

Crushproof Tubing Company

100 North St., PO Box 668

McComb, OH 45858

419-293-2111 Fax: 419-293-2609

Website: www.crushproof.com

Terms & Conditions of Sale

- 1. Acceptance:** The following terms and conditions of sale are applicable to all sales of Products or Services, and all quotations, order acknowledgements, and invoices from Crushproof Tubing Company ("Seller") and to all Purchase Orders from Seller's customers (Buyer) and are the only terms and conditions applicable to the sale of Seller's Products or Services. Purchase Orders, if accepted by Seller, are accepted subject to the terms and conditions set forth herein. SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY BUYER, WHETHER OR NOT CONTAINED IN ANY OF BUYER'S BUSINESS FORMS OR IN BUYER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE VOID AND OF NO EFFECT UNLESS IN A WRITING SPECIFICALLY AGREED TO BY SELLER SPECIFICALLY REFERRING TO AND AGREEING TO THE CHANGE. Buyer's acceptance of Products or Services ("Products or Services") called for in said Purchase Order shall constitute its acceptance of the following terms and conditions of sale (these "Terms and Conditions"). Any changes to these terms and conditions must be in writing clearly identifying the change and signed by Seller.
- 2. Product Use:** Buyer agrees that all Products supplied by the Seller are the Buyer's design. Buyer is solely responsible for determining whether any Product is fit for a particular purpose and suitable for Buyer's method of application. Accordingly, and due to the nature and manner of use of Seller's Products, Seller is not responsible for the results or consequences of use, misuse or application of its Products by **anyone**.
- 3. Quotations:** Quotations are only valid in writing and for 30 days from the date of the quotation unless otherwise notified. All quotations by Seller are subject to change or withdrawal without prior notice to Buyer unless otherwise specifically stated in the quotation. Quotations are made subject to approval by Seller of Buyer's credit. Seller shall have no obligation to sell or deliver Products or Services covered by Seller's quotation unless and until Seller issues an order acknowledgement form or upon the shipment of Products or commencement of Services by Seller.
- 4. Price:** Prices are in U.S. Dollars and are subject to change without notice. If a raw material, component, or service provider raises its prices, or imposes a surcharge on Seller, Seller reserves the right to increase prices and/or surcharge Buyer and Buyer agrees to accept such price increase or surcharge for the term of such price increase or surcharge or until the termination of the contract to which these terms and conditions apply is reached. Time of payment is of the essence. All orders are accepted subject to

Seller's price in effect at time of shipment. However, the price does not include shipping or transportation costs; sales, use, excise or other taxes; customs duties, or costs of nonstandard packaging or insurance. Buyer shall pay such taxes and costs directly or reimburse Seller.

5. **Shipment:** Unless otherwise expressly stated herein, the Products shall be shipped f.o.b. Seller's facility. Title and risk of loss shall pass to Buyer upon delivery of the Products to the carrier at Seller's facility. Unless otherwise directed by Buyer before the date of shipment, Seller may select any reasonable method of shipment, and Buyer will bear the cost of such shipment.
6. **Inspection / Non - Conforming Shipments:** Seller grants Purchaser the right to inspect Products for a period of thirty (30) business days immediately following delivery ("Inspection Period"). Purchaser must notify Seller of any Products that do not conform to the terms applicable to their sale within the inspection period, and afford Seller a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide Seller with notice of nonconformity within the Inspection Period, Purchaser shall be deemed to have accepted the Products. Purchaser will have no right to return any Product without Seller's prior written authorization. Any return authorized by Seller must be made in accordance with Seller's return policies then in effect and must be accompanied by a Returned Goods Authorization ("RGA") from Seller. Purchaser will be responsible for all costs and expenses associated with any returns of Products and will bear the risk of loss or damage of such Products, unless Seller agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Seller, in its sole discretion may reject any return of Product not approved by Seller in accordance with this paragraph or otherwise not returned in accordance with Seller's then current-return policies.
7. **Delay:** Force Majeur. Delivery dates are approximate, dating from the receipt of all engineering and manufacturing information, and Seller shall have no liability to Buyer for Seller's delay or default in delivery due to strikes, secondary boycotts, riots, wars, accidents, fires, floods, explosions, vandalism, government embargoes, priorities or regulations, transportation delays, shortage of labor, fuel, materials, supplies, power transportation facilities or tooling capacity or other similar causes beyond Seller's reasonable control. Under no circumstances shall Seller have any liability for penalties or other consequential damages of any kind resulting in whole or part from Seller's delay in delivering or failure to deliver any products to Buyer as agreed.
8. **Payment:** Buyer shall pay all invoices within 30 days of the invoice date. Payment shall be made in U.S. Dollars. Late payments shall be subject to an interest charge of the lower of 1 1/2% per month or the highest interest rate permissible by law, plus collection and attorney's fees. Buyer shall make no set-off deduction without Seller's written consent.
9. **Warranty:**
 - Seller warrants that all Products manufactured by Seller will be free from defects in materials and workmanship. Warranty claims are limited to replacement of product or refund of the purchase price. Replacement products may be refurbished or contain refurbished materials. If Seller, in its sole discretion, is unable to repair

or replace the defective Products, it will refund the purchase price of the Products. Proof of date of delivery of the returned Products is required.

