions with respect to the packaging, marketing, sale and delivery of Grower Crop as Oppenheimer deems appropriate including but not limited to, setting weekly, monthly, quarterly or annual prices, setting ceiling and/or floor prices, granting rebates and ad pricing;

(xiii) Making adjustments to the purchase price with respect to a sale of any portion of the Grower Crop that is not of a quality or in a condition reasonably acceptable to a Customer without requiring the inspection of such Grower Crop when such adjustments and waiver of inspection are necessary to consummate a sale or otherwise, at any time, including at the time of delivery of the Grower Crop to the Customer; and

(xiv) Repacking or reconditioning any portion of the Grower Crop at Grower's expense, including the cost of labor, materials and in and out freight.

(c) **Sale Decisions.** Oppenheimer may choose to not sell all or any portion of the Grower Crop that, in Oppenheimer's reasonable judgment, is not prudent under market conditions, is not marketable for any reason, or does not conform to appropriate food safety practices. Oppenheimer may instruct Grower to discontinue further production of Grower Crop or to convert a portion of the Grower Crop to freezer product, juice product, or other product

form other than Fresh Produce, due to market conditions or the quality or condition of the Grower Crop.

(d) **Special Sale Programs.**

(i) **Retail Programs.** If Grower participates in any type of Retail Program, but does not provide forecast volumes or US#1 quality specifications as agreed with Oppenheimer and upon which Oppenheimer relies to fulfill such program commitment to a customer, then Oppenheimer may, with written notice, recover any consequential loss related therefrom by purchasing produce from other sources to meet such program commitments.

(ii) From time to time, Oppenheimer manages fixed-price retail programs of certain customers that require repacking Produce into consumer packs comprised of a specific quantity and quality of Produce (“CRP - Commingled Retail Program”). When necessary to meet the fulfillment requirements, Oppenheimer may notify Grower in writing that Oppenheimer intends to include Grower Crop in a CRP load along with other grower’s crop to fulfill all or a portion of a Retail Program. If Grower does not want to participate in a specific CRP, Grower may opt out by providing written notice of Grower’s decision to opt out to Oppenheimer within seven days from the date Oppenheimer provides notice to Grower of its intention to include Grower Crop as part of a CRP. Failure to provide this opt out notice will be deemed Grower’s agreement to participate in the Retail Program. Accounting for sales of such commingled loads shall be reported to all growers participating in the commingled load on a pro-rata basis depending on each grower’s share of the total inventory based upon weight making up the load. In the event all or a portion of a commingled load is rejected by Oppenheimer’s customer, all growers participating in the commingled load will share in the loss on that same pro-rata basis.

(iii) **Promotional Sales.** Oppenheimer, as the agent for Grower, has the authority to enter into promotional agreements and relationships with Customers, including providing Customers with promotional allowances, rebates and other incentives to Customers with respect to Grower’s Crop and to deduct such expenses from the sale proceeds of the Grower Crop.

3. **Purchase Price Adjustments.**

(a) **General.** Oppenheimer has the exclusive right to set or adjust the sale price with respect to any sale of the Grower Crop based upon market conditions or for any reason in its sole and absolute discretion. If Oppenheimer adjusts the sale price with respect to any sale of the Grower Crop due to issues regarding the quality or condition of a certain portion of Grower Crop, Oppenheimer may, but is not required, request a USDA or similar inspection (as applicable) or conduct its own warehouse inspections of the Grower Crop at issue.

(b) **Compromises.** Oppenheimer, acting in good faith, may enter into agreements and compromises with Customers to resolve disputes relating to sales of the Grower Crop, including without limitation adjusting the purchase price or accepting a return of the Grower Crop.

#### 4. **Packaging.**

(a) **Designation of Packaging.** Oppenheimer will determine, after consultation with Grower, the Pack Box styles, labels and configurations under which the Grower Crop will be packed and marketed.

(b) **Oppenheimer Brand Exclusivity.** Cartons, labels and other packaging materials created by Oppenheimer that contains or displays any Oppenheimer brand, content, graphic designs or other trademark or intellectual property, including, without limitation, Oppenheimer's rights in and to the Ocean Spray® brand, label or trademark, whether in the possession of Grower, used in connection with the marketing and sale of the Grower Crop, or otherwise, are and shall remain at all times property of Oppenheimer and are for the exclusive use of Oppenheimer. Oppenheimer may use Oppenheimer branded cartons, labels and packaging materials for packing Grower Crop marketed exclusively by Oppenheimer on behalf of Grower. Grower and its affiliates are prohibited from using any Oppenheimer branded packaging materials unless otherwise expressly approved by Oppenheimer in writing prior to such use. Grower acknowledges that it has no right, title or interest in Oppenheimer's intellectual property, including, without limitation, all brands, trademarks, trade names or trade dress except as provided by this Agreement and that Oppenheimer may revoke any right or license granted by this Agreement at any time.

