

# TERMS AND CONDITIONS OF SALE

**1. ORDERS.** All orders are subject to acceptance or rejection by The Heil Co. dba Environmental Solutions Group, its subsidiaries, or affiliates including but not limited to: Marathon Equipment Company, Parts Central, 3rd Eye, The Curroto-Can, and Bayne Machine Works (each, an "Entity" and collectively, "ESG"). NO ORDERS MAY BE CHANGED IN ANY MANNER WITHIN SIXTY (60) DAYS OF THE SCHEDULED PRODUCTION DATE. ANY CHANGES REQUIRED BY THE CUSTOMER WITHIN THIS 60-DAY TIME FRAME may incur additional charges AND WILL CAUSE THE ORDER TO BE REMOVED FROM THE PRODUCTION SCHEDULE AND RESCHEDULED AS DEEMED NECESSARY BY ESG IN ITS SOLE JUDGMENT.

**2. ORDER CANCELLATION.** After acceptance, orders for Products or Services cannot be cancelled except upon terms that will compensate ESG fully for all inconvenience, cost, loss and/or damage sustained.

**3. ORDER ACKNOWLEDGEMENTS.** An Order Acknowledgment ("OA") must be reviewed, signed and returned to the applicable ESG Entity, subsidiary or affiliate to indicate Purchaser's verification the order is accurate. ESG reserves the right to forego initiation of any work on an Order or to hold an Order from being slotted in the Production Schedule until a signed OA has been received. Regardless of whether an Order Acknowledgment has been executed, Purchaser expressly waives any claims of error or loss for orders that are produced in accordance with an OA transmitted to Purchaser that Purchaser does not correct and transmit in writing to ESG before production begins. In the event of an order change after an OA has been sent to Purchaser, a change order fee of \$250 plus cost incurred, will be assessed, in addition to price adjustments resulting in the changes to the order.

**4. CUSTOM ORDER REQUESTS.** Orders for Products with components not regularly carried in stock or requiring special engineering, special parts ordering or special manufacture are in every case subject to approval by the Product Management department of ESG and shall be subject to the procedures and qualifications set forth in ESG's Custom Order Policy. Work performed at Purchaser's request such as sketches, drawings, design, testing, fabrication and materials shall be charged at then-current rates.

**5. PERFORMANCE.** ESG shall not be liable for damages of any kind whatsoever arising from failure to complete the contract in accordance with its Order if such changes are due to an event of Force Majeure including but not limited to: Acts of God, wars, severe weather, strikes, fires, floods, accidents, material or component shortages, delays in transportation or other causes beyond its reasonable control.

**6. INTELLECTUAL PROPERTY.** Sketches, engineering drawings, specifications, models, mock-ups, manuals, marketing materials, and all preparatory work submitted to, created or furnished by ESG shall remain ESG's exclusive property. No other customer use of these materials is authorized, nor may derivations, alternatives or modifications created there from be used or disclosed to anyone except with the prior written consent of ESG.

**7. SHIPMENT AND F.O.B. POINT.** All shipments will be made after completion of manufacture unless otherwise agreed to in writing. In the event that a Product Pick-up Agreement has been signed by the Purchaser, the Product will be invoiced immediately upon completion of manufacture, and such invoice shall be due and payable according to these terms. Storage shall be at the risk of the Purchaser and ESG shall be liable only for the ordinary care and custody of the property. Unless otherwise stated in writing, all prices quoted or otherwise listed are F.O.B. point of manufacture. In all cases, in-transit liability and risk of loss transfers to the Purchaser at the time of delivery to the Purchaser, their employees, agents, or a delivery service or common carrier – whichever occurs first. Unless otherwise provided, with respect to the attachment or affixing of ESG Products to the Purchaser's property (e.g., truck chassis), title and risk of loss with respect to such Products are transferred to the Purchaser upon initiation of such attachment.

**8. PURCHASER'S PROPERTY.** All Purchasers' property, or third parties' property, that is stored by ESG or its employees, agents or assigns (whether on or off ESG facilities) is at the Purchaser's or other party's risk. ESG shall only provide for ordinary care and custody of the property and shall not be liable for any loss or damage thereto caused by weather, fire, water, corrosion, vandalism, theft, negligence, or any cause whatsoever. It is the Purchaser's unconditional obligation to accept the risk of loss and insure its property while it is in ESG or its designees' custody.

