

HESCO
Terms and Conditions
[6/16/21 Revision]

1. Definitions.

“**HESCO**” shall mean Hartford Electric Supply Company (and its subsidiaries and affiliates – including without limitation its ASG division), which is the seller of the Equipment or provider of Services pursuant to the HESCO Proposal, Statement of Work, purchase order or other order under which products or services are being purchased from HESCO; “**Buyer**” shall mean the person or entity purchasing the Equipment or engaging the performance of Services; “**Equipment**” shall mean the products and Services incorporated into the products described in the Proposal or order acknowledgement or other sale agreements issued or accepted by HESCO; The “**Proposal**” shall mean any Proposal issued by HESCO for the provision by HESCO of Equipment or Services, together with any and all amendments, attachments, Statements of Work or other incorporated documents, if any, approved by HESCO in writing; “**Services**” shall mean those services to be provided by HESCO pursuant to the Proposal and/or described in any separate Statement of Work approved by HESCO, in writing, relating to specified services to be provided by HESCO; “**Statement of Work**” shall mean the description of any Services to be provided by HESCO as issued and approved by HESCO in writing; and the “**Terms and Conditions**” refers to these Terms and Conditions, as they may be revised and updated from time to time.

2. Acceptance.

(a) Acceptance of Proposal and Terms and Conditions: Acceptance of the Proposal by Buyer is expressly limited to these Terms and Conditions. Any term or condition in any Buyer purchase order or other form in conflict with the terms and conditions of the Proposal or these Terms and Conditions is expressly rejected and shall not be binding on HESCO. The Proposal may be withdrawn by HESCO at any time prior to acceptance by Buyer and will expire automatically thirty (30) days from the date hereof unless accepted by Buyer. **These Terms and Conditions supersede the terms of any purchase order received by HESCO. If HESCO receives a purchase order that limits acceptance to its terms or states that HESCO's acknowledgement, shipping of material, commencing work, or other act or failure to act constitutes acceptance of an offer on the terms of the Buyer's purchase order, that provision shall have no force or effect. HESCO's response to the purchase order by document or action shall be deemed a counteroffer on these Terms and**

Conditions of Sale, accepted when Buyer accepts shipment of any of the Equipment or Services described in the Proposal or any Statement of Work.

(b) Acceptance of Equipment: Unless otherwise specified in the Proposal, acceptance by the Buyer of Equipment (expressly including any Services incorporated into the Equipment) occurs upon the delivery and completion of any installation of the Equipment by HESCO as specified in the Proposal or any associated Statement of Work.

(c) Acceptance of Services: Acceptance of the Services occurs either (i) on the date the Services are substantially completed and conform to acceptance criteria in the Statement of Work or is otherwise beneficially used by Buyer, but in no event later than 60 days from start-up or 120 days following completion whichever occurs first. If no acceptance criteria are specified in the Statement of Work for Services to be provided by HESCO then acceptance occurs upon completion of delivery of the Services. Any deliverable requiring Buyer's approval pursuant to the Statement of Work will be deemed accepted if formal Buyer approval, written or as otherwise required, is not received by HESCO within two calendar weeks after the date submitted.

(d) Buyer's Duty to Inspect: Buyer agrees to inspect all Equipment and parts immediately upon delivery to verify: (a) that the quantities described in the accompanying delivery ticket are the quantities delivered and (b) there are no visible defects. The Buyer also agrees to examine all delivery tickets and invoices upon receipt.

(e) Machine Drawings and Specifications: Unless otherwise specified in the Proposal or any Statement of Work it is HESCO's policy for Buyers to supply machine drawings and specifications. At the request of the Buyer HESCO may acquire or provide machine drawings and/or specifications, but HESCO will require the customer to approve them, and the failure of the customer to object shall constitute approval of, the drawings for HESCO to rely upon in any required manufacturing of Equipment or performance of Services. The time necessary to acquire said drawings and specification will not be included in the lead time quote, but rather be in addition to the quoted time.