(c) **Co-Branding, Grower** agrees to include the Oppy half-moon logo as a secondary trade brand on any packaging going to market in their own brand.

(d) **Promotional Packaging Programs.** Notwithstanding any other term in this Agreement, Oppenheimer may sell Grower Crop to certain Customers who request or require the Grower Crop to be packed in a form other than the form of the Pack Boxes. In those situations, Grower may be required to package a portion of the Grower Crop in such particular manner as may be requested by such Customer. Oppenheimer will make reasonable efforts to provide Grower with notice of such special programs and packaging requirements.

(e) **Packaging.** Grower is solely responsible for the purchase and inventory of all packaging material and will bear the risk of loss or damage while in its custody, maintaining adequate insurance coverage. In the event Oppenheimer orders and pays for packaging on the Grower's behalf, Oppenheimer may charge Grower upon receiving a Proof of Delivery from the vendor and deduct such amounts from Oppenheimer's payments or Advances to Grower. Any excess packaging at the end of a Production Season will be stored in good condition and may be carried forward to a subsequent Production Season. Upon expiration or termination of this Agreement, Grower shall, as Oppenheimer will determine in its sole and absolute discretion, either (i) destroy all such labels and packaging, or (ii) sell or ship the labels and packaging to Oppenheimer or an authorized supplier, producer, or other Person designated by Oppenheimer.

5. **Advances and Security Grant.** Advances made by Oppenheimer under this Agreement do not constitute a guaranteed price. Oppenheimer may in its sole discretion discontinue or modify these Advances due to market conditions, quality or condition concerns, adverse weather, or other factors. Oppenheimer will provide Grower with notice of any such restrictions, conditions, or changes. All Advances made to or for the benefit of Grower will be recovered from the sale of Grower's Crop and will be deducted from each settlement, beginning with the first arrivals. These deductions, which may result in a lower net return to the Grower,

include without limitation: shipping and good arrival advances, ocean freight, cartage, handling and storage, customs duty and clearance, inspection fees and fumigation. Advances may be wired to Grower's designated bank account. All associated bank fees or costs involved with such wire transfers will be the responsibility of Grower and may also be deducted from any net recoveries. Immediately after Final Reconciliation, any outstanding amounts owed to Oppenheimer resulting from any Grower default pursuant to the Agreement will be charged interest at the rate that is the greater of i) 12% and ii) Wall Street Journal US Prime rate plus 4% per annum, compounded annually. Interest on amounts owing to Oppenheimer after 6 months will be increased to the greater of i) 14% and ii) Wall Street Journal US Prime rate plus 8% per annum compounded annually or the maximum allowed under state law, whichever is less. To the extent not otherwise provided or effective in the other Transaction Documents, Grower grants Oppenheimer a continuing security interest in all Grower's assets, including Grower Crop, inventory, equipment, and accounts, and all rents, issues, profits, and proceeds of the foregoing, both now existing and hereafter acquired, to secure the Advances and all other obligations under this Agreement and the Transaction Documents.

**6. Oppenheimer Representations of the Grower Crop.**

Notwithstanding that Oppenheimer is marketing and selling the Grower Crop as the agent of and for Grower, Grower authorizes Oppenheimer to use bills of lading, to take possession of and to deliver the Grower Crop under the name of Oppenheimer as contemplated under 7 CFR 46.30(b) and to transfer title to the Grower Crop pursuant to Cal. Comm. Code § 2403(2) and this Agreement.

**7. Accounting and Reporting.** Oppenheimer will provide Grower

(i) on a weekly basis, reports of sales and deliveries of Grower Crop sold and delivered the preceding week, and (ii) at such times as determined by Oppenheimer, other information and reports, in such form and at such times as is Oppenheimer's typical practice, regarding inventory position, daily price averaging and trouble reports relating to sales of Grower Crop. Oppenheimer will retain copies of all statements and receipts relating to Agent Expenses. Notwithstanding the foregoing, Oppenheimer will provide Grower with itemized information relating to Customer-Related Expenses upon Grower's written request. Grower agrees that the above-described information satisfies the requirements of sections 56273 and 56273.1 of the California Food & Agricultural Code as to record keeping and accounting obligations. Grower hereby waives any additional rights it may have under sections 56255, 56271, 56273, 56273.1, and 56275, all of which are set forth and attached hereto.

