

The following terms and conditions form part of each proposal, order or delivery submitted or effected by Holmatro Incorporated for the sale of merchandise to a purchasing distributor or customer and any contract made by and between Holmatro Incorporated and such purchaser includes as a part thereof these terms and conditions.

No modification of these terms and conditions shall be binding upon Holmatro Incorporated unless it expressly agrees in writing to such changes.

1. **Definitions.** As used in these terms and conditions, the term "goods" means any machinery, equipment accessories, materials, articles or items as listed on the face of this Invoice or Order Confirmation; the term "Seller" means Holmatro Incorporated; and, the term "Buyer" means the person, firm, corporation or other entity shown on the face of this Invoice or Order Confirmation. These terms and conditions are binding upon Seller's receipt of any portion of the purchase price, or upon Buyer's execution and return of this Invoice or Order Confirmation.
2. **Deliveries.** Deliveries and shipments are to be made in accordance with the terms and conditions stated on the face of this Invoice or Order Confirmation. The quoted delivery date is approximate. All scheduled delivery dates are subject to delays caused by civil insurrection, war, riots, fires, strikes, Acts of God, labor disputes, shortages of materials or failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries or any other factor or event beyond Seller's reasonable control, none of which factors or events shall give rise to any liability on the part of Seller.
3. **Sales and Use Tax.** Sales, use, excise, property or similar taxes arising out of or relating to this order or the goods delivered are not included in the price except as otherwise specifically stated in the invoice. All such taxes are the responsibility of Buyer. Seller shall have the right at any time to separately bill Buyer for any such tax which Seller may be called upon to pay.
4. **Place of Contract.** All orders are made subject to final acceptance by Seller at its main office in Glen Burnie, Maryland, and the State of Maryland shall be the place of performance where title passes to Buyer and payment becomes due.
5. **Payment Terms.** Unless stated to the contrary on the face of this Invoice or Order Confirmation, payment for the goods will be made as follows: 100% of the contract price shall be due and payable 30 days after shipment. All payments are net without deductions. If permitted by applicable law, that portion of an account that has not been paid within 30 days of shipment is subject to a late payment charge, for the period from the date when due to the date of payment in full, in an amount determined by multiplying the outstanding balance by the prime rate of interest (floating) established and declared from time to time by Citibank, N.A., of New York, New York plus two percent per annum.
6. **Warranties.** Seller warrants to the original purchasers that new goods manufactured and sold by Seller will be free from defects in materials or workmanship for a period of time stated in its Certificate of Warranty for the particular equipment (rescue tool, lifting bag and hazmat equipment or shoring equipment) from the date the goods were purchased by Buyer or its customers, if the Buyer is a distributor and the goods are first used by Buyer's customer and not by Buyer. The date of purchase shall be established by the date of shipment of the goods. Said warranty shall remain in effect only if (i) such goods are used normally and properly in accordance with Seller's instructions as to maintenance and operation, whether given orally or set forth in manuals and instruction sheets furnished by Seller; (ii) Buyer gives prompt notice of all alleged defects in goods sold; and (iii) Buyer preserves and turns over to Seller all allegedly defective goods, parts or items. In no event shall this warranty be deemed to cover or obligate Seller in any way regarding goods furnished by Seller but not manufactured by Seller, such as the Honda motors (for which goods Seller shall make available to Buyer or the customer which first uses the goods those warranties made available to the Seller by the manufacturer), wear and tear parts, consumable items, any damage due to corrosion, or any damage occurring during shipment of the goods (for which claims shall be presented to the carrier). THE WARRANTY STATED HEREIN IS IN LIEU OF ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS, PERFORMANCE OR SUITABILITY FOR A PARTICULAR PURPOSE. Unless set forth in writing and attached to the Invoice or Order Confirmation, no promise or affirmation of fact (including, but not limited to, statements regarding capacity or performance of a machine) shall constitute a warranty by Seller or give rise to any liability or obligation on the part of Seller. Seller's obligation under this warranty shall be strictly and exclusively limited to furnishing labor and materials required for repairing or replacing parts which are determined to be defective on inspection by an authorized representative of Seller. The determination of Seller's representative shall be final. Seller assumes no responsibility for reimbursing Buyer for repair or replacement costs incurred without Seller's prior written authorization. All costs of packing and shipping defective parts or goods to Seller or to any service-shop designated by Seller shall be paid by Buyer, and Seller shall pay for all costs of packing and returning goods to the Buyer if the repairs or replacements are covered by these warranty provisions. If Seller's authorized representative determines, in his sole and final discretion, that the nature of a defect precludes remedy by repair or replacement of parts, Seller reserves the right to satisfy its warranty obligation in full by refunding the full purchase price on return of all goods to Seller, freight prepaid. In no event shall Seller's liability under this warranty exceed the purchase price paid for the goods. The limitations, disclaimers and exclusions contained in the above warranty provisions and in paragraph 7 below shall be applicable to the Buyer as well as Buyer's original customer, if the Buyer is a distributor.
7. **Limitation of Damages.** UNDER NO CIRCUMSTANCES, WHETHER DUE TO A BREACH OF ANY WARRANTY HEREUNDER OR ANY OTHER CAUSE ARISING OUT OF PERFORMANCE OR NONPERFORMANCE OF THIS CONTRACT, AND WHETHER ARISING IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) SHALL SELLER BE LIABLE (1) FOR LOSS OF REVENUE OR PROFITS OR FOR CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE INCLUDING, BUT NOT LIMITED TO, LOSS OF