3. Prices.

Prices are (a) subject to change without notice prior to acceptance of the Proposal by Buyer; (b) exclusive of all federal, state, municipal or other government excise, sales, occupational or like taxes; (c) subject to an increase equal in amount to any tax HESCO may be required to collect or pay upon the sale of the Equipment, provided Buyer shall not be required to pay any income

tax that may be payable by or chargeable to HESCO with respect to the purchase price of the Equipment; (d) F.O.B. point of shipment; and (e) subject to change by HESCO in the event of any change in the terms and conditions of the Proposal and/or any Statement of Work at Buyer's request. Any change resulting from any of the following circumstances is subject to equitable adjustments to price, scheduling, and other affected terms and conditions: (a) Buyer requested changes, including those affecting the identity, scope, and delivery of the Equipment or Services; (b) concealed or otherwise unknown physical conditions differing materially from those indicated or anticipated in the Statement of Work or that otherwise differ materially from those ordinarily found under similar circumstances; (c) material inaccuracy of any information or design criteria provided by Buyer; (d) delays caused by Buyer, its employees, affiliates, other contractors to Buyer, or any other party within Buyer's reasonable control; and (e) any emergency endangering persons or property; in such emergency circumstances, HESCO may act at its discretion to prevent damage, injury, or loss. All changes, except actions necessitated by emergencies as provided in (e) above, must be executed by a written change order signed or otherwise definitively authorized by both parties, and HESCO will not begin work on a change until it is authorized. All claims must be made within a reasonable time after the occurrence giving rise to the claim.

4. Terms of Payment.

Invoices will be issued upon shipment of the Equipment with terms as specified in the Proposal. Unless otherwise specified in the Proposal or on said invoices, the Buyer shall pay the full amount of any outstanding balance shown on HESCO's invoices within thirty (30) days of the invoice date. Special payment terms may apply subject to credit rating and type of Equipment or Services being purchased. Payments past due are subject to a charge at the lesser of the rate of 1-1/2% per month or the maximum permitted by applicable law and Buyer shall pay any costs of collection including, without limitation, attorneys' fees.

5. Changes.

Prior to the date of delivery of the Equipment or performance of the Services, Buyer shall have the right to request changes in the Proposal provided that HESCO receives written notice of the desired changes and accepts the same, in writing, and provided further that Buyer accepts the additional charges therefore as determined by HESCO. If such changes affect delivery, Buyer must also accept a modification to the established schedule as deemed necessary by HESCO as referenced in section 3(a). In the event that such changes are agreed upon after the Proposal is accepted by the Buyer such changes shall be documented by a written change

order signed or otherwise definitively authorized by both parties, and HESCO will not make such changes until so authorized.

6. Standard Returns.

All returns require a Return Merchandise Authorization (RMA) number issued by HESCO. The RMA document is not a guarantee of credit or return.

The returned material must be in new, original and unmarked packaging, in resalable condition, factory seal in-tact (if applicable) and return request be made within 30 days* of shipment date. All returns will be inspected by HESCO to ensure the condition and product meets return conditions. If the product or condition varies from that of when the RGA was created, it could result in the delay or denial of the return.

Restock charges will be applied when HESCO incurs any additional charges or fees in processing the RGA. This ranges from incurring restock charges from the vendor to having to pay freight to send the item back. These charges will be subtracted from any issued credit.

HESCO may issue credit before the product is sent back to the manufacture for inspection. If the manufacture denies or gives partial credit to HESCO, an invoice will be issued to offset the difference between expected and issued credit from the Manufacturer.

Items not eligible for return:

1. Items sold as "Non-Cancel/Non-Return", NCNR, or any other wording implying the items are unable to be returned. This notification will be displayed on the quote/acknowledgement document or via E-mail.
2. Any wire, conduit or other product that is cut to length.
3. Any custom or modified part.