**8. Agency for Other Growers.** Notwithstanding the agency

relationship pursuant to this Agreement, Grower acknowledges that Oppenheimer and its affiliates may serve as agent or provide sales, marketing, delivery, financing, or other services on behalf of other growers or providers of agricultural product, including Produce, that may compete in similar markets as the Grower Crop. Moreover, Grower specifically acknowledges and consents to Oppenheimer and the Affiliates selling, marketing, distributing, financing, providing goods and services, and otherwise supporting any/all of Grower's affiliates, principals, officers, directors, agents, employees (current and former), predecessors, and competitors to the fullest extent permitted by law, without affecting any of Grower's obligations to Oppenheimer and the Affiliates under this Agreement or the Transaction Documents. Grower waives any claim or conflict of interest created by Oppenheimer's or any of the Affiliate's acting as agent for, representation of, or providing services for other growers of similar Produce. Due to market conditions or otherwise, Grower acknowledges that Oppenheimer does not warrant or guarantee

that the Grower Crop will be sold at similar prices of Produce sold by Oppenheimer for other growers. Grower, together with its principals, officers, agents, and employees, shall not take any action or commit any omission that may have the potential to: (i) impair, hinder, delay, or interfere with Oppenheimer's or the Affiliates' other borrowers, growers, and producers of agricultural products from meeting their respective commitments and obligations to Oppenheimer or the Affiliates; or (ii) adversely affect any of Oppenheimer's or the Affiliates' other collateral or crops.

9. **Settlement.** Grower will provide written notice to Oppenheimer within 60 days of the date of Final Reconciliation for each Production Season of any and all claims, disputes, exceptions, controversies, discrepancies, adjustment requests and any other issues of any kind or nature relating to the sale and delivery of Grower Crop during that Production Season or otherwise arising under this Agreement or Oppenheimer's alleged performance or failure to act under this Agreement. Grower waives and releases all claims, demands and liabilities that Grower may have or may assert against Oppenheimer, whether under the Agreement or otherwise, that Grower does not provide written notice to Oppenheimer within such 60-day period, as a final release, settlement, and waiver of any claims, causes of action, adjustments, disputes and controversies that Grower has or may have against Oppenheimer, its agents, or the Affiliates, arising from the performance of its duties to Grower during the Production Season. In the event that the 60-day notice period in this provision is found to be unenforceable, the notice period in this provision will extend no longer than 120 days of the date of the Final Reconciliation for each Production Season.

10. **Negative Covenants.** Grower covenants, warrants and agrees that Grower will not do, cause or permit any of the following to occur:

(a) The transfer or encumbrance of any of the Grower Crop, assets relating to the Production of the Grower Crop, or Grower's right to sell, distribute or market the Grower Crop without Oppenheimer's express prior written consent.

(b) The use of any Substance on or in connection with the Production of the Grower Crop or on any of the land used for the Production of the Grower Crop, or the "adulteration" of any of the Grower Crop within the meaning of the Federal Food, Drug and Cosmetic Act or other Applicable Laws, that could compromise the Production, harvesting, quantity, quality, marketing or selling of the Grower Crop.

(c) The wind up, liquidation, dissolution, reorganization, reincorporation, merger or consolidation with or into any other entity, or acquire all or substantially all of the assets or the business of any other person or entity which could in any way invalidate or put into question the enforceability of this Agreement.

10. **Food Safety and Compliance.** Grower shall develop and maintain food safety programs, including good agricultural practices and good harvesting practices required by all Applicable Laws. Grower shall immediately notify Oppenheimer of any flagrant or major deviations from accepted food safety standards under Applicable Laws and will forward to Oppenheimer within five (5) days of receipt, any audit findings or corrective actions relating to any Grower Crop or the Production of Grower Crop. Grower shall document and make available to Oppenheimer upon Oppenheimer's request all of its food safety and product quality-related documents (including, without limitation, a description of its training programs and efforts to comply with all Applicable Laws).

11. **Inspections and Audits.** Oppenheimer may inspect and audit, or have a third party inspect or audit, the Grower Crop or the Production of Grower Crop, together with any findings, corrective actions, or responses relating to the Grower Crop, the Production of Grower Crop, or Grower's obligations and representations under this Agreement, the Advance Agreement, or any other Transaction Documents. Without limiting the foregoing, Oppenheimer shall have access on three (3) days' notice to Grower's books, records, fields, ranches, and all facilities, including, without limitation, for storage, packaging, shipping, and transporting Grower Crop at any time.

12. **Indemnity.**

(a) **Grower Indemnity.** Grower agrees to indemnify, protect and hold Oppenheimer harmless from any and all claims or actions, including attorneys' fees, that may arise from the breach by Grower of any of the representations, warranties, covenants and other terms of this Agreement or from any product liability, labor, environmental, personal injury, product recall (voluntary or involuntary), quarantines or government advisory warnings or seizures, or other claims of any nature which in any way relate to the Grower Crop, regardless of whether that advisory, withdrawal, seizure or recall is directly imposed upon the Grower Crop or whether that advisory withdrawal, seizure or recall is directed at a category of crops to which the Grower Crop belongs.

