

# **Thai Summit America Corporation**

Howell, Michigan

## **PURCHASE ORDER GENERAL TERMS AND CONDITIONS TOOLING-CAPITAL EQUIPMENT (Investment/Expense-in excess of \$50,000)**

The following items constitute the General Terms and conditions which apply to Tooling and/or Capital Equipment Purchase orders issued by Thai Summit America Corporation. As used herein, "Buyer" shall mean the Thai Summit America Corporation, with Main offices located at 1480 West McPherson Park Drive, Howell, MI 48443. "Seller" shall mean the person or entity set forth on the Purchase Order Document, and the goods and/or services to be furnished hereunder ("Goods and/or Services") are as described in the Purchase Order Document. The Purchase Order Document together with these General Terms and Conditions may be collectively referred to herein as the "Order"

### **Article 1: ACCEPTANCE.**

1.1 Seller has read and understands this Order and accepts these General Terms and Conditions only. Any other terms and conditions proposed by Seller which are different from or in addition to this Order are unacceptable to Buyer, and shall not be considered a part of this Order, unless specifically noted on the face of the Purchase Order document. Any modifications to this Order shall be made in accordance with Article 20.

1.2 These Terms and conditions shall become effective on the same date as the Confirmation Signing of Purchase Order by Seller.

### **Article 2: SCOPE OF WORK.**

2.1 The scope of work for this Order shall be such work as specifically described on the face of the Purchase Order Document, which is incorporated herein by this reference. Buyer expects Seller to be ISO/QS Compliant or an approved supplier per Thai Summit America Corporation's Supplier Manual (8.4.3.IMS.M1) where applicable. If Seller's ISO/QS compliance is rescinded, revoked or discontinued in any way, Seller must notify Buyer in writing. For On-Site services, please refer to additional requirements in the Safety & Environmental Guidelines for Contractors and Visitors (8.1 ES.M4).

2.2 Work progress timing reports are to be communicated to TSAC Purchasing department on a periodic basis, to assist in monitoring Work Scope timing progress (frequency determined on a case by case basis). TSAC Purchasing, along with relevant TSAC Engineering Departments, may, at their discretion, request to visit Seller's facility to confirm the timing progress reports. An approval to deliver finished work to TSAC shall be in accordance with above noted Supplier Manual (reference articles 7, 8 and 9 of Manual).

2.3 The Buyer reserves the right to direct changes, or cause Seller to make changes to the stated scope of work for this Order, and Seller agrees to promptly make such changes.

Any difference in price and/or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. If an equitable agreement cannot be reached between Buyer and Seller, then resolution to this Order shall be made in accordance with Article 15.

**Article 3: PRICE-PAYMENT TERMS – RIGHT TO AUDIT.**

3.1 The price for the Goods and/or Services to be furnished under this Order shall be as described on the Purchase Order Document, and are not subject to any variation and/or escalation during the duration of the contract.

3.2 The Terms of Payment are as specified on the Purchase Order Document.

3.3 Seller grants to Buyer access to all pertinent information, including, but not limited to, books, records, payroll data, receipts, correspondence and other documents for the purpose of auditing Seller's charges under this Order. Seller will preserve these documents for a period of 2 years after the final payment under this contract. In addition, all work, materials, inventories and other items provided under this contract must be accessible to Buyer, including, but not limited to, parts, tools, fixtures, gages and models. Seller will segregate its records and otherwise cooperate with Buyer so as to facilitate the audit.

**Article 4: DELIVERY.**

4.1 Seller shall deliver stated Goods and/or Services to the destination specified on Purchase Order Document.

4.2 Credits or benefits resulting or arising from this Order, including trade credits, export credits or the refund of duties, taxes or fees shall belong to Buyer. Seller shall provide all information necessary (including written documentation and electronic transaction records) to permit Buyer to receive such benefits or credits, as well as to fulfill its customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Export licenses or authorizations necessary for the export of the Goods shall be the responsibility of Seller unless otherwise indicated in this contract, in which event Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorization(s). Seller shall undertake such arrangements as necessary for the Goods to be covered by any duty deferral or free trade zone program(s) of the country of import.

**Article 5: TITLE AND RISK.**

5 Title and Risk of the Goods and/or Services delivered shall be transferred from Seller to Buyer when such Goods and/or Services have been delivered and accepted at Buyer's destination. Ownership shall be transferred to Buyer after full payment for the Goods and/or Services.

**Article 6: INTELLECTUAL PROPERTY – TECHNICAL INFORMATION  
DISCLOSED TO BUYER-ADVERTISING.**

6.1 Seller agrees:

- (a) to defend, hold harmless and indemnify Buyer, its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture use or sale of the Goods and/or Services ordered, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions;
- (b) to waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for patent, trademark, copyright or mask work right infringement or the like, including claims arising out of compliance with specifications furnished by Buyer; and
- (c) to grant to Buyer a worldwide, nonexclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the Goods ordered hereunder. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights and mask work rights in any material created for Buyer under this Order.

6.2 Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Goods and/or Services covered by this Order.

6.3 Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Goods and/or Services herein ordered, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any Goods and/or Services covered by this Order and shall not be required to make further payments except for conforming Goods delivered and/or Services rendered prior to cancellation.

**Article 7: INDEMNIFICATION.**

7. If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller shall indemnify and hold Buyer harmless from any against any liability claims, demands or expenses (including reasonable attorney fees) for damages to the property of or injuries (including death) to Buyer, its employees or any other person arising from or in connection with Seller's performance of work or

use of Buyer's property, except for such liability, claim, or demand arising out of the sole negligence of Buyer.

