

## STANDARD TERMS AND CONDITIONS

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

a. **Sales Rights.** Oppenheimer has the exclusive authority to arrange the sale of the Grower Crop, and to determine the Customers, the quantity to be sold, the prices, the terms of sale, the timing of sales, the quantities to be sold to a Customer, the payment terms, the delivery terms, the timing of delivery, and the collection policy of all amounts due from Customers. Oppenheimer makes no representation, warranty or guarantee that 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 its right to notice of any such price adjustments for condition, quality or reduction in quantity of the Grower Crop, in whole or in part, within 48 hours or otherwise of notice of such condition.

b. **Special Retail Programs.** From time to time, Oppenheimer manages programs with specific retail customers. In order to meet commitments from these programs, Oppenheimer may select Grower and other growers to participate in these programs. These programs will provide a return to Grower as determined by reference pricing that will be provided on a weekly, phased program or total program basis. If, however, Grower does not want to participate in such programs, it can opt out by providing written notice to Oppenheimer within seven days from the date of the posted reference price. Such notifications related to Special Retail Programs may be sent to Oppenheimer by e-mail to [optout@oppy.com](mailto:optout@oppy.com) or by fax to 604-468-8646 (with a copy to Oppenheimer's Category Director and Procurement Manager).

c. **Sales Terms.** 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 corresponding Canadian law. 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 in Oppenheimer's sole discretion.

d. **Marketing Methods.** Oppenheimer is authorized to utilize any of the following marketing methods to market the Grower Crop:

- i. Sell the Grower Crop on an f.o.b. open, price after sale, price after arrival or delivered basis;
- ii. Sell the grower crop on fixed terms with a retailer
- iii. Consign or re-consign the Grower Crop or sell on joint account;
- iv. Use other local or destination brokers or commission merchants to sell the Grower Crop;
- v. Sell the Grower Crop through terminal markets
- vi. Transfer title to the Grower Crop;
- vii. Grant credits;
- viii. Handle, settle and compromise claims with carriers and Customers;
- ix. Market the Grower Crop with the produce of other growers by shipment, grade, variety, pack style or other standards as Oppenheimer may prescribe;
- x. Discontinue selling the Grower Crop or sell only a certain portion due to market conditions or quality;

xi. Take any actions with respect to marketing the Grower Crop as it deems necessary including but not limited to, setting weekly, monthly, quarterly or annual prices, setting ceiling and/or floor prices, granting rebates and ad pricing;

xii. Make adjustments with Customers for any of the Grower Crop that is not of a quality or in a condition reasonably acceptable to such buyer without prior notice to Grower and without the need to obtain an inspection whenever, in marketer's sole discretion such adjustments and waiver of inspection are necessary to consummate the sale at destination or are otherwise commercially reasonable;

xiii. Repacking or Reconditioning any portion of the Grower Crop at Grower's expense, including the cost of labor, materials and in and out freight.

e. **Purchase Price Adjustments.** Oppenheimer has the exclusive right to adjust the price with respect to any sale of the Grower Crop to reflect changes in market conditions or for cause. If Oppenheimer provides a price adjustment based upon defects or inferior quality of the Grower Crop, Oppenheimer may, but is not required, to support such price adjustment by requesting a USDA or Canadian inspection (as the case may be) of the Grower Crop at issue, or conduct warehouse inspections at locations where the defective Produce is located. Grower waives any rights it may have under any law to notice of and an explanation for any price adjustments for condition, quality or reduction in quality of defective or poor quality Crop.

f. **Settlement of Accounts.** Oppenheimer, may in its sole judgment, settle accounts relating to sales of the Grower Crop and claims for price adjustments or agree to a return of the Grower Crop to cold storage facility or location designated by Oppenheimer.

g. **Promotional Sales.** Grower gives OPPENHEIMER the authority to enter into promotional contracts with customers, to pay promotional allowances, rebates or incentives to customers with respect to Grower's Crop and to deduct such expenses from the Crop returns.

h. **Packaging.**

i. **Designation of Packaging.** Oppenheimer has the exclusive right to determine the pack styles, labels and box under which the Grower Crop will be packed and marketed.

ii. **Oppenheimer Brand Exclusivity.** Cartons, labels and other packaging materials containing or displaying an Oppenheimer brand, content, graphic designs or other trademark or intellectual property are for the exclusive use of Oppenheimer. Oppenheimer branded cartons, labels and packaging materials may only be used for packing Grower Crop marketed exclusively by Oppenheimer on behalf of Grower. Unless otherwise approved of by Oppenheimer, under no circumstances will Grower or any of its affiliates use Oppenheimer branded packaging materials.