(b) **Oppenheimer Indemnity.** Oppenheimer agrees to indemnify, protect and hold Grower harmless from any and all claims or actions, including attorneys' fees, which may arise from the breach by Oppenheimer of any of the representations, warranties, covenants and other terms of this Agreement.

13. **Agent Expenses and Non-Agent Expenses.**

(a) Grower is obligated to pay and reimburse Oppenheimer for all Agent Expenses, including any advances by Oppenheimer on behalf of Grower to pay Agent Expenses. Agent Expenses, including advances by Oppenheimer on behalf of Grower to pay Agent Expenses, may be paid either directly from the Sale Proceeds (whether or not the particular Agent Expense relates to the sale or delivery of the particular Grower Crop from which the Sale Proceeds relate), or are due and payable on demand by Oppenheimer to Grower, and. The incurring of Agent Expenses or advancing of funds by Oppenheimer to pay for Agent Expenses do not constitute a guaranty or commitment that Grower Crop to which such Agent Expense relates will be sold or sold for a particular price. Oppenheimer, at any time and in its sole discretion, may choose not to incur an Agent Expense or provide an advance to pay for an Agent Expenses.

(b) Agent Expenses may include expenses incurred by Oppenheimer under this Agreement or on behalf of other vendors or service providers, including providers of transportation, warehouse or manufacturing services. Oppenheimer may from time to time utilize transportation services provided by an Affiliate.

(c) All of the costs and expenses (including attorneys' fees and costs) incurred by Oppenheimer in connection with the negotiation, preparation, execution and performance of this Agreement, and any and all other documents as contemplated herein, in connection herewith, or relating hereto, which constitutes obligations of Grower pursuant to this Agreement.

14. **Consent and Waiver Regarding Third-Party Providers.** From time to time, Oppenheimer may introduce Grower to third parties to provide various goods and/or services (the “Third Party Providers”). Grower may enter into agreements with Third Party Providers (the “Third Party Agreements”) in its sole and absolute discretion. Grower expressly waives any claims against Oppenheimer arising out of, in connection with, or as a result of the Third-Party Agreements or any Third-Party Providers, including, without limitation, all agreements, instruments, or documents related to the Third-Party Agreements to which Oppy is not an express party. In addition, Grower agrees that its decision to use any Third-Party Providers or enter into any Third-Party Agreements will not affect Grower’s obligations, covenants, responsibilities, or commitments under this Agreement, including all representations and warranties concerning the Grower Crop and the Minimum Grower Crop Quantity.

15. **Oppenheimer Affiliates.** Oppenheimer hereby discloses to Grower, and Grower acknowledges and agrees that Oppenheimer may at its discretion engage related affiliates without limitation to perform services relating to the sale, marketing, packing/repacking, packaging procurement, storage and delivery of Grower Crop or other obligations on behalf of Oppenheimer under this Agreement, including providing transportation of Grower Crop through David Oppenheimer Transport Inc. Grower acknowledges that Oppenheimer’s affiliates will provide such related services at competitive market rates, and that Oppenheimer may receive reasonable fair market compensation in connection with the services provided. Grower waives any claim against Oppenheimer or conflict of interest created by the retention or engagement of an affiliate of Oppenheimer to perform related services under this agreement

16. **Force Majeure.** No Party will be liable for any failure or delay in complying, wholly or in part, with any obligation upon such Party under this Agreement if: (a) the failure or delay arises from a cause beyond that Party’s reasonable control and without that Party’s fault and such Party could not take reasonable measures to prevent or mitigate the effects of such cause (the “Force Majeure Event”); (b) that Party promptly gives the other Party written notice providing details of the nature, expected duration, and effect of the Force Majeure Event and keeps the other Party informed of any changes in the nature of the Force Majeure Event and of the cessation of the Force Majeure Event; and (c) that Party uses reasonable endeavors to mitigate the effects of the Force Majeure Event on that Party’s obligations under this Agreement. A Force Majeure Event shall not eliminate, reduce or affect the Grower’s responsibilities under the Advance Agreement or any other Transaction Documents.

17. **Interpretation and Controlling Version.**

(a) **English Version.** Grower acknowledges that it has or has had an opportunity to consult with independent counsel of its choice regarding this Agreement and the terms and conditions hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. Grower further acknowledges that it has or has had the opportunity to have this Agreement translated into the Spanish language and that if it has been so translated, the English version shall control over the Spanish translation. Grower agrees, in any event, to be bound by the terms of this Agreement.