**9. TRAINING.** It is the Purchaser's responsibility to provide these Terms & Conditions of Sale to the Product owner and to specifically notify the Product owner that it is the Product owner's responsibility to ensure that the Operators Manual is reviewed by all Operators and remains with each unit, as well as ensuring the Parts & Service Manual is available for use. Additionally, regardless of whether or not the manufacturer or its designee provides training at the time of Product delivery, the Product owner is responsible for training their operators and maintenance personnel and shall ensure that every person who operates or maintains the Product has been trained on the proper operation, service, storage, service hoist use, battery disconnect use, lockout/tag out procedures for each Product, as well as the Product owner's company work rules. Please note that certain Products require different and, in some cases, several types of training and that these depend on the product being requested. For example, ESG's electrified bodies require training specifically covering batteries and various electric componentry. Purchaser acknowledges that it is solely its responsibility to understand what trainings apply to the product(s) ordered. ESG representatives can assist in this regard. Purchaser commits to communicate such requirements to any of its subsequent purchaser(s) and to ensure the compliance of such purchaser(s).

**10. PRICES.** All orders are subject to current prices in effect at the time of shipment, including any applicable surcharges and transport charges.

**11. PAYMENT AND COLLECTION.** ESG's standard domestic payment terms are Net 30 days from the date of invoice unless modified by a separate written agreement with your company. For non-domestic shipments, a Letter of Credit or other ESG approved surety of payment may be required prior to shipment. Notwithstanding the foregoing, ESG reserves the right to offset any due and owing payments against any open account balances and/or to apply payments received against any open account balances. ESG shall establish or revise payment terms and/or administer credit in accordance with its Credit Department's sole judgment at any time to any order and its decision shall be final, non-appealable, and binding. If for any reason the Purchaser defaults on any monies owed to ESG, said Purchaser shall be responsible for all costs incurred by ESG in the collection of outstanding monies including but not limited to: collection agency fees, filing fees, judgment, interest expense, settlement, Court and/or administration costs, attorney's fees, etc. ESG reserves the right to charge and collect late fees for overdue payments at the rate of 1.5% per month or the highest amount allowable by law, whichever is higher.

**12. TAXES.** Unless specifically stated on your quotation and invoice, prices charged by ESG do not include Federal, State, City or other excise, occupation, sales, use, VAT or similar taxes which are extra and are the customers' obligation to pay to the applicable taxing authority at rates in effect at time of shipment. If Federal Excise Taxes are included and listed on the order acknowledgement or invoice, they are stated at the rates and regulations in effect at the time this order is written and are subject to revision in accordance with rates and regulations in effect at time of shipment. If Federal Excise Taxes are not included on ESG's invoice, this shall not be construed as ESG offering an opinion on taxability of our product(s) or providing tax or legal advice. ESG does not provide tax advice. Customers are encouraged to consult with a tax professional to determine the potential for any tax liabilities beyond those reflected on an invoice from ESG.

**13. PRODUCT IMPROVEMENT.** ESG reserves the right to change its Product or Service offerings, Product specifications, training curricula, materials, components, suppliers, Product design, and/or Production procedures without prior notice at any time in its sole judgment.

**14. MOUNTING PRICES.** For waste & recycling collection body Products, it is the Purchaser's responsibility to provide or purchase from ESG a new chassis that meets or exceeds the specifications published by ESG on the website of its applicable subsidiary or affiliate for the specific Product model & size ordered. Used chassis will not be factory mounted with a new body. Mounting prices assume normal factory installation on a fully functional truck chassis meeting ESG's prescribed specifications for the unit purchased. Repair of chassis, relocation or installation of any components or accessories such as batteries, battery disconnect switches, gas tanks, mufflers, air tanks, cameras, etc. will be made at an additional charge, to be billed at the standard factory parts and labor rates. It is expressly understood that ESG is not authorized to modify exhaust systems on engines that comply with EPA emission standards which became effective in 2007. Chassis delivered to ESG requiring modification of such an exhaust system to enable body mounting will be returned to the Purchaser or a designated chassis dealer at the Purchaser's expense.

**15. WARRANTY.** ESG warrants its Products in accordance with the applicable ESG subsidiary or affiliate's Warranty Statement (the "Warranty Statement") provided with the Product or published on the respective Product's website unless you have a contract with ESG providing specific terms and conditions of warranty. A copy of the ESG Warranty Statement is available from your Dealer and is posted on ESG's applicable website for the Product. Please note that certain Products may have certain use and care requirements, limitations, and instructions that factor in to warranty coverage (for example, battery systems, electric batteries and componentry). ESG is not responsible for failure to comply with such instructions. Customer has to comply with the applicable Warranty Statement for each Product. While the text in the Warranty Statement for each

respective ESG entity is more specific and shall prevail, ESG's Product warranty is expressly limited to repair or replacement of any component or part thereof, for any such Product that is determined by ESG to be defective in materials or workmanship. ESG Product warranty is not transferable, except for factory-owned sales demonstration units. No warranty claims will be processed on any ESG Product unless the warranty registration was submitted timely to the ESG Customer Support Department applicable to the Product. Any service parts sold by ESG carry a six-month warranty for part replacement only, provided such failure was due to a defect in material or workmanship. Troubleshooting time, travel time, component removal and installation labor cost are excluded from ESG's service part warranty.

**16. CHASSIS AND ACCESSORY WARRANTY.** ESG makes no warranty of Products or component parts manufactured by others, except to the extent there is a defect in workmanship solely related to the installation at ESG's factory or by ESG personnel. Chassis, component parts and accessories are solely subject to the warranties, if any, as provided and administered by their respective manufacturers. This expressly applies to anybody/chassis compatibility or other chassis-related issues and/or accessory components – regardless of whether said chassis or accessory was provided by ESG at the time of sale. Purchaser needs to make itself familiar with respective chassis capabilities and ratings – including weight capacities. ESG has no responsibility for exceedance of respective chassis weight limits. In the event Purchaser requests ESG to install a body on a chassis where the load capabilities of the body could result in overloading of the chassis (in excess of the weight rating), ESG may (i) (but has no obligation to) inform Purchaser of the expected overload condition and/or (ii) refuse to install the body on that chassis or, (iii) should ESG choose to install at Purchaser's request, Purchaser releases ESG from and agrees to indemnify ESG for any claims related to that potential weight overload condition. Additionally, unless there is a defect in workmanship solely related to the installation by ESG personnel, ESG shall not administer any chassis, component, or accessory manufacturer's warranty directly or as a third-party liaison for the Product owner or Dealer. The Product owner shall address any such "non-ESG Product" warranty issues directly with their local chassis dealer and/or the manufacturer of the specific accessory, component, or equipment with no further liability to ESG. Please note that battery and electrically powered refuse collection bodies that do not include an independent battery system rely on a chassis battery system and, as such, are subject to the respective chassis maker's warranty and are outside the scope of any Heil warranty.

**17. WE MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND MAKE NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE – EACH OF WHICH IS HEREBY EXPRESSLY DISCLAIMED.** Any improper use, operation beyond rated capacity, substitution of non-OEM parts not specifically approved by us in writing, or any alteration or repair by others in such manner as in our judgment affects the Product materially and adversely shall void this Warranty. NO EMPLOYEE OR REPRESENTATIVE OF ESG OR ITS ENTITIES IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY OR GRANT ANY OTHER WARRANTY, except as part of a definitive written agreement between the manufacturer and purchaser. The above warranty supercedes and is in lieu of all other warranties whether express or implied.

**18. LIMITATION OF LIABILITY; NO DIRECT OR CONSEQUENTIAL DAMAGES.** ESG HEREBY DISCLAIMS AND DOES NOT ACCEPT ANY LIABILITY WHATSOEVER FOR COSTS OR EXPENSES RELATED TO THE USE OR UNAVAILABILITY OF ITS PRODUCT FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ACCIDENTS, INJURY, DEATH, LATE DELIVERY PENALTIES, CHASSIS FLOORING COST OR CHARGES, PRODUCT DOWN TIME, FIRE DAMAGE, LOSS OF PRODUCT, IN-TRANSIT DAMAGE OR LOSS, OPPORTUNITY COST, LOST PROFITS, OR ANY OTHER DIRECT, INDIRECT OR CONSEQUENTIAL LOSSES, DAMAGES OR DELAY, PROPERTY DAMAGE OR INJURIES OR DEATH TO PERSONS. UNDER NO CIRCUMSTANCES MAY ESG'S LIABILITY EXCEED THE PURCHASE PRICE FROM WHICH THAT PARTICULAR CLAIM ARISES.

**19. ETHICAL BUSINESS PRACTICES AND COMPLIANCE WITH LAWS.** ESG is committed to conducting operations ethically and in compliance with all laws applicable to such commerce. This includes compliance with laws prohibiting commercial bribery, payments to government officials, money laundering, and other similar anti-corruption laws, and compliance with laws governing import and export restrictions, customs, duties, and taxes (together, the "Applicable Laws"). Purchaser agrees to comply with such Applicable Laws. Purchaser specifically acknowledges that ESG is a part of a global enterprise and subject to the US Foreign Corrupt Practices Act and the UK Bribery Act of 2010, US Export Administration Regulations, the US International Traffic in Arms Regulations, provisions of the Chemical Weapons Convention, US sanctions and embargos, and export control laws and regulations of other countries, including OECD restrictions and regulations, and Purchaser shall not take any action which shall directly or indirectly cause a violation of those Applicable Laws with respect to the activities contemplated by or related to this Order.