iii. **Promotional Packaging Programs.** Notwithstanding the foregoing, Oppenheimer may, in its sole discretion, participate in special programs with Customers who request or require non-standard packaging. In those situations, Grower may be required to package a portion of the Grower Crop in a particular manner requested by a Customer that varies from the typical packaging set forth in this Agreement. When feasible and practical, Oppenheimer will provide Grower with information regarding special programs in advance.

i. **Oppenheimer Representations of the Grower Crop.** Notwithstanding that Oppenheimer is marketing and selling the Grower Crop as an agent on behalf of Grower, Grower authorizes Oppenheimer to use bills of lading, to take possession of and to deliver the Grower Crop as contemplated by 7 CFR 46.30(b).

j. **Acceptance of Grower Crop.** Oppenheimer expressly reserves the right to not accept and to return any portion of the Grower Crop that, in Oppenheimer's judgment, is not marketable.

Oppenheimer may reject any portion of the Grower Crop that may not conform to any food safety or laboratory-testing program in which Oppenheimer may be participating. Oppenheimer may instruct Grower to discontinue further shipping of the Grower Crop at any time that Oppenheimer determines the marketing or quality conditions of the Grower Crop to be unfavorable. If the Grower continues to ship to Oppenheimer after the instruction to discontinue shipping, Oppenheimer will not be held accountable for market level returns on that portion of the crop.

k. **Accounting and Reporting.** Oppenheimer will provide Grower (i) on a weekly basis, an accounting of the Grower Crop sold and delivered during the preceding week, and (ii) and at certain times at Oppenheimer's discretion, 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. Oppenheimer will retain copies of all costs and expenses incurred pursuant to the services provided by Oppenheimer under this Agreement constituting Obligations of Grower as provided herein.

l. **Advances.** 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.

m. **Packaging.** Grower is solely responsible for the purchase and inventory of all packaging material. In the event Oppenheimer orders and pays for packaging, 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 of this Agreement, Oppenheimer may, in its discretion, purchase back any excess Oppenheimer-branded inventory in good condition.

n. **Agency for Other Growers.** Notwithstanding the exclusive agency relationship pursuant to this Agreement, Oppenheimer may also serve as agent or provide services on behalf of other growers or providers of agricultural product, including Produce, with respect to the marketing, sales and distribution of similar Produce of other growers that may compete in similar markets as the Grower Crop. Grower waives any conflict of interest created by Oppenheimer's engagement or agency with other growers or producers of similar Produce, and acknowledges that the Grower Crop may not be sold for similar prices of Produce sold by other growers.

o. **Settlement.** Grower agrees to provide notice to Oppenheimer within 120 days of the final settlement payment for each Production Season of any and all claims, disputes, exceptions, controversies, discrepancies, proposed adjustments and issues of any sort Grower may have against Oppenheimer related to that Production Season. If Grower does not so notify Oppenheimer within such 120-day period, then such failure to so notify Oppenheimer will constitute a final release, settlement, and waiver of any claims, causes of action, adjustments, disputes and controversies which Grower has or may have against Oppenheimer, its agents, or affiliates, arising from the performance of its duties to Grower during the Production Season.

p. **Negative Covenants.** Grower will not do or permit any of the following:

- i. The transfer or encumbrance of any of the Grower Crop, assets relating to the Production of the Grower Crop, or its rights to sell, distribute or market the Grower Crop without Oppenheimer's express prior written consent.

- ii. The use of any Substance on or in connection with the Production of the Grower Crop or on any of the land on which the Production of the Grower Crop is occurring, 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, marketing or selling of the Grower Crop.
- iii. Wind up, liquidate or dissolve, reorganize, reincorporate, merge or consolidate with or into any other entity, or acquire all or substantially all of the assets or the business of any other Person.

q. **Indemnity.**

i. Grower Indemnity. Grower agrees to indemnify, protect and hold Oppenheimer harmless from any and all claims or actions, including attorneys' fees, which 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.

ii. 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 and any Related Document.

r. **Agent Expenses.**

- i. All costs, expenses, charges and other liabilities incurred by Oppenheimer under or in connection with this Agreement, including Customer-Related Expenses and expenses relating to or arising from inspections, assessments, rebates, promotional allowances, commissions, brokerage, packing, packaging, repacking, storage, cooling, palletizing, loading, materials or supplies, services, duties, disposal fees, transportation, legal fees and costs, or any other expenses associated with Oppenheimer's performance of its duties described herein or otherwise incurred in the sales and marketing of the Grower Crop constitute obligations of Grower and will be deducted by Oppenheimer from the sales proceeds of the Grower Crop, or Oppenheimer may invoice Grower for same, at Oppenheimer's discretion.
- ii. 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.