(b) **Spanish Version.** Agricultor reconoce que ha tenido la oportunidad de consultar un abogado independiente de su preferencia en cuanto a este contrato y los terminos y condiciones de aqui y que reglas de construccion al efecto que ambiguedades seran resueltas contra la parte no seran aplicado al interpretacion de este contrato. Agricultor ademas reconoce que ha tenido la oportunidad de que este contrato sea traducido al idioma Espanol y que si este es

traducido, la version in el idioma Ingles tendra control sobre la traduccion en Espanol. Agricultor concuerda, en cualquier caso, que se obligue por los terminos de este contrato.

18. **Sanctions.** The Grower represents and warrants that: (i) it is not the subject of any sanctions imposed by any national and multinational sanction regimes applicable to either party to this Agreement, (for example, but not to be construed as a limitation, such sanctions regimes include those of the UN, EU, US, UK and locally applicable sanctions regimes, together (the “Sanctions Regimes”)), and (ii) is not located, organized or resident in a region, country or territory that is, or whose government is, the subject of sanctions imposed by any of the Sanctions Regimes.

In order to ensure that Grower does not engage in business with individuals or business entities that are restricted or sanctioned under laws or regulations applicable to either or both parties to this Agreement, Grower shall comply with any and all Sanction Regimes. Grower shall immediately notify Oppenheimer thereof in writing if the Grower (a) is or has engaged in any activity that contravenes any of the Sanctions Regimes; and/or (b) becomes aware of any claim, action, suit, proceedings or investigation against it related to such Sanctions Regimes, so far as is relevant to this Agreement. In furtherance of Grower’s compliance with the Sanctions Regimes, Grower shall also do the following:

(a) Certify to Oppenheimer that the name, common variations thereof, and address of all individuals or business entities with an ownership interest (in any form or amount) in Grower do not appear on the U.S. government Consolidated Screening List publicly available at <https://legacy.export.gov/csl-search>;

(b) Inform Oppenheimer of all names and addresses of all individuals and business entities that hold an ownership interest (in any form or amount) in Grower and/or have any right, whether or not exercised and regardless whether it is a majority or minority interest, to control or significantly influence (directly or through third parties) the operations and activities of Grower;

(c) As to Grower’s business partners and shareholders, ensure through its own independent due diligence and hereby certify to Oppenheimer that it shall not engage in any business activities with an individual or business entity that is a denied party or prohibited entity restricted from doing business with Grower or Oppenheimer under the Sanctions Regimes;

(d) Update the name, ownership and control information provided by Grower to Oppenheimer under this Agreement as soon as Grower becomes aware of any change in the ownership or control of itself, or any change in the ownership or control of its shareholders.

(e) Grower will ensure that no proceeds paid pursuant to this Agreement will directly or indirectly, be used, paid or otherwise made available to any individual or business entity in breach of the Sanctions Regimes.

Notwithstanding anything to the contrary in this Agreement, Oppenheimer has the right to terminate any transaction under this Agreement and this Agreement as a whole with immediate effect and without any liability towards the Grower in the event that Oppenheimer (acting reasonably) considers any such transaction or any part thereof, or the Growers actions, would or might result in a violation of any of the Sanction Regimes.

19. **Commission Merchant Law and Waivers.** For crop i) grown in California and or ii) sold by a CA sales person, and/or iii) sold into California.

Grower acknowledges receipt of a copy of the California Food and Agricultural Code Sections applicable to Commission Merchants under section 56281, including, but not limited to, sections 56255, 56271, 56272, 56273 et seq., 56274, 56275, 56276, 56277, 56278, 56279, 56280, 56282, 56283, 56331, 56332 and 56351. The text of these sections is attached hereto in Exhibit C. Grower further understands and agrees that unless Grower returns the form indicating Grower's desire to receive the notice of information referred to therein to the extent applicable, Grower voluntarily waives the following rights:

(a) the right, under § 56273, to obtain net sales proceeds and accountings within 10 days after receipt of the moneys by a commission merchant; \_\_\_\_\_

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Grower  
Initials

(b) the right, under § 56280, to obtain inspection certificates for any lots of any crop alleged to be of substandard condition; \_\_\_\_\_

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Grower  
Initials

(c) the right, under § 56271(h) to have lot numbers affixed to each individual farm product contained; and \_\_\_\_\_

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Grower  
Initials

(d) the right, under § 56281 to receive notice, within forty-eight (48) hours or otherwise, of any price adjustments and the explanations therefore. \_\_\_\_\_

Grower Initials

## COMMISSION MERCHANT LAW

### CALIFORNIA FOOD & AGRICULTURAL CODE REFERENCES

#### **Section 56255. Accounts, records and memoranda; preparation; preservation; contents; period of retention**

- (a) Every licensee shall prepare and preserve the accounts, records, and memoranda required by this chapter which shall fully and correctly disclose all transactions involved in his business. Licensees shall keep records which are adapted to the particular business that the licensee is conducting and in each case such records shall fully disclose all transactions in the business in sufficient detail as to be readily understood and audited. Minimum records required under this section are:
- (1) A record of cash received.
  - (2) A record of cash disbursed.
  - (3) A general ledger or its equivalent.
  - (4) A record of amounts due California producers.
  - (5) A record of amounts due others.
- (b) Every licensee shall prepare and preserve records and memoranda required by this chapter which shall fully and correctly disclose the true ownership and management of such business.
- (c) All records required to be kept under this chapter shall be kept for a period of four years.

(Added by Stats. 1976, c.632, p.1495, § 20.)

#### **Section 56271. Records**

Every commission merchant, that receives any farm product for sale as a commission merchant, shall promptly make and keep a correct record which shows in detail all of the following with reference to the handling, sale, or storage of such farm product:

- (a) The name and address of the consignor.
- (b) The date it was received.
- (c) The condition and quantity upon arrival.
- (d) Date of such sale for the account of the consignor.
- (e) The price for which it was sold.
- (f) An itemized statement of the charges to be paid by the consignor in connection with the sale. Any services rendered for which charges are made, if not filed with the director, shall be charged at cost if not covered by a written contract. Cost-supporting data shall be available for verification.
- (g) The names and addresses of all purchasers if the commission merchant has any financial interest in the business of the purchasers, or if the purchasers have any financial interest in the business of the commission merchant directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in such records following the name of any such purchaser.
- (h) A lot number or other identifying mark for each consignment, which number or mark shall appear on every sales tag and every other essential record which is needed to identify each consignment from receipt through final sale. When requested by the consignor as provided by Section 56281, a lot number shall appear on each individual farm product container. When containers are on pallets, then only the exposed containers shall be marked. When stamping or otherwise identifying each container is impractical due to the type of packaging, the container need not be marked.
- (i) Any claim which has been or may be filed by the commission merchant against any person for overcharges or for damages which result from the injury or deterioration of such farm product by the act, neglect, or failure of such person. Such records shall be open to the inspection of the director and the consignor of the farm product for whom such claim is made.

(Stats.1967), c. 15. Amended by Stats.1976, c. 632, p. 1495, § 21; Stats.1977, c. 1170, p. 3827, §1; Stats.1978, c. 588, p. 2013, §1.)

#### **Section 56272. Report of sale**

When requested by his consignors, a commission merchant shall, before the close of the next business day following such request, transmit to the consignor a true written report of the quantity sold and the selling price.

(Added by Stats. 1976, c. 632, p. 1496 §23.)

### **Section 56273. Remittance**

The full amount which is realized from the sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sales, as provided in Section 56273.1, shall be remitted to the consignor within 10 days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing.

(Amended by Stats. 1990, c. 1081 (S.B. 1589), §1.)

### **Section 56273.1. Complete account of sale; information required; documentation**

- (a) For purposes of this chapter, an account of sales shall be deemed complete if it consists of all of the following information:
- (1) The date of shipment.
  - (2) The terms of the original sale concerning where and when title passes.
  - (3) The commodity, variety, size, and grade.
  - (4) The quantity shipped.
  - (5) The quantity disposed of in a manner other than sale by the buyer, if applicable.
  - (6) The original selling price.
  - (7) The adjusted selling price, if applicable.
  - (8) The reason for adjustment, if applicable.
  - (9) Any inspection certificate required to be obtained as stated in Section 56280.
  - (10) Amounts billed and collected from the buyer for services rendered to the buyer by the commission merchant.
  - (11) The gross and net returns received from the buyer.
  - (12) Any authorized commission merchant charges.
  - (13) Any additional amounts paid to the consignor by the commission merchant to support the original price.
  - (14) The net amount due the consignor.
- (b) The consignor and the commission merchant may agree on the documentation necessary to support the information required by subdivision (a). The agreements shall be made, in writing, prior to the shipping season of the particular farm product.

(Added by Stats.1990, c. 1081 (S.B.1589), § 2. Amended by Stats.1997, c. 696 (S.B.1198), § 67.5.)

### **Section 56274. Application where written contract with two or more producers or consignors entered into by commission merchant**

In the account, the names and addresses of purchasers need not be given. Where a commission merchant has entered into a contract with two or more producers or consignors which contract provides that the returns for farm products sold for the account of such producers or consignors shall be pooled on a definite basis as to size or grade, or both, during a certain period of time, then a commission merchant shall obtain the written consent of the consignors and shall be required to render an account of sales, showing the net average pool return on each size or grade, or both, from sales made and shall keep a correct record of such sales, showing in detail all information as required in Section 56271.