**Article 8: INSURANCE.**

8. Seller shall maintain insurance coverage in amount not less than the following:
  - (a) Worker's Compensation - Statutory Limits for the state or states in which this Order is to be performed (or evidence of authority to self-insure);
  - (b) Employer's Liability - \$250,000;
  - (c) Comprehensive General Liability (including Products/Completed Operations and Blanket Contractual Liability) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury, and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit;
  - (d) An Umbrella Policy - \$5,000,000 per occurrence; and
  - (e) Automobile Liability (including owned, non-owned and hired vehicles) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit.

Seller shall, further, list Buyer as an additional insured on all such policies. At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, insured parties, policy number(s) and dates(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller from its obligations or liabilities under this Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any Goods and/or Services covered by this Order and shall not be required to make further payments except for conforming Goods delivered and/or Services rendered prior to cancellation.

**Article 9: WARRANTY.**

9. Seller expressly warrants that all Goods and/or Services covered by this Order will conform to the specifications, drawings, samples, or descriptions furnished to or by Buyer, and will be merchantable of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use and expressly warrants that all Goods covered by this Order which have been selected, designed, manufactured, or assembled by Seller, based upon Buyer's stated use, will be fit and sufficient for the particular purposes intended by Buyer. The warranty period shall be that provided by applicable law, except that if Buyer offers a longer warranty to its customers for Goods installed on vehicles, such longer period shall apply.

**Article 10: LIQUIDATED DAMAGES.**

10.1 The Buyer shall be entitled to claim for liquidated damages for delayed delivery. To claim for liquidated damages for delayed delivery, the Buyer shall prove that the delay has been caused through the fault of the Seller and that Buyer suffered loss as result of such delay. Such reimbursement amount shall be discussed and determined by both parties. Such reimbursement agreement shall be specified on Purchase Order Document.

10.2 The Liquidated Damages for delayed delivery as mentioned in 10.1 above, shall be paid in the amount of zero point five percent (0.5%) of the Order Price per each week of delay, up to aggregate maximum amount of 5% of Order Price.

**Article 11: TERMINATION.**

11.1 **INSOLVENCY:** Buyer may immediately cancel this Order without liability to Seller in the event of the happening of any of the following or any other comparable event:

- (a) insolvency of the Seller;
- (b) filing of a voluntary petition in bankruptcy against Seller,
- (c) appointment of a receiver or trustee for Seller; or
- (d) execution of an assignment for the benefit of creditors by Seller,

provided that such petition, appointment, or assignment is not vacated or nullified within fifteen (15) days of such event.

11.2 **CANCELLATION FOR BREACH:** Buyer reserves the right to cancel immediately all or any part of this Order, without liability to Seller, if Seller:

- (a) repudiates or breaches any of the terms of this Order, including Seller's warranties;
- (b) fails to perform Services or deliver Goods as specified by Buyer; or
- (c) fails to make progress so as to endanger timely and proper completion of Services or delivery of Goods; and does not correct such failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such failure or breach.

11.3 **TERMINATION:** In addition to any other rights of Buyer to cancel or terminate this Order, Buyer may at its option immediately terminate all or any part of this Order, at any time and for any reason, by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication:

- (a) the Order Price for all Goods and/or Services which have been completed in accordance with this Order and not previously paid for, and
- (b) the actual costs of work-in-progress and raw materials incurred by Seller in furnishing the Goods and/or Services under this Order to the extent such costs are reasonable in amount and are property allocable or apportionable under generally accepted accounting principles to the terminated portion

of this Order; less, however, the reasonable value or cost (whichever is higher) of any Goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed Goods or materials.

Buyer will make no payments for finished Goods, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases nor for any undelivered Goods which are in Seller's standard stock or which are readily marketable. Payments made under this Paragraph shall not exceed the aggregate price payable by Buyer for finished Goods which would be produced by Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this Paragraph, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of this Order. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit Buyer's audit, and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer, or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim of Seller.

**Article 12: NONCONFORMING GOODS.**

12. To the extent Buyer rejects Goods as nonconforming, the quantities under this Order will automatically be reduced unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced without a new order or schedule from Buyer. Nonconforming Goods will be held by Buyer for disposition in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the Goods, without liability to Seller. Payment for nonconforming Goods shall not constitute an acceptance thereof, or relieve Seller's responsibility for latent defects.

**Article 13: REMEDIES.**

13. The rights and remedies reserved to Buyer in this Order shall be cumulative, and additional to all other or further remedies provided in law or equity. Without limiting the foregoing, should any Goods fail to conform to the warranties set forth in Article 9, Buyer shall notify Seller, and Buyer shall charge or debit Seller for any incidental and consequential damages caused by such non conforming Goods, including, but not limited to, costs, expenses and losses incurred by Buyer:

- (a) in inspecting, sorting, repairing or replacing such non conforming Goods;

- (b) resulting from production interruptions-Hourly Charges per “Supplier Production Shutdown Charges (Schedule A)”. TSAC purchasing to provide upon request;
- (c) conducting recall campaigns or other corrective service actions, and;
- (d) claims for personal injury (including death) or property damage caused by such nonconforming Goods. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge backs for nonconforming Goods.

**Article 14: FORCE MAJEURE.**

14 Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order, provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days. During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase Goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the Goods from other sources in quantities and at times requested by Buyer and at the price set forth in this Order. If requested by the Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Buyer may immediately cancