



## CRUSHING EQUIPMENT SOLUTIONS

## SALES AGREEMENT

### TERMS AND CONDITIONS

(COLORADO, NEW MEXICO, OKLAHOMA, TEXAS)

1. **Pricing is subject to change based on manufacturer changes to cost and availability.**
2. **METHODS OF ACCEPTANCE and TERMS OF AGREEMENT:** This Machine Sales Order ("MSO") is an offer for the sale of the equipment and attachments described on the face hereof (referred to herein generally as "equipment" and "goods" interchangeably) to Customer under the terms and conditions specified herein. This offer may be accepted by (1) the execution of this MSO by a representative of Customer or (2) Customer's verbal or written authorizations or conduct consistent with prior course of dealing between the parts authorizing CRUSHING EQUIPMENT SOLUTIONS to take action to fulfill this order, or (3) the commencement of manufacture or shipment of the goods or services specified in this Order, whichever of the foregoing first occurs. Acceptance of this offer is limited to the express terms stated in this Order. Any proposal in Buyer's acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the terms or any attempt by Customer to vary in any degree any of the terms of this offer is objected to and hereby rejected, but such proposals shall not operate as a rejection of this offer, unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, but shall be deemed a material alteration of this Order and this offer shall be deemed accepted by Seller without said additional or different terms. Once accepted, this Order shall constitute the entire agreement between CRUSHING EQUIPMENT SOLUTIONS and Customer. CRUSHING EQUIPMENT SOLUTIONS is not bound by any representation or agreements, express, or implied, oral or otherwise, which are not stated within this agreement or contained in a separate writing supplementing this agreement and signed by authorized agents of both CRUSHING EQUIPMENT SOLUTIONS and Customer.
3. It is understood that CRUSHING EQUIPMENT SOLUTIONS is not the manufacturer of the Equipment and that CRUSHING EQUIPMENT SOLUTIONS makes no warranties against defects in material or workmanship, or relating to the capability or performance of the Equipment or the profitability of its use. THERE ARE NO EXPRESS WARRANTIES BY CRUSHING EQUIPMENT SOLUTIONS OF ANY KIND WITH RESPECT TO THE EQUIPMENT AND CRUSHING EQUIPMENT SOLUTIONS DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE UNDER NO CIRCUMSTANCES SHALL CRUSHING EQUIPMENT SOLUTIONS BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING DAMAGES DUE TO ANY DELAY. CRUSHING EQUIPMENT SOLUTIONS hereby assigns to the Buyer all Manufacturer's warranties applicable to the Equipment.
4. **TIME OF DELIVERY and SHIPPING:** Orders for equipment are processed in the order of their acceptance by CRUSHING EQUIPMENT SOLUTIONS and CRUSHING EQUIPMENT SOLUTIONS will use its reasonable efforts to deliver the equipment to You on the scheduled delivery date on the face hereof. However, shipping and delivery dates are acknowledged to be estimates only and dependent upon many factors outside of CRUSHING EQUIPMENT SOLUTIONS'S control including, but not limited to, the manufacturer's production schedule, material and labor shortages, shipping delays and various other unrelated factors. CRUSHING EQUIPMENT SOLUTIONS is not liable for delays or damages caused by delays including any delays in delivery or shipment of the equipment, or in delivery or shipment of the equipment, unless stated on the face of this order to the contrary. You are responsible for all freight, shipping, loading and unloading costs.
5. To secure Customer's obligations under this agreement and to secure all of Customer's present or future debts, obligations, or liabilities of whatever nature to CRUSHING EQUIPMENT SOLUTIONS Customer grants to CRUSHING EQUIPMENT SOLUTIONS a security interest in the goods described on the reverse side hereof, together with any attachments or accessions thereto and proceeds from the sale or lease thereof and insurance proceeds payable as a result of the loss of or damage to the goods. Customer agrees to deliver to CRUSHING EQUIPMENT SOLUTIONS properly executed, any certificate of title or other document or instrument required by CRUSHING EQUIPMENT SOLUTIONS to protect CRUSHING EQUIPMENT SOLUTIONS'S security interest as created in this paragraph. Customer also authorizes CRUSHING EQUIPMENT SOLUTIONS to file financing statement(s) with respect to the security interest granted herein. Customer grants CRUSHING EQUIPMENT SOLUTIONS the right to assign CRUSHING EQUIPMENT SOLUTIONS security interest in the goods to any other entity or person, at any time CRUSHING EQUIPMENT SOLUTIONS so chooses.