PROFITS, LOSS OF PRODUCTION, PLANT DOWNTIME, OR LIABILITIES TO CUSTOMERS OR OTHER THIRD PARTIES, OR (2) FOR LOSS OR DAMAGE ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF BUYER, ITS EMPLOYEES OR AGENTS, OR ANY THIRD PARTY, OR (3) FOR ANY SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE OR (4) FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES IN CONNECTION WITH ANY PRODUCT WHICH EXCEED IN THE AGGREGATE THE PURCHASE PRICE FOR THAT PRODUCT EXCEPT IN THE CASE OF PERSONAL INJURY TO THE EXTENT RESULTING FROM A DEFECT IN SELLER'S MANUFACTURING OF THE PRODUCT OR FROM SELLER'S NEGLIGENCE. ANY ACTION FOR BREACH OF WARRANTY OR OTHER ACTION UNDER THIS CONTRACT MUST BE COMMENCED WITHIN ONE YEAR AFTER SUCH CAUSE OF ACTION ARISES.

- 8. Indemnity by Buyer.** Buyer shall use, and shall require its employees to use, all safety devices, guards, and proper safe operating procedures as set forth in manuals and instruction sheets furnished by Seller. If the Buyer is a distributor or not the ultimate user of the goods, then Buyer agrees to train the ultimate user of the goods in the proper and safe operation and use of the goods as set forth in the manuals and instruction sheets furnished by the Seller. Buyer shall not remove or modify any such device, guard or warning sign. Buyer shall not permit any person other than required operating personnel to remain within thirty feet of any machine or accessory sold by Seller during operation thereof. If Buyer fails to strictly observe each and every one of the obligations set forth in this paragraph with regard to any of Seller's goods (including, without limitation, the obligation to train its ultimate customer in the use of the Seller's goods), Buyer agrees to defend, indemnify and save Seller harmless from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of such goods. Buyer shall notify Seller promptly, and in any event within 10 days, of any accident or malfunction involving Seller's products which results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining the cause of such accident or malfunction, and shall preserve and give Seller access to any allegedly defective goods, parts or items. In the event that Buyer fails to give such notice to Seller, or to so cooperate, Buyer agrees to defend, indemnify and save Seller harmless from any and all claims arising from such accident or malfunction.
- 9. Cancellation of Order.** Following acceptance by Seller, this order may not be cancelled by Buyer without the written consent of Seller.
- (a) Seller shall have the absolute right to cancel and refuse to complete this order: (1) if at any time all terms and conditions governing this order are not strictly complied with by Buyer, (2) if at any time Buyer becomes insolvent or commits an act of bankruptcy, or (3) if, in the event that a good faith doubt arises as to Buyer's ability to make prompt payment and Seller has requested Buyer to post adequate security for any or all payments due, Buyer fails to post adequate security as determined by Seller within 10 days after the request of Seller. In the event of such a cancellation, Seller shall be entitled to retain or collect 1/2 of the contract sales price, and Buyer agrees that such amount is an agreed upon liquidated damage amount, and not a penalty.
 - (b) In the event that Buyer shall cancel all or any part of an order after said order has been accepted by Seller but prior to shipment and Seller agrees to such cancellation, Seller shall be entitled to retain or collect 1/2 of the contract sales price, and Buyer agrees that such amount is an agreed upon liquidated damage amount, and not a penalty.
 - (c) In the event that the goods have been shipped at the time of Seller's receipt of notice of Buyer's cancellation and Seller agrees to such cancellation, Seller shall be entitled to retain 1/2 of the contract sales price and Buyer shall immediately return the goods to Seller and shall be responsible for payment of the original freight and shipping charges as well as for those incurred by Buyer in returning the goods to Seller.
 - (d) After the goods have been shipped and received by Buyer, Buyer shall not have any right to cancel this order but shall be responsible for the payment of the entire sales price.
 - (e) In the event of the cancellation pursuant to the terms above of an order requiring special tooling, engineering or parts, Seller shall be entitled to retain or collect from Buyer payment in full for the costs of the special tooling, engineering or parts in addition to any other amounts which Seller may be entitled to retain or collect pursuant to the terms above.
- 10. Operating Manuals and Spare Parts Catalogs.** Seller will furnish, without charge, one copy of the operating manual for goods sold and one copy of the applicable spare parts catalog. All of the above documentation and other materials provided to Buyer by Seller are for informational purposes only, and specifications which may be contained therein are not binding on Seller. The Buyer should review the operating manual thoroughly before its use of any machine or accessory in order to determine any safety measures required or suggested in connection with the use or operation of the machine or accessory. Seller reserves the right to make, from time to time, such changes in detail of design or construction as shall, in Seller's sole judgment, constitute an improvement over former practice. All operating manuals, spare parts lists, or any other information furnished to Buyer by Seller are intended for Buyer's confidential use, shall remain the property of Seller, and shall not be shown or otherwise made available to any third party at any time without Seller's prior written consent. Any such proprietary and confidential information which Buyer determines must be disclosed to its employees shall be disclosed only on a need-to-know basis for the operation and maintenance of the goods sold hereunder.
- 11. Security Interest and Seller's Rights upon Default.** Without waiving any rights to elect to proceed under applicable laws, Seller reserves a security interest in the goods sold hereunder and Buyer hereby grants a security interest to Seller under the Uniform Commercial Code in the goods and any and all proceeds thereof until full and final payment for such goods is received by Seller. Notwithstanding the parties' agreement to arbitrate as set forth in paragraph 13 of these terms and conditions, in the event that Buyer becomes insolvent or commits an act of bankruptcy or defaults in any payment hereunder or in the performance of any terms or conditions hereunder, Seller, at its option, shall have the right (1) to sue for any and all payments due hereunder and for reasonable attorneys' fees plus out-of-pocket expenses and interest; (2) to enter any place where the goods are located and to take possession of and remove the goods with or without legal process; (3) to retain all payments theretofore made as compensation for the use of the goods; (4) to resell the goods at public or private sale without notice or demand for and on behalf of Buyer; and (5) to apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale and all expenses of retaking possession, repairs necessary to put the goods in salable condition, storage charges, taxes, liens, collection

and attorneys' charges and all other expenses in connection therewith) to the amount then due to Seller for the goods and to receive from Buyer the deficiency between the net proceeds of the sale and the amount due Seller. Buyer hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal, retention, repair, alteration and sale. The remedies provided in this paragraph are in addition to and not in limitation of any other available remedy or remedies of Seller, but each and every such remedy shall be cumulative and shall be in addition to every other remedy under the Invoice or Order Confirmation or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

12. **Risk of Loss.** Buyer shall bear the risk of loss of or damage to the goods after shipment in accordance with F.O.B. terms stated on the face of the Invoice or Order Confirmation.
13. **Arbitration and Governing Law.** Subject to the rights of the Seller contained in paragraph 11 hereof, any controversy or claim arising out of or relating to this order, or the breach of any contract for this order, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The terms and conditions of the contract for this order shall be governed by, and construed and enforced in accordance with, the laws of the State of Maryland. It is expressly agreed that the UN Convention on the International Sale of Goods will not apply. The locale of any such arbitration between the parties shall be at the Washington, D.C. Regional Office of the American Arbitration Association.
14. **Merger of Understanding.** All negotiations, undertakings, understandings and the like between the parties with respect to the transactions covered by the Invoice or Order Confirmation have been merged within the terms and conditions of the Invoice or Order Confirmation including these terms and conditions and there are no further or contrary understandings. Upon the Seller's receipt of any portion of the purchase price for the goods or the execution by Buyer of the Invoice or Order Confirmation, the terms and conditions contained herein, and any other terms and conditions set forth in writing and attached to the Invoice or Order Confirmation, shall constitute the complete agreement between Seller and Buyer and shall supersede all prior oral or written statements of any kind whatsoever made by the parties or their representatives. No statement subsequent to the acceptance of this proposal purporting to modify these terms and conditions shall be binding unless consented to in writing by a duly authorized agent of Seller in a document making specific reference to this order.
15. **Waiver.** No claimed waiver of any of these terms, conditions or provisions of this proposal shall be valid unless in writing and signed by a duly authorized representative of Seller. Waiver of any term, condition or provision of this proposal or order or any contract embodying this proposal or order shall not operate or be construed as a waiver of any subsequent breach on the part of the offending party or constitute a waiver of any other term, condition or provision.