s. **Termination.** A Party may terminate this Agreement by written notice. In the event the other Party fails to perform any of its obligations under this Agreement, (a) immediately if such breach or failure cannot be cured, or (b) if such breach or failure is capable of being cured, and the defaulting party fails to cure such breach or failure within 30 days of the Oppenheimer Category Director and Executive Vice President of Sales & Categories receiving written notice of such default. Otherwise, this Agreement may be terminated by both parties upon mutual written agreement of the Parties. Notwithstanding any other term of this Agreement, Grower cannot terminate this Agreement while any obligations owed by Grower to Oppenheimer under this Agreement,

t. **Confidentiality.** Each Party will not disclose and will take all reasonable efforts to safeguard and maintain the confidence of all contents, conditions and terms of this Agreement at all times until one year after termination of this Agreement, except upon the following conditions: (a) the other Party consents to the disclosure in writing, (b) the disclosure is to certain tax advisors, attorneys, agents and other professionals retained by such Party who has agreed to not disclose such information and to take all reasonable efforts to safeguard and maintain the confidence of such information, and (c) the disclosure is required to comply with a court order or law, provided if a Party is requested or required to disclose any of the contents, conditions and terms of this Agreement by oral questions, interrogatories, requests for information or other documents in legal proceedings, subpoena, civil investigative demand or any other similar process, that Party will provide the other Party (to the extent not otherwise legally prohibited) with prompt written notice of such request or requirement to provide the other Party with an opportunity to seek a protective order or other appropriate remedy, at its sole expense, or waive compliance with the provisions of this Agreement.

u. **Mediation/Arbitration.** All disputes are to be directed to the OPPENHEIMER Category Director through Early Grapes S.A – FOR ARG ONLY and person of equal representation for Grower and then, if necessary, escalated to Executive Management. Thereafter any dispute, controversy or claim arising out of or relating to this contract, or the breach thereof, shall be submitted to and finally settled by binding arbitration administered by the Fruit & Vegetable Dispute Resolution Corporation (“DRC”) in accordance with its published rules and procedures. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. As set forth in the rules and procedures of the DRC, the dispute resolution process includes an initial informal mediation process and may include a formal mediation process. In the event of any controversy, claim, or dispute between the parties, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys’ and other professionals’ fees, and costs.

v. **Attorneys’ Fees.** In the event of any controversy, claim or dispute between the Parties, the prevailing Party is entitled to recover from the other Party reasonable expenses, attorneys’ and other professionals’ fees, and costs.

w. **Severability.** In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full effect.

x. **Entire Agreement.** This Agreement, the Related Documents and the Advance Documents, along with any exhibits, appendices, addendums, schedules and amendments hereto and thereto, constitute the entire agreement between the Parties concerning the subject matter hereof. All prior agreements, discussions, representations, warranties and covenants relating to this Agreement are superseded by this Agreement, the Related Documents and the Advance Documents (if applicable). This Agreement amends and restates all prior sales and marketing agreements between the Parties. There are no warranties, representations, covenants or agreements, express or implied, between the parties except those expressly set forth in this Agreement, the Related Documents and the Advance Documents. Any amendments or modifications of this Agreement must be in writing and executed by the Parties.

y. **Governing Law.** This Agreement is governed by and construed in accordance with laws of the State of Washington and the laws of the United States of America.

z. **Grower's Acceptance.** If the Grower Crop is sold by Oppenheimer after Grower's receipt of this Agreement, Grower will be deemed to have agreed to be bound by the terms of this Agreement regardless of whether either or both parties execute and return this Agreement.

aa. **North American Imports.** If Grower imports Produce into North America, Grower agrees to the terms and conditions set forth in Oppenheimer's "North American Import Operations Requirements" and any and all additional conditions and restrictions imposed by Governmental Agencies.

bb. **Authorized Signatory.** Each person whose signature appears below on behalf of an entity hereby represents and warrants that said person has the requisite authority to execute this Agreement on behalf of the entity and that by so signing has bound said entity to the terms of this Agreement.

**Commission Merchant Law and Waivers.**

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 § 56280, to obtain inspection certificates for any lots of any crop alleged to be of substandard condition; \_\_\_\_\_  
Grower Initials
- (b) the right, under § 56271(h) to have lot numbers affixed to each individual farm product contained; and \_\_\_\_\_  
Grower Initials
- (c) the right, under § 56281 to receive notice, within forty-eight (48) hours or otherwise, of any price adjustments and the explanations therefore. \_\_\_\_\_  
Grower Initials

## EXHIBIT C

### 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.)