

# General Terms and Conditions of Sale

## John I. Haas, Inc.

**Effective Date: August 15, 2018**

**1. Nature of Agreement.** These General Terms and Conditions of Sale ("Terms and Conditions") shall govern all sales of hops or processed hops, or other products, (together, "Hops") from John I. Haas, Inc. ("Haas") to Buyer and constitute the entire agreement between the parties (replacing any other agreements, understandings, representations, or discussions) with respect to such sales, except for (i) such details of variety, Crop Year, price, quantity, unit of measurement, method of analysis, and delivery as would normally be specified by order, (ii) any applicable written Hops specifications, and (iii) any superseding terms and conditions as described below. While it is expected that purchases will normally be evidenced by a Purchase Order signed by both Haas and Buyer, "Order" as used in these Terms and Conditions refers to any writings that evidence a commitment for the sale of Hops. Additional terms and conditions proposed by Buyer in a form of Purchase Order it may use or otherwise shall not be effective unless specifically agreed to in writing by Haas. **Should any Order contain inconsistent or additional terms, the terms of that Order will supersede these Terms and Conditions.** Any change to an existing Order must be agreed in writing to be effective.

**2. Offers and Acceptances.** Orders 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. No Order will be binding upon Haas unless and until approval and acceptance is made by an authorized representative of Haas at its corporate offices in Yakima, WA or Washington, DC. Shipments on Orders will be made by Buyer "calling-off" Hops on the Order, that is, requesting Haas to ship all or a portion of an Order. Unless otherwise provided in these Terms and Conditions, 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 shipment of Hops called-off by Buyer. Payment of Haas's invoices is due within 30 days of the date of invoice. However, 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. Any wire transfer costs for making payment shall be the responsibility of Buyer. Buyer shall not be entitled to set-off any amount owing it by Haas against payment of Haas's invoices. Any amounts due in connection with an Order or these Terms and Conditions not paid when due shall bear annual interest at the Prime Rate plus 3% until paid.

**4. Call-Offs Particulars.** Call-offs of Hops may only be made of full pallets of a single hop variety and Crop Year. For multi-year Orders, deliveries will be made on a first-in first-out basis by variety and Crop Year, that is, for example, Buyer must call-off all 2017 Crop Year Hops of a particular variety before calling-off any 2018 Crop Year Hops of that variety. If Buyer fails to call-off any Hops by June 30<sup>th</sup> of the year following the Crop Year for those Hops, even if Haas agrees to a delayed call-off, Haas shall have the right to substitute Hops of the same variety from a later Crop Year for those not called-off. With respect to required call-off dates and interest and storage charges pursuant to Paragraph 5 below, the Crop Year of the substituted

Hops will be used in place of the earlier Crop Year, that is, for example, if Crop Year 2016 Hops are taken by Haas and Crop Year 2017 Hops substituted, the Crop Year 2017 Hops would not be required to be called-off until June 30<sup>th</sup> of 2018.

**5. Delayed Call-offs.** If any sale is not called-off by Buyer by June 30<sup>th</sup> of the year following the Hops' Crop Year, Haas will be entitled to invoice on that June 30<sup>th</sup> or at any time thereafter. Haas may, in its sole discretion, agree to a later call-off, in which case Buyer will pay on demand compounded interest on the amount to be invoiced at the Prime Rate then in effect plus 3% and reasonable storage charges for the Hops not delivered, both effective August 31st. If Buyer orders Hops from a particular Crop Year after June 30<sup>th</sup> of the year following that Crop Year, the call-off date for those Hops shall be 30 days after contract formation.

**6. Buyer Selection.** At Haas's discretion, a Buyer with an Order to purchase Hops from a particular Crop Year may attend the hop harvest for that Crop Year, take samples from different lots of hops, and select from which lots Buyer wants its Hops Order to be taken, all pursuant to such Haas hop selection process as may be in effect from time to time. Par. 5 applies to this type of Hops purchase, provided, however, that if Haas exercises its right to substitute later Crop Year Hops for pre-selected Hops not timely called-off, Buyer has the right to re-select lots for the substituted Hops.

**7. Shipping Terms; Delivery.** Sales are made and Hops delivered ExWorks Incoterms 2010 at a facility of Haas or a Haas affiliate, unless otherwise specified in the Order. 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 Order is made. No delivery deadline shall be considered binding if Buyer has failed to provide information needed by Haas to fulfill the Order. Haas shall have the right to make partial deliveries.