*In some instances, we can process and accept returns after 30 days from shipment at HESCO's sole discretion. Please contact Customer Service for more information at csr@hesconet.com

7. Defective Returns.

If a part is suspected to be defective, contact the Customer Service department as soon as possible for a credit or replacement.

8. Excusable Delay.

HESCO shall not be liable for delays in delivery due to any cause beyond its control, including, but not limited to, acts of God, fire, strike, flood, embargo, acts of government, epidemic or pandemic, inability to obtain materials or defaults of suppliers or subcontractors, and in the event of any such delay the date of delivery shall be extended for a reasonable length of time not less than the period of delay, provided HESCO shall use commercially reasonable efforts to minimize the effects of any such delay.

9. Shipment.

(a) Delivery Terms: Unless otherwise specified in the Proposal, the delivery terms for the Equipment shall be F.O.B. point of shipment (as that term is defined in Article 2 of the Uniform Commercial Code adopted and in effect in the State of Connecticut), and HESCO shall have the right to select the carrier unless the carrier is designated by Buyer at the time of acceptance of the Proposal. Upon delivery of the Equipment to the carrier or Buyer, whichever is earlier, the risk of loss shall be on Buyer. All carriers shall be deemed agents of Buyer.

(b) Suspension of Delivery By Buyer: Unless otherwise specified in the Proposal or any Statement of Work, Buyer shall not delay delivery of any Equipment or provision of Services by HESCO without the prior written consent of HESCO in its sole discretion. A delay in performance by Buyer required to complete the Equipment or Services will be considered such a delay by Buyer. As a condition for HESCO's approval of any such delay or suspension by Buyer, or in the event of any such delay, HESCO may require full payment of all amounts owing for the Equipment or Services plus any additional costs incurred by HESCO as a result of the delay and HESCO may adjust the purchase price as provided in Section 3 and/or require a change order as provided in Section 5 above.

10. Warranty.

(a) Equipment Warranties: Any Equipment or part thereof manufactured or designed by HESCO which under normal operating conditions in the plant of Buyer proves defective in material or workmanship (or in design by HESCO, if HESCO has designed the Equipment) within one (1) year from the date of installation if installed by HESCO, or one (1) year from the date of delivery if not installed by HESCO, will be repaired or replaced by HESCO, provided that (1) Buyer promptly gives notice of the defect and establishes that the Equipment has been properly installed in accordance with installation recommendations and maintained and operated within the limits of normal usage; (2) the operating conditions and use of the

Equipment are in accordance with any standards set forth in the Proposal and any Statement of Work, HESCO's specifications, and any applicable recommendations of HESCO; and (3) the installation, adjustment, tuning, and start-up of the Equipment have been properly performed in accordance with HESCO's specifications and any applicable recommendations of HESCO. All transportation expenses, as well as repair personnel travel, lodging and premium labor expenses for any such repair or replacement shall be paid by Buyer.

(b) No Warranty for Other Equipment: This warranty shall not extend to or obligate HESCO for defects in any item of Equipment not manufactured or designed by HESCO. With respect to materials, parts and accessories not manufactured or designed by HESCO, it will undertake to obtain for Buyer the benefits of the manufacturer's warranties.

(c) Claim for Defective Parts: Any request by Buyer to return parts which are claimed to be defective must be made to HESCO in writing promptly upon discovery of the claimed defect and must include the invoice number, date of purchase of the Equipment and all product identifying information (such as serial number, revision and series, to the extent applicable). Parts may be returned only upon prior written authorization and with shipment prepaid.

(d) Improper Use or Alteration: This warranty is of no effect if the Equipment claimed to be defective or any part or component thereof shall have been improperly repaired or altered or if the Equipment is operated or installed contrary to instructions or is subjected to misuse, negligence or accident.

(e) Services Warranty: HESCO warrants to Buyer for a period of 30 days from the date services are provided that services shall be performed in a workmanlike manner conforming to standard industry practice and the provisions of the Statement of Work agreed upon, in writing, by HESCO.