### **Section 56275. Required retention of records**

Every licensee operating as a commission merchant shall retain a copy of all records which cover each transaction, which copy shall at all times be available for, and open to, the confidential inspection of the director, consignor, or the authorized representative of either.

**Section 56276. Certificate establishing condition of lot, shipment, or consignment in event of dispute or disagreement between consignor and commission merchant**

If there is any dispute or disagreement between a consignor and a commission merchant which arises at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment, or consignment of any farm product, the department shall furnish, upon the payment of a reasonable fee for it by the requesting party, a certificate which establishes the condition, quality, grade, pack, quantity, or weight of such lot, shipment, or consignment.

**Section 56277. Certificate as prima facie evidence.**

Such certificate is prima facie evidence of the truth of the statements contained therein. The presumption established by this section is a presumption affecting the burden of proof, but it does not apply in a criminal action.

**Section 56278. Sale below market price to financial connection of seller as presumption of fraud.**

Proof of any sale of any farm product which is made by a commission merchant for less than the current market price to any person with whom he has any financial connection, directly or indirectly as owner of its corporate stock, as copartner, or otherwise, or any sale out of which such commission merchant receives, directly or indirectly, any portion of the purchase price, except the commission which is named in the licensee's application or in a specific contract with the consignor, establishes a rebuttable presumption of fraud within the meaning of this chapter. This presumption is a presumption affecting the burden of proof.

**Section 56279. Burden of Proof.**

The burden of proof shall be upon the commission merchant to prove the correctness of any accounting required to be performed by the commission merchant pursuant to this chapter as to any transaction which may be questioned.

**Section 56280. Breach of contract; charge against account; inspection certificate or substitute**

- (a) A commission merchant shall notify each consignor with whom he or she does business of this section. The notice shall be given in writing prior to the shipping season of the particular farm product.
- (b) No charge shall be made against a consignor's account for a downward price adjustment or a reduction in quantity of farm products delivered due to a breach of contract, unless the commission merchant has, in his or her files, a federal-state inspection certificate, issued pursuant to the United States Agricultural Marketing Act of 1946, (7 U.S.C. 1621, et seq.), indicating the type and the extent of the substandard condition of the lot involved in the breach of contract, thereby supporting the amount charged against the consignor's account. The commission merchant need not obtain a federal state inspection certificate unless the lot involved is of a substandard condition.
- (c) Notwithstanding Section 56281, this section does not preclude a consignor from agreeing to a downward price adjustment or a reduction in the quantity of farm products delivered and waiving the right to inspection when the agreement was made prior to the shipping season of the particular farm product and was in writing.
- (d) The federal-state inspection certificate may be substituted by a private third-party inspection, based on the standards prescribed under the United States Agricultural Marketing Act of 1946, if the director determines, to this or her satisfaction, that a federal-state inspection certificate could not reasonably be obtained. If the director determines, to this or her satisfaction, that neither a federal-state inspection certificate nor private, third-party inspection, can be reasonably obtain, a signed statement of two or more disinterested, or otherwise independent parties, who have sufficient knowledge, acquired through education or experience, to evaluate the farm product involved, may be used as a substitute for the federal-state certificate e or third-party inspection, in order to make a statement as to the quality and condition of the lot of farm product at the time of inspection.
- (e) Where the condition of the lot is not substandard but for other reasons, including a decline in market demand, there is a downward price adjustment, the commission merchant shall affirm in writing, that the lot was at least of standard quality at the time of sale. The affirmation shall be attached to, or made part of, the records of the consignment.

- (f) As used in this section, "lot" means the farm product identified by the procedure set forth in subdivision (h) of Section 56271.

(Amended by Stats. 1990, c. 1081 (S.B. 1589), §4.)

**Section 56281. Adjustments on transactions; notice to consignor; contents; record**

A commission merchant shall notify each consignor with whom he or she does business of the provisions affecting the consignor that are contained in Sections 56271, 56272, 56273, 56280, 56282, and 56351, and this section. The notice shall be given in writing prior to the shipping season of the particular farm product. The notice shall include a form whereby the consignor may request notice of any adjustment by the commission merchant. The form shall also include a provision whereby the consignor may request that lot numbers be affixed on each individual farm product container as provided in subdivision (h) of Section 56271. Each commission merchant shall keep the records necessary to prove that the notices were given to each consignor in accordance with this section. A licensee operating as a commission merchant shall notify the consignor of any adjustment on a transaction, and provide reasons for the adjustment, within 48 hours.

