Additional Special Conditions of Contract

The following Additional Special Conditions of Contract (ASCC) shall be read in conjunction with and form an integral part of the Special Conditions of Contract (SCC) contained in Section VII of the Bidding Document. In the event of any discrepancy, inconsistency, or conflict between the ASCC and the SCC, the ASCC shall prevail.

1. **Document forming the Contract**

(1) Purchase order issued.
(2) Performance Guarantee submitted by the successful Firm and its verification from the concerned Bank
(3) Letter of Intent (LOI) by HESCO and its acceptance by the successful bidder
(4) Form of Contract,
(5) Additional Special Condition of the Contract
(6) Special Conditions of Contract
(7) General Conditions of Contract,
(8) Specifications
(9) Contractor's Bid

2. **Conditions Precedent**

Having signed the contract it shall come into effect on the date of its issuance.

3. **Performance Security (or Guarantee)**

i. The amount of performance security (or guarantee), as a percentage of the Contract Price, shall be: 5% of the total bid price (including GST)
ii. Time period of validity: shall be **36 months** from the date of completion of supply.
iii. The Performance Security/Guarantee shall be in PKR issued in favour of Chief Executive Officer (CEO) HESCO and it shall be in the form as the per following:
   a) A bank guarantee issued by a scheduled bank of Pakistan in the form provided in the Bidding Documents.
   b) Cash Deposit Receipt (CDR)
   c) Pay Order (PO)
iv. After delivery and acceptance of the Goods, the Performance Security (or guarantee) shall be withheld to cover the Supplier's warranty obligations in accordance with the SCC /ASCC clause. The Performance Security (or

guarantee) shall be extended by the firm in case any defect or replacement of material is claimed until the expiry/extended warranty period.

4. **Inspections and Tests**

i. Inspection and tests prior to shipment of Goods and at final acceptance are as follows:

ii. Quality and quantity inspection shall be carried out prior to shipment of Goods by the manufacturer(s)/supplier(s) at the supplier's own expense and responsibility in terms of the approved samples verifying the size, dimensions, quality & finishing of material etc. The supplier/manufacturer shall submit the inspection certificate issued by himself to the Procuring Agency, at the time of submission of the inspection call, in order to ensure that the goods are manufactured/supplied in compliance with the contract.

iii. The inspection shall be carried out at the manufacturer's/supplier's premises by **Two HESCO inspectors.** Notice in writing shall have to be given to the Manager (Material Management) HESCO by the manufacturer/supplier when the store against the order is ready for inspection. The inspection call shall be effective on the date of its receipt at the office of Manager (Material Management).

iv. All expenses of HESCO Inspectors shall be borne by the Tenderer including Boarding/ Lodging, Daily Allowance etc.

v. Stage inspection may be carried out, if necessary. Inspection Call shall be declared fake if the store against the inspection call is less as per the mentioned quantity.

vi. All reasonable facilities followed by the industry or trade, in general, shall have to be accorded to the inspecting officers at your expense for carrying out the inspection.

vii. The Inspecting Officer may reject a part or the whole of the consignment tendered for inspection, if after inspection, such portion thereof as he may decide, on his discretion, he is satisfied that the consignment is below the requirements of the particulars governing the supply given in the Purchase Order.

viii. The decision of the Inspecting Officer shall be binding on the supplier.

ix. If the stores are rejected as aforesaid, then without prejudice to the right of the Purchaser, the supplier may submit stores in replacement of those rejected but resubmission will not mean the extension of the delivery period.

x. On final rejection, the purchaser shall have the following rights:

a. To purchase the rejected goods at the supplier's cost and expense.
b. To terminate the contract/PO and recover from the supplier the loss the Company, thereby incurs.

xi. HESCO reserves the right to re-inspect, re-test (at its own expense) and, where necessary, reject the Goods after their arrival at the final destination. This shall in no way be limited to or eased because of the Goods having previously been inspected, tested and passed by HESCO or its representative prior to the Goods' shipment. The decision of HESCO based on the reports of re-inspection and/or re-testing shall be binding on the manufacturer/supplier.

5. Packaging

The Goods shall be packed properly in accordance with standard packing followed by the industry or trade, in general that ensures the goods delivery to its final destination without any damage, scratch or physical loss.
The word "Hyderabad Electric Supply Company" or HESCO with PO No. & year of manufacturing together with other essential markings shall be provided.

6. Delivery and Documents

Goods shall be supplied on FCS basis at Regional Store Hyderabad. The unloading of the goods shall be the responsibility of the Supplier.
Upon delivery of the Goods, the Supplier shall notify HESCO and mail the following documents to HESCO:

i. one original plus four copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;
ii. delivery note, railway receipt, or truck receipt;
iii. Manufacturer's or Supplier's warranty certificate;
iv. Certificate to the effect that the prime material has been used in the manufacturing of Goods, and if any evidence of used/scrap material is found at a later stage the supplied Goods shall be replaced free of cost with the Goods having prime material. Also, if any manufacturing, design and/or inherent fault is detected at later stage the faulty Goods shall be replaced with Healthy Goods. The inspection procedure for the replaced goods shall be same as per the SCC 9 and the Contract.
v. inspection certificate issued by the two HESCO inspectors, and the Supplier's factory inspection/test report; and
vi. certificate of country of origin issued by Pakistan Chamber of Commerce and Industry or equivalent authority in the country of origin in duplicate.

The above documents shall be received by HESCO before the arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

7. **Insurance**

The In-surance shall be in an amount equal to 110 percent of the FCS value of the Goods from "warehouse" to "warehouse" on "All Risks" basis, including War Risks and Strikes.

8. **Warranty**

i. The warranty period shall be for a period of **36 months** from the date of completion of supply. The Supplier shall be held responsible for all the losses and the unacceptable Goods shall be substituted with the acceptable Goods free of cost.
ii. if applicable, upon receipt of notice for correction of defects under warranty period the manufacturer/supplier shall, within 45 days and with all reasonable speed, repair or replace the defective Goods or parts thereof. The cost of repair or replacement and returning back to HESCO stores shall be borne by the supplier.

iii. The warranty period of the entirely replaced item shall be as per the initial warranty period of new goods.

i. If the Goods under warranty period already repaired are damaged again (second time) the procedure mentioned for the first time damage shall be followed. Accordingly, the same procedure shall be followed for damage/defect for the third time. However, if the goods under warranty period are damaged for the third time the manufacturer/supplier shall be issued a Performance Certificate that will have an impact on its participation in future bids/tenders in HESCO.

9. **Payment**

The payment will be made directly by the Chief Financial Officer HESCO Hyderabad within (30) days on the presentation of the following documents:-

i. Invoice of the supplied material in triplicate.
ii. Delivery Challan duly acknowledged and signed by the consignee.
iii. GRN issued by concerned Deputy Manager, Regional Store HESCO.
iv. Warranty Certificate.

v. Inspection Certificate issued by Chief Engineer, (MI) PPMC or his authorized representative.
vi. Confirmation letter of acceptance of performance Bond/Security by the Manager (MM) HESCO.
vii. Certificate to the effect that the billed amount has not been claimed or received earlier (Non-payment certificate).
viii. Professional Tax paid certificate by the firm.
ix. All Federal & Provincial Taxes will be applied as per prevailing laws.
x. Copy of General Sales Tax/Excise Duty Invoice.
xi. The manufacturer/supplier in its invoices shall also give an undertaking, in case of omission of any deductible amount; HESCO's claim at any later stage (through pre-audit / post audit) shall be acceptable to them.
xii. As per directions of FBR dated. 3.9.2015 conveyed vide C.E (Operation) PEPCO vide letter No. 1918-28 dated. 17.09.2015, the payment to the registered persons may be linked with the active taxpayer status of the suppliers as per FBR database. If any registered supplier is not in ATL his payment should be stopped till he files his mandatory returns and appears on ATL of FBR.

PARTIAL DELIVERIES AND PARTIAL PAYMENTS ARE ALLOWED.

The amount of 18% sales tax will be reimbursed by the Chief Financial Officer HESCO Hyderabad as under:

a. Sales Tax return cum payment Challan for the month of delivery of material.
b. Copy of GRN duly stamped and signed by the respective consignees.
c. Sales Tax Invoice as per GRN above.
d. Any increase/decrease in the existing tariff of custom duty/Sales tax or any other tax is imposed or charged by the Government of Pakistan/Provincial Government, the same will be adjusted by the Chief Financial Officer, HESCO Limited, Hyderabad on presentation of documentary evidence.

In case the manufactures who pay lump-sum Sales Tax, they shall also submit an affidavit on non-judicial paper separately that "Challan includes the amount of Rs.___________of Sales Tax for supply of material to HESCO against P.O. No._______ dated._________

10. **Prices**

Prices shall not be adjusted. The offered price shall be firm and final.

11. **Liquidated Damages**

If the supplier fails to deliver the Goods or any consignment thereof within the specified delivery period, the purchaser shall be entitled at his option, either:

a) To recover from the supplier liquidated damages levied at the rate of two percent (2%) per month or a fraction thereof subject to a maximum of ten percent (10%) of the PO/contract price, except:

- Where un-delivered stores hold up the use of other stores, liquidated damages shall be levied on the total value of the contract/PO.

- The recovery of liquidated damages mentioned above can be effected from any payment due to the supplier from any unit of HESCO Or

b) To purchase from elsewhere, without notice to the supplier, at the supplier's risk and cost, the stores not delivered, without canceling the contract/PO in respect of the consignment not yet due for delivery Or
c) To cancel the contract/PO at the supplier's risk and cost.

In the event of action being taken under (b) or (c) above, the supplier shall be liable for any loss which the purchaser may suffer on the account, but the supplier shall not be entitled to any gain on repurchase made against the supply order.

12. **Procedure for Dispute Resolution**

(a) <u>For Contracts to be entered with nationals of Pakistan:</u>

i. If any dispute of any kind whatsoever shall arise between HESCO and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of foregoing, any question regarding its existence, validity, termination and the execution of the Contract– whether during developing phase or after their completion and whether before or after the termination, abandonment or breach of the Contract – the parties shall seek to resolve any such dispute or difference by mutual diligent negotiations in good faith within 7 (seven) days following a notice sent by one Party to the other Party in this regard.
ii. At future of negotiation the dispute shall be resolved through mediation and Chief Supply
iii. Chain Management Officer, HESCO shall act as Arbitrator/mediator.
iv. At the event of failure of mediation to resolve the dispute relating to this contract such dispute shall finally be resolved through binding Arbitration by sole arbitrator in accordance with Arbitration Act 1940. The Arbitration shall take place in HESCO Hyderabad and proceedings will be conducted in English language.
v. The cost of the mediation and arbitration shall be shared by the parties in equal proportion however the both parties shall bear their own costs and lawyer's fees regarding their own participation in the mediation and arbitration. However, the

Arbitrator may make an award of costs upon the conclusion of the arbitration making any party to the dispute liable to pay the costs of another party to the dispute.

vi. Arbitration proceedings as mentioned in the above clause regarding resolution of disputes may be commenced prior to, during or after delivery of goods.

Notwithstanding any reference to the arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree that HESCO shall pay the Supplier any monies due to the Supplier.

Furthermore, the supplier agrees that the territorial jurisdiction of the litigation shall be Hyderabad District. No court other than Hyderabad District will entertain any judicial matter in respect thereto.