**8. Inspection; Warranty; Disclaimer.** Buyer shall inspect the Hops and notify Haas in writing of any failure of the Hops to meet specifications as soon as possible upon arrival at Buyer's premises, provided, however, that inspection and notification must occur within thirty days after delivery of the Hops to Buyer. With respect to any failure to meet specifications that cannot be detected on reasonable inspection, Buyer shall notify Haas in writing of such nonconformities within five business days of their identification. If no notification is given as required, Buyer has no claim against Haas for nonconformities. The notice must describe the nonconformity specifically enough that Haas can act to remedy the defect and must specify the Hops to which it refers.

The Hops specifications (referred to as analytical data on some websites) are as provided on the websites of Haas and its affiliates [www.johnihaas.com](http://www.johnihaas.com), [www.barthhaasgroup.com](http://www.barthhaasgroup.com), and [www.hops.com.au](http://www.hops.com.au), unless Buyer and Haas agree to other specifications in writing. Provided the Hops are properly stored, treated, and cared for by Buyer, including adherence to any instructions from Haas, Haas warrants the Hops will meet the agreed specifications until their "Best By" date. **Haas disclaims all other warranties, including the implied warranties of merchantability and fitness for a particular purpose.**

**9. Limitation of Liability.** Haas's liability to Buyer for any losses in connection with a sale of Hops shall be conditioned on Buyer's having properly inspected the Hops and properly notified Haas of any failure to meet specifications and shall be limited to, at Haas's election, (i) replacement of the nonconforming Hops or (ii) refund of the purchase price corresponding to the nonconforming Hops. Haas shall not be liable to Buyer for any consequential, incidental, special, punitive, non-compensatory, or indirect damages, including loss of profits, reputation, 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 Hops.

**10. Indemnity.** Buyer agrees to indemnify and hold harmless Haas for any losses suffered by Haas, including from claims asserted by third parties and including Haas's attorneys fees and other costs of defense incurred, that are connected with any action or omission by Buyer whatsoever that is related to the sale of Hops or these Terms and Conditions, including Buyer's fault in failing to properly inspect the Hops for, or advise Haas of, any nonconformity and including any breach of confidentiality obligations.

**11. 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.

**12. 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. Otherwise, the proceeding is barred.

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

**14. Buyer's Default.** Should Buyer fail to take delivery of Hops 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 Hops at Buyer's cost, together with annual interest at the rate of Prime Rate plus 6% on the invoiced amount until paid, until such time as Buyer takes delivery of the Hops, and/or (ii) cancel the Order for those Hops and recover its damages from Buyer.

Should (i) Buyer default in performance with respect to any Order or other obligation pursuant to these Terms and Conditions, (ii) any insolvency proceedings be instituted by or against Buyer, (iii) Buyer make any assignment for the benefit of creditors or have a receiver or similar third party appointed with respect to any of its assets, or (iv) Haas in good faith deems itself insecure with respect to Buyer's ability to pay for any Hops when payment is due, Haas may at its option cancel any Order between the parties where Hops 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.

**15. Hops Storage.** If Haas retains custody of the Hops prior to delivery to Buyer, irrespective of whether title has passed, Haas shall (i) maintain customary replacement cost insurance on the Hops while in custody, (ii) bear the risk of loss as to all losses covered by the insurance, and (iii) take reasonable care with respect to the Hops.

**16. Jurisdiction and Governing Law.** The exclusive jurisdiction for resolution of any claims between the parties shall be either the United States District Court for the Eastern District of Washington, Yakima Division, or 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.

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

**18. Confidentiality.** Each party will (i) keep confidential, and not disclose, and (ii) use only in connection with sales of Hops 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, new product development, 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 and be immediately returned to the other party on request.

**19. Complete and Superseding Agreement; Conflict in Terms.** An Order, these Terms and Conditions, and any applicable written specifications constitute the complete agreement between the parties on the subject of that Order, and they replace any other agreements, understandings, representations, or discussions between the parties on that Order. Should any Order, these Terms and Conditions, or any specifications be in conflict, the Order shall prevail.

**20. Miscellaneous Provisions.** Any notice to be given Haas must be in writing and to one or more email or physical addresses most likely to effectively reach an appropriate Haas representative. 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 part of an Order or these Terms and Conditions or failure to exercise any right thereunder 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. An Order may not be assigned by Buyer except with the consent of Haas. Haas may assign any Order. Assignment will not release the assigning party from its obligations under the sales contract unless that is expressly agreed to in writing by the other party.