If the commission merchant is unable to contact the consignor by telephone or in person, the notification shall be immediately provided by mail.

(Amended by Stats.1986, c. 942, §11; Stats.1990, c. 1081 (S.B.1589), § 5-1 Stats.1996, c. 620 (S.B. 1047), § 18.)

**Section 56282. Disallowance of adjustments; waiver or agreement; criteria**

- (a) Pursuant to this chapter, upon the verified complaint of the consignor, the secretary may disallow to a commission merchant, all or part of, any adjustment charged back to any consignor similarly situated, if the secretary determines that there is insufficient justification of the condition or circumstances requiring the adjustment.
- (b) In determining whether there is insufficient justification for an adjustment, the secretary shall first determine if any waivers or agreements have been entered into pursuant to this chapter. If a waiver or agreement has been entered into and the secretary determines that the waiver or agreement complies with Section 56280.5 and does not otherwise violate this chapter, the secretary's inquiry in determining this adjustment shall be governed by the terms and conditions of the waiver or agreement.
- (c) If there is no waiver or agreement, or if the waiver or agreement violates this chapter, as determined by the secretary, in determining whether there is insufficient justification for an adjustment, the secretary shall consider, among other things, the following:
- (1) The certificate issued pursuant to Section 56280 or 56351 does not support breach of contract.
  - (2) The perishability of the farm product involved and the timely issuance of the certificate pursuant to Section 56280 or 56352.
  - (3) Market reports or other market evidence does not support a downward price adjustment in accordance with Section 56279.

(Amended by Stat.1990, c. 1081 (S.B.1589), §6; Stats.1996, c. 620 (S.B. 1047), § 19.)

**Section 56283. Disposing of farm products; duty of care**

Every commission merchant who receives any farm product for sale on consignment shall exercise reasonable care and diligence in disposing of the product in a fair and reasonable manner.

**Section 56331. Memorandum of sale**

- (a) Every licensee operating as a broker, upon negotiating the sale of farm products, shall issue to both buyer and seller a written memorandum of sale, before the close of the next business day, showing price, date of delivery, quality, and all other details concerned in the transaction.

(b) The memorandum required by subdivision (a) shall have an individual identifying number printed upon it. The numbers shall be organized and printed on the memoranda so that each memorandum can be identified and accounted for sequentially. Unused or damaged memoranda shall be retained by the broker for accounting purposes.

(Stats.1967, c. 15. Amended by Stats.1967, c. 807, § 19; Stats.1972, c. 667, p. 1234, § 6; Stats.1976, c. 632, p. 1496, § 28; Stats.1977, c. 1170, p. 3829, § 5.)

**Section 56332. Alteration of terms; consent of parties; corrected memorandum of sale**

A licensee operating as a broker shall not alter the terms of the transaction as specified on his original memorandum of sale without the consent of both parties to the transaction. Upon making such change, the broker is required to issue a clearly marked corrected memorandum of sale, which shall clearly indicate the date and time when such adjustment or change was made, and shall transmit such corrected memorandum to both buyer and seller before the close of the next business day.

(Added by Stats.1977, c. 1170, p. 3829, § 6.)

**Section 56351. Necessity of certificate by public officer as to damage, etc.; substitute**

A claim may not be made against the seller of any farm product by a licensee pursuant to this chapter, and no credit may be allowed to such licensee against another licensee or a producer of any farm product by reason of damage to or loss, dumping, or disposal of any farm product which is sold to such licensee, in any payment, accounting, or settlement which is made by the licensee to the producer or other licensee, unless the licensee has secured and is in possession of a certificate issued by a county agricultural commissioner, a county health officer, the director, a duly authorized officer of the State Board of Health, or by some other official now or hereafter authorized by law. The certificate shall state that the farm product which is involved has been damaged, dumped, destroyed, or otherwise disposed of as unfit for human consumption or as in violation of the fruit and vegetable standards which are contained in Division 17 (commencing with Section 42501) of this Code.

A private third-party inspection based on the standards prescribed in the United States Agricultural Marketing Act of 1946 may be substituted for such certificate if the director determines that an inspection certificate cannot be reasonably obtained. Where the director determines that neither an inspection certificate nor a private third-party inspection can be reasonably obtained, the signed statement of two or more disinterested or otherwise independent parties who have sufficient knowledge acquired through education or experience to evaluate the farm product involved may be used to describe the type and extent of the quality and condition factors present upon inspection.

(Stats.1967, c. 15. Amended by Stats.1971, c. 1593, p. 3215, §22, operative July 1, 1973; Stats.1971, c. 915, p. 1797, §24; Stats.1978, c. 588, p. 2016, §5; Stats.1979, c. 871, p. 3030, §30.)