

# General Terms and Conditions of Sale

## John I. Haas, Inc.

**Effective Date: April 1, 2015**

**1. Nature of Agreement.** These General Terms and Conditions of Sale ("Terms and Conditions") shall govern all sales from John I. Haas, Inc. ("Haas") to Buyer and constitute the entire agreement between the parties with respect to such sales, except for such details of price, quantity, and delivery as would normally be specified by order and except for any written product specifications agreed on between the parties. Additional terms and conditions proposed by Buyer in a form of Purchase Order or otherwise shall not be effective unless specifically agreed to in writing by Haas. **Should any order executed by Haas and Buyer subsequent to the Effective Date of these Terms and Conditions contain inconsistent or additional terms, the terms of that subsequent order will supersede these Terms and Conditions.**

**2. Offers and Acceptances.** Sales contracts between Haas and Buyer will be created by either (i) a legally binding offer from Haas to Buyer that is accepted by Buyer, or (ii) a legally binding offer from Buyer to Haas that is accepted by Haas. All offers and acceptances must be in writing. Neither Buyer nor Haas may cancel an accepted offer without the other's written consent.

**3. Invoicing; Payment; Set-Off.** Haas will invoice for sales at the time of delivery / customer call-off. If any sale has not been called-off by June 30<sup>th</sup> of the year following the crop year, Haas will be entitled to invoice on that June 30<sup>th</sup> or thereafter. Haas may, in its discretion, agree to a later call-off, in which case Buyer will pay compounded interest on the amount to be invoiced at the Prime Rate then in effect plus 5% and reasonable storage charges for the goods not delivered. Payment of Haas' invoices is due within 30 days of the date of invoice, provided however, that, if Buyer fails to pay prior invoices when due or otherwise breaches its contract with Haas, Haas retains the right to require prepayment with respect to any particular future order or call-off. Buyer shall not be entitled to set-off any amount owing it by Haas against payment of Haas' invoices. Any amounts not paid when due shall bear annual interest at the Prime Rate plus 5% until paid.

**4. Incoterms; Delivery.** Sales are made and goods delivered ExWorks Yakima, Washington Incoterms 2010, unless otherwise specified. Any term so specified in lieu of "ExWorks" shall be construed pursuant to Incoterms 2010. Delivery deadlines specified in terms of the passage of time rather than a specified date shall commence the day after the sales contract is formed. No delivery deadline shall be considered binding if Buyer has failed to provide information needed by Haas to fulfill the parties' contract. Deliveries shall consist of a minimum of full pallets of a single variety and crop year. Haas shall have the right to make partial deliveries.

**5. Inspection; Warranty; Disclaimer.** Buyer shall inspect the goods and notify Haas in writing of any nonconformities as soon as possible upon arrival at Buyer's premises, provided, however, that inspection and notification must occur within thirty days after delivery of goods to Buyer. With respect to nonconformities that cannot be detected on reasonable inspection, Buyer shall notify Haas in writing of such nonconformities within five business days of their identification.

Haas warrants the goods shall meet the agreed specifications at the time of delivery and, provided the goods are properly stored, treated and cared for by Buyer, including adherence to any instructions from Haas, warrants the goods will be free from defects until the "Best By" date specified with respect to the goods. **Haas disclaims all other warranties, including the implied warranties of merchantability and fitness for a particular purpose.**

**6. Limitation of Liability.** Haas's liability to Buyer for any losses in connection with a sale of goods shall be conditioned on Buyer's having properly inspected the goods and notified Haas of any nonconformity and shall be limited to, at Haas' election, (i) replacement of the goods at Haas' cost or (ii) refund of the purchase price corresponding to the nonconforming goods. **Haas shall not be liable to Buyer for any consequential, incidental, or indirect damages, including loss of profits, business, or losses caused by delayed delivery. Haas's liability shall, in any event, be limited to \$2,000,000 for losses for any one sale of goods.**

**7. Indemnity.** Buyer agrees to indemnify and hold harmless Haas for any losses suffered by it, including from claims asserted by third parties and including Haas' attorneys fees and other costs of defense incurred, that result from Buyer's fault in connection with the goods, including Buyer's fault in failing to properly inspect the goods for, or advise Haas of, any nonconformity.

**8. Force Majeure.** Neither party shall be in breach of its obligations (other than payment) for failure to perform due to force majeure, including war or insurrection, civil commotion, acts of nature (including those that produce a poor crop in quantity or quality), government actions or laws, strikes or lockouts, fire, rioting, terrorist acts, threats or risk to personal safety of employees, material shortages, or unforeseen business interruptions occurring through no fault of the party. Should Haas be delayed in its performance of any particular contract with Buyer by ninety days or more as a result of such a force majeure, Buyer shall have the right to cancel that contract at no expense to it.

**9. Limitation of Actions.** Legal proceedings on any claim by Buyer against Haas shall be commenced no later than one year from accrual of the cause of action.

**10. Reservation of Title.** Haas retains title to, and the right to effect repossession of, any goods sold to Buyer until Buyer shall have paid in full for those goods.

**11. Buyer's Default.** Should Buyer fail to take delivery of goods on tender of the same by Haas, in addition to any other remedies it may have at law, in equity, or by contract, Haas shall be entitled to (i) store and insure the goods at Buyer's cost, together with annual interest at the rate of Prime Rate plus 5% on the invoiced amount until paid, until such time as Buyer takes

delivery of the goods, and/or (ii) cancel the contract for those goods and recover its damages from Buyer.

Should (i) Buyer default in performance with respect to any sale of goods, (ii) any insolvency proceedings be instituted by or against Buyer, or (iii) Buyer make any assignment for the benefit of creditors, Haas may at its option cancel any contract of sale between the parties where goods have not yet been delivered to Buyer and be entitled to recover from Buyer any damages it may suffer as a result of such cancellation.

**12. Jurisdiction and Governing Law.** The exclusive jurisdiction for resolution of any claims between the parties shall be the Superior Court of the State of Washington in and for the County of Yakima, provided, however, that Haas shall be entitled to bring suit against Buyer in such other jurisdictions where Haas may be able to obtain jurisdiction over Buyer. Any and all claims arising between the parties shall be governed by the law of the state of Washington, without reference to its principles of conflicts of law.

**13. Attorneys Fees.** The prevailing party shall be entitled to its reasonable attorneys fees and expenses incurred in any judicial proceeding, including any arbitration or proceeding in bankruptcy, in connection with these Terms and Conditions or a sale of goods by Haas to Buyer, whether in the trial court or on appeal.

**14. Confidentiality.** Each party will (i) keep confidential, and not disclose, and (ii) use only in connection with sales of goods between the parties, all of the other party's Confidential Information that may be learned in the course of the parties' relationship, including after that relationship ends. "Confidential Information" means all information that a business would normally keep to itself, and specifically includes manufacturing processes, pricing, product descriptions, contract terms, technical data, the nature of business relationships, product know-how, identity of customers, sales and market projections, strategies, business practices, and financial information. All Confidential Information will be protected by each party with at least the same degree of care as each would use with its own proprietary information. All Confidential Information will remain the property of the party initially possessing it.

**15. Miscellaneous Provisions.** If any portion of these Terms and Conditions is held invalid or unenforceable, the remainder thereof will continue in full force and effect and the invalid or unenforceable portion will be replaced by such provision as will best effect the original intention of the parties. A party's failure to insist on performance of any portion of these Terms and Conditions or failure to exercise any right hereunder on one or more occasions will not constitute a waiver of any right to demand future performance or to exercise a right in the future.