- The warranty set forth above is inapplicable to and excludes any defect, damage, or malfunction resulting from (i) normal wear and tear, erosion, corrosion, (ii) misuse, negligence, or modification of the Products or any component by Buyer or its representative, (iii) repair service provided by third parties, (iv) failure by Buyer to follow installation or operating manuals or instructions, (v) failure of parts or components or services not provided by Seller, or (vi) any other factors outside Seller's reasonable control. This warranty will be voided by installation of unauthorized components into Seller's products.
- THE WARRANTIES AND REMEDIES STATED ABOVE BY SELLER ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS OR IMPLIED. ANY AND ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS ARE EXPRESSLY EXCLUDED. BUYER AGREES TO HOLD SELLER HARMLESS FOR ANY VIOLATIONS THEREOF.

10. **Liability:** The remedies set forth in these terms and conditions are exclusive, and Seller's liability under this contract shall in no event extend to indirect, punitive, special, incidental, or consequential damages which Buyer may suffer or incur in connection with the contract between Buyer and Seller, including, but not limited to loss of profits, damages or losses resulting from Buyer's inability to fulfill contracts with third parties or loss of goodwill. Seller's liability under the contract between Buyer and Seller under any theory of law shall in no event exceed the purchase price of the Products in question. All claims for any liability will be brought within one year from the date of which the Products were received by Buyer.

11. **Indemnification:** Buyer shall defend, indemnify and hold Seller and its officers, directors, employees, agents, and representatives harmless from any and all claims, demands, liabilities, actions, suits, proceedings, losses, injuries, death, judgments, and/or costs (including without limitation of reasonable attorney's fees and related costs) based on or arising out of any claims or demands based on or relating to: Seller's use of Buyer's proprietary information in regards to the design of the Products; Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; Buyer's violation or alleged violation of any federal, state, or local laws or regulations, including the laws and regulations governing product safety, labeling, packaging and labor practices; or a breach by Buyer of any of these terms and conditions. Seller shall give written notice of any claim or potential claim to Buyer within reasonable time following the time at which Seller first became aware of the claim for indemnification hereunder. Buyer may, at its option, have control of any litigation and appointment of counsel in defense of any third party claim for which Seller seeks indemnification. No suit or proceeding shall be settled or compromised without the prior written consent of Seller. The obligation to indemnify under this shall survive the termination or expiration of the accepted purchase order.

12. **Assignment:** Without the express written consent of the other party, neither party may assign any of its rights or obligations in connection with the sale of the Products.

13. **Changes, Modification, Waiver:** No change in specifications, drawings or delivery for the Products may be made without the prior written consent of Seller. These terms may be modified only in writing signed by an authorized representative of the Seller. Seller's waiver of Buyer's default under any term or condition shall not constitute a waiver of any further defaults. Seller reserves the right of Buyer cost adjustment when initial production of Buyer product represents a production alteration versus original quotation with Buyer/Seller confirmation of necessary change.
14. **Notice:** Any notice to be provided to Seller hereunder must be in writing and transmitted via U.S. First Class Mail, facsimile, or email. If Buyer does not receive a confirmation from Seller within 48 hours, then Buyer should assume the Seller did not receive.
15. **Storage Fees:** If Buyer does not take delivery by the date which Buyer requested, then Seller may impose a charge equal to 1.5% of the purchase price for each month after such date until Buyer takes delivery.
16. **Governing Law:** The contract between Seller and Buyer shall be governed by the laws of the State of Ohio. Buyer and Seller consent to the jurisdiction of the Courts of the State of Ohio with venue in Hancock County, and any litigation involving the contract shall be commenced only in Hancock County, State of Ohio.
17. **Entire Agreement:** The contract between Buyer and Seller, including these terms and conditions, constitutes the entire agreement between the parties with respect to its subject matter, and any prior contemporaneous communications or agreements other than any pre-existing blanket sales agreement are hereby superseded. The contract may not be terminated or modified by any party unless in writing, signed by both Seller and Buyer. Any purchase order placed by Buyer with Seller represents an acceptance of these Terms and Conditions by Buyer. Pre-printed terms and conditions on Buyer's purchase order shall not apply.
18. **ISO Procedures:** Every Buyer purchase order must be acknowledged and no purchase orders may begin processing until Seller *receives written customer approval or a new purchase order* if any changes regarding delivery date(s), price(s) or necessary product descriptions are corrected from the purchase order on the order acknowledgement.