6. Risk of loss of the goods shall pass to Customer as soon as the goods are properly loaded on the carrier. CRUSHING EQUIPMENT SOLUTIONS responsibility for shipment ceases upon delivery of the goods to a transportation company. Customer shall carry such fire and other insurance as necessary to protect its interest and the interest of CRUSHING EQUIPMENT SOLUTIONS. Any claim by Customer for shortage in shipment shall be made within ten (10) days after receipt of the shipment. It is specifically agreed that the risk of loss shall not be altered by the fact that the conduct of either party hereto may constitute a default or breach. The shortage in shipment notice must be in writing within ten (10) days and further, shortage in shipment is not deemed to constitute a nonconformity.
7. Any notices pertaining to rejection or claims of nonconformity must be made in writing specifying in detail Customer's objections and such notices must be delivered within ten (10) days after delivery of the goods. It is agreed that in the event of rejection, Customer may in no event resell the goods, even in the absence of instructions from CRUSHING EQUIPMENT SOLUTIONS and Customer will store the goods or reship the goods to CRUSHING EQUIPMENT SOLUTIONS. Should Customer sell the goods, such sale shall be deemed an unequivocal acceptance of the goods. If Customer accepts goods tendered under this agreement, such acceptance shall be final and irrevocable; no attempted revocation shall have any effect whatsoever.
8. No right or interest in this agreement shall be assigned by Customer without the written permission of CRUSHING EQUIPMENT SOLUTIONS and no delegation of any obligation owed or of the performance of any obligation by Customer shall be made without written permission of CRUSHING EQUIPMENT SOLUTIONS. Any attempted assignment or delegation by Customer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
9. CRUSHING EQUIPMENT SOLUTIONS shall have all rights and remedies provided in the Uniform Commercial Code and in any other document executed in connection with this agreement. Customer agrees to pay all costs incurred by CRUSHING EQUIPMENT SOLUTIONS in enforcing this agreement or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the goods, whether or not legal action is commenced. In the event the goods are reclaimed, Customer agrees that CRUSHING EQUIPMENT SOLUTIONS may bid on the goods and that a commercially reasonable price for said reclaimed goods, a public sale, may be determined by CRUSHING EQUIPMENT SOLUTIONS based upon current national auction values, market trends relating to supply and demand, and related factor, for goods of similar type and condition.
10. **CANCELLATION/TERMINATION:** This Order may be canceled by Customer only with CRUSHING EQUIPMENT SOLUTIONS'S written consent and then only upon such terms as will protect Seller from any loss. This Order may be canceled by CRUSHING EQUIPMENT SOLUTIONS in the event of any default by Customer or in the event Customer fails, upon CRUSHING EQUIPMENT SOLUTIONS'S request, to provide reasonable assurances of future performance.
11. **PERMISSIBLE VARIATIONS:** All goods shall be subject to the standard manufacturing and commercial variation and practices of the Manufacturer of the goods of CRUSHING EQUIPMENT SOLUTIONS. In the event of shipment of non-conforming goods, CRUSHING EQUIPMENT SOLUTIONS shall be given a reasonable opportunity to replace the goods with those which conform to the order.
12. **FORCE MAJEURE:** a CRUSHING EQUIPMENT SOLUTIONS shall not be responsible or liable for any delay or failure to deliver any or all of the goods and/or performance of the services of such delay or failure is caused by any act of God, fire, flood, inclement weather, explosion, war, insurrection, riot, embargo, statute, ordinance, regulation or order of any government or agent thereof, shortage of labor, material fuel, supplies or transportation, strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified beyond CRUSHING EQUIPMENT SOLUTIONS control, which prevents, hinders or interferes with manufacture, assembly, or delivery of the goods or performance of the services. Any such cause, contingency, occurrence, or circumstance shall release CRUSHING EQUIPMENT SOLUTIONS from performance of its obligations hereunder.
13. Venue for any and all disputes between the parties will be in state court located in Adams County, Colorado. Purchaser hereby expressly consents to jurisdiction in Adams County, Colorado and waives any objection based on inconvenient forum and any right to remove any legal action from the court originally acquiring jurisdiction. Venue will be in the appropriate county courts in the states of Oklahoma, Texas, or New Mexico where applicable.