(f) Form and Timing of Written Claim: Any warranty claim must be addressed to HESCO in writing, set forth sufficient detail to permit identification of the defect, and be made no later than ninety (90) days after the expiration of the warranty period set forth above. Warranty satisfaction is available only if (1) HESCO is provided prompt written notice of the warranty claim, and (2) HESCO's examination discloses that any alleged defect has not been caused by: (i) misuse, neglect, improper installation, operation, maintenance, repair, alteration, or modification by other than HESCO; (ii) accident, or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electromagnetic noise environment; (iii) concealed or otherwise unknown physical conditions differing materially from

those indicated or anticipated in the Statement of Work or that otherwise differ materially from those ordinarily found under similar circumstances; or (iv) material inaccuracy of any information or design criteria provided by Buyer.

(g) Buyer Specifications: (1) Unless otherwise specified in the Statement of Work, HESCO does not warrant or indemnify and will not otherwise be liable for (i) design, materials, or construction criteria furnished or specified by Buyer and incorporated into the Services or Equipment, (ii) products supplied by, made by or sourced from Buyer or other manufacturers or vendors specified by Buyer; or (iii) commercially available computer software, hardware, and electrical components. (Such Buyer-specified products shall include but not be limited to any identified in the Statement of Work.) Any warranty or indemnity applicable to such Buyer supplied/specified products will be limited solely to the warranty or indemnity, if any, extended by the original manufacturer or vendor other than HESCO to the extent permissible thereunder.

(h) THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HESCO MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND SHALL HAVE NO OBLIGATIONS OR LIABILITY, WITH RESPECT TO ANY DELIVERY, INSTALLATION, REPAIR, MAINTENANCE OR OTHER SERVICES PROVIDED BY ANY THIRD PARTY AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO ANY OF SUCH SERVICES. No statement, oral or written, inconsistent with this warranty shall be binding on HESCO.

11. Disclaimer and Limitation of Liability.

HESCO SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, INCREASED EXPENSE OF OPERATION, DATA LOSS OR ANY OTHER LOSSES RESULTING FROM THE EQUIPMENT OR SERVICES, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE EVEN THOUGH HESCO MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, HESCO'S LIABILITY WITH RESPECT TO ANY ITEM OF EQUIPMENT OR PROVISION OF ANY SERVICES SHALL NOT EXCEED AN AMOUNT EQUAL TO THE PURCHASE PRICE. THE REMEDIES FOR BREACH OF WARRANTY CONTAINED HEREIN SHALL BE EXCLUSIVE. HESCO FURTHER DISCLAIMS ALL LIABILITY FOR GRATUITOUS ASSISTANCE PROVIDED BY HESCO BUT NOT REQUIRED BY THE STATEMENT OF WORK.

12. Safety Devices

Buyer acknowledges that the use and operation of HESCO's products or Equipment without the recommended safety devices may be hazardous and may constitute a threat to health and safety. HESCO does not authorize and expressly disapproves the use and operation of its products or equipment without the recommended safety devices. HESCO hereby expressly disclaims and excludes liability and responsibility for all consequential damages and/or other losses, of whatever type, which may rise from operation of its products or Equipment without the recommended safety devices.

Buyer further agrees only to allow its fully trained operators to operate the equipment. 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 HESCO or any third-party manufacturer.

If the Buyer fails to comply with the obligations set forth in these Terms and Conditions, the Buyer agrees to indemnify and hold/save HESCO harmless from all liability or obligation incurred by HESCO arising from the operation of its products or Equipment. Failure to follow the safety manuals, operating procedures and instruction sheets shall further result in Buyer's waiver of all warranties.

13. Property, Intellectual Property and Patent Rights.

(a) Retention of Rights: HESCO retains all rights to designs, inventions and improvements made by or for or assigned to HESCO pertaining to the Equipment and to patents, trademarks, copyrights and related property rights in connection therewith, and Buyer will not assert any rights thereto; provided, however, HESCO shall permit Buyer to have the license and right to use the Equipment for the purposes contemplated by the parties. Each party shall own all right, title, and interest in all patents, trademarks, copyrights, confidential information, trade secrets, mask rights, and other intellectual property rights as it owned on the date of the acceptance of these Terms and Conditions by the Buyer.

(b) Patent Infringement Indemnity and Conditions: HESCO will indemnify and hold Buyer harmless from all costs, expenses and damages resulting from any claim of infringement of a patent by reason of its use in the manner contemplated hereby of Equipment manufactured or designed by HESCO or from any suit resulting from such claim, provided that Buyer promptly

notifies HESCO in writing of such claim or the institution of such suit and gives HESCO its full cooperation and grants HESCO the exclusive right to defend such suit. In the event of such claim or suit, HESCO shall have the right to modify or replace the Equipment or to remove it and refund the purchase price less 15% for each full year from the date of shipment. This paragraph shall not apply to any modifications by Buyer or at its request, any process in which the Equipment is used, any products made by Buyer, or any claims or suits related solely to materials, parts or accessories not manufactured or designed by HESCO.

(c) Buyer Information: Buyer represents and warrants that it has the rights to the information provided or made available by Buyer to HESCO, including but not limited to technical specifications, drawings, source code, application code, communication interfaces, protocols, and all other documentation (collectively "Buyer Information"), for HESCO to perform its obligations under the Proposal or any Statement of Work and that such access to and use of Buyer Information will not infringe or violate any agreement, confidentiality obligations, copyrights, or other intellectual property rights of the original vendor or any other third party. Buyer agrees to indemnify HESCO from any claims arising out of HESCO's use of Buyer Information pursuant to the Proposal or any Statement of Work.

(d) Standard Software Provisions: Software comprised of firmware or standard software (including, but not limited to packaged software, any HESCO's preexisting templates, models and library files, and commercially available software) (collectively "Standard Software") is subject to Buyer's acceptance of additional terms and conditions set forth in separate HESCO or third-party click-wrap license agreements provided with such Standard Software. Such terms and conditions shall be the exclusive terms and conditions applicable to such Standard Software, excluding Buyer's obligation to pay any license fee which shall be identified in the Statement of Work.

(e) HESCO Documentation and Application Software: In the absence of a separate HESCO license agreement for software created and provided by HESCO under a Statement of Work, HESCO hereby grants Buyer a non-exclusive, non-transferable license to use such software solely in conjunction with the Services for the project identified in the Statement of Work without the right to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software. Ownership of the respective HESCO or third-party software shall remain with HESCO or the third party.

14. Site Preparations and Standards for Performance of Services.

(a) Safety and Standards: HESCO is responsible for compliance of the Services with laws, regulations, and standards, including safety regulations and standards, of the state and country where the Services will be located that are applicable to the Services at the effective date of the Proposal or Statement of Works. Buyer must inform HESCO of any other laws, regulations, or standards that may apply to the Services. HESCO will be responsible for compliance with such other safety or other standards only if documented in the Statement of Work. HESCO is not responsible for laws, regulations, or standards that apply to Buyer's (or end-user's, if different from Buyer) facility, equipment, process, information system, or data.

(b) Site Rules: HESCO agrees to comply with all applicable posted site rules of Buyer (unless inconsistent with the obligations set forth in the Statement of Work) and any additional Buyer's site rules that have been incorporated into the Statement of Work.

(c) Licenses, Permits and Site Preparation: Buyer is responsible for: (1) all licenses, permits, clearances, and site access rights; (2) all sites being ready and equipped with all necessary Buyer furnished equipment and facilities; (3) any required Buyer fixtures or facilities being safe, hazard free, structurally sound, and sufficient; (4) reasonable access to the worksite, (5) properly using, calibrating operating, monitoring and maintaining the Services consistent with all HESCO or third-party provided instructions, warnings, recommendations and documentation; (6) all other factors affecting the Services that are outside of the direct control of HESCO; and indemnifying HESCO for any claims to the percentage extent directly caused by Buyer's breach of the obligations listed in this section 14(c).

15. Applicable Laws, Arbitration and Consent to Jurisdiction and Venue.

(a) Governing Law: All sales of Equipment and Services by HESCO shall be deemed to have been made in and governed by the substantive laws of the State of Connecticut, without regard to any choice-of-law provisions.

(b) Jurisdiction and Venue: Any dispute or claims relating to the sale of Equipment or the Services performed by HESCO shall be asserted only in the state or federal Courts located in Hartford County, Connecticut, and all Buyers of Equipment and Services consent to the jurisdiction and venue of said Courts. **THE PARTIES WAIVE TRIAL BY JURY IN ANY SUCH PROCEEDING.**

(c) Arbitration: Any controversy or claim arising out of or relating to the purchase or sale of Equipment or the Services performed by HESCO or governed by these Terms and Conditions or the breach thereof shall be settled by arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules, and judgment on the award (the “Underlying Award”) rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be held in Hartford County, Connecticut. The Arbitrator(s) shall give effect to the applicable substantive law applied to the facts that it shall find and may grant any legal, equitable or other remedy or relief provided by law in deciding such controversy or claim.

(d) Appeal of Arbitration Award: Notwithstanding any language to the contrary in any other contract documents, the parties agree that the Underlying Award in such arbitration may be appealed pursuant to the AAA’s Optional Appellate Arbitration Rules (“Appellate Rules”); that the Underlying Award rendered by the Arbitrator(s) shall, at a minimum, be a reasoned award; and that the Underlying Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Underlying Award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. Following the appeal process the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof.

16. Security.

The Proposal and these Terms and Conditions constitute a security agreement and Buyer grants HESCO a purchase money security interest in the Equipment within the meaning of the Uniform Commercial Code until the purchase price is fully paid. Buyer will execute and deliver any documents reasonably requested by HESCO to give effect to this provision, and Buyer authorizes HESCO to sign Buyer’s name to such documents and to file such documents with appropriate governmental authorities. By accepting these Terms and Conditions Buyer consents to the filing by HESCO of financing statements or other records in any public filing office naming Buyer as “debtor” and HESCO as “secured party” thereunder indicating the interest of HESCO in any such Equipment in the possession of Buyer. Buyer also consents to HESCO notifying Buyer’s secured creditors of HESCO’s purchase money security interest in the Equipment in Buyer’s possession.

17. Assignment.

Except as provided in Section 15, neither party may assign any of its rights or obligations under the Proposal or these Terms and Conditions without the written consent of the other except to

an affiliate of the assigning party, and any assignment with such consent or to an affiliate shall not release the assignor from its obligations in the event the assignee fails to perform.

18. Subcontracting; Supplemental Terms.

Buyer acknowledges and agrees that HESCO may subcontract or delegate delivery, installation, repair, maintenance, or other services relating to the Equipment to its suppliers, distributors or other providers or their affiliates or successors ("Provider"), without notice to or consent by Buyer. To the extent any such Provider delivers, installs, repairs, maintains, or provides other services relating to any Equipment, all additional or supplemental terms and conditions imposed by such Provider are deemed incorporated by reference into and made a part of these Terms and Conditions, and HESCO shall have no obligation or liability to Buyer with respect to such services. Buyer further acknowledges that no such Provider has any obligation to provide delivery, installation, repair, maintenance, or other services relating to the Equipment, except as expressly agreed.

19. Waiver of Terms.

Failure or delay of either party to insist upon strict performance of any of the provisions hereof or to exercise any rights or remedies provided herein shall not release the other party from any of its obligations and shall not be deemed a waiver of any right of either party to insist upon strict performance hereof or to exercise any right or remedy as to any default hereunder.

20. Complete Agreement.

The Proposal and these Terms and Conditions constitute the entire agreement between Buyer and HESCO, supersede all oral or written agreements or understandings between the parties relating to the subject matter hereof, and no alteration or addition shall bind HESCO unless agreed in writing by its authorized representative.