**20. OFF-SITE LOSS DISCLAIMER.** The Purchaser shall bear all risk for damage or loss to the purchaser-owned Product, chassis, accessories, or injury to property or persons, while the Product and/or chassis is (i) at ESG facilities, (ii) en route to/from ESG facilities, (iii) at or en route to/from a third party subcontractor of ESG's, (iv) in transit to/from Purchaser's or the chassis manufacturer's location, or (v) to/from any third party Dealer or a component supplier's location.

**21. CHOICE OF LAW AND VENUE.** This agreement shall be interpreted according to the laws of the State of Tennessee. Any claims lodged against ESG involving this Order in any way must be filed and adjudicated in the Circuit or Federal Court located in Hamilton County, Tennessee, and in the case of appeal, at the situs of their respective appellate Courts.

**22. NON-WAIVER.** Our failure at any time to exercise any right we may have under this agreement shall not constitute a waiver thereof nor prejudice our right to enforce same thereafter.

**23. SECURITY INTEREST.** The Purchaser hereby grants a first priority purchase money security interest and lien to ESG in and to all Products and goods sold to Purchaser and to which these Terms & Conditions of Sale relate, to all chassis and trucks to which any such Products or goods become accessories, and to all Products, proceeds, and accessions thereto, from time to time (collectively, the "Product Collateral") to secure all obligations of the Purchaser or any person or entity related to Purchaser, under any agreement, arrangement or financing with or provided by the Company, including without limitation, the obligation to pay the unpaid purchase price of all Products and goods from time to time sold by ESG to Purchaser (collectively, the "Obligations"). The Purchaser represents and warrants that none of the Product Collateral is subject to any other lien, security interest or claim of any type or nature, and covenants that it: (i) will not create or permit to exist any lien, security interest or claim in any portion of the Product Collateral in favor of any other person, (ii) will pay, prior to any delinquency, all taxes (including all property taxes), charges or other obligations which may be owing with respect to the Product Collateral from time to time, (iii) will not change its name, place of incorporation or creation, address or location of the Product Collateral without first providing ESG with not less than 30 days prior written notice, (iv) will take all steps requested by ESG to obtain and maintain the perfection of the security interests granted hereunder, (v) will keep the Product Collateral fully insured against destruction or damage in an amount up to its full insurable value, and will name ESG as additional insured and loss payee under all such insurance policies, and (vi) will cooperate with ESG upon any default of any of the Obligations and will, at the request of ESG, turn over and deliver all Product Collateral to or at the direction of ESG. Purchaser will, at ESG's request, execute such additional security agreements and amendments and additions thereto or hereto as ESG requests in order that it may have at all times a first priority purchase money security interest and lien securing the Obligations. Purchaser hereby authorizes ESG to file financing statements and amendments thereto in all relevant jurisdictions naming Purchaser as debtor and describing the Product Collateral as collateral.

**24. FRAUD SCHEMES.** ESG requires that Purchaser be wary of business email fraud schemes, such as payment diversion and bank account change scams, and take prudent measures to avoid such schemes. ESG has no current or pending intent to change its bank account payment instructions. Purchaser is responsible for full and proper payment to ESG where Purchaser fails to properly verify through an independent contact to ESG personnel should Purchaser receive any requests for a change in ESG's payment bank, and where Purchaser fails to follow prudent payment practices. Purchaser's payment obligations for product delivered and/or services completed by ESG are not impacted by Purchaser's failure to comply with the requirements herein.

**25. ENTIRE AGREEMENT.** Unless a prevailing purchase contract is in place between the parties hereto, this order, including the above Terms & Conditions of Sale, contains the complete and final agreement between the parties hereto and verbal agreements, Purchaser-supplied purchase order or other transactional forms with terms, or other document purporting in any way to modify or supplement any of these Terms and Conditions of Sale will not be binding on ESG unless agreed to in writing by an authorized representative of ESG. These Terms and Conditions of Sale shall take precedence over any different or conflicting terms in any order or other documents presented by Purchaser. In the event of any conflict between these Terms and Conditions of Sale and ESG's applicable Warranty Statement, the Warranty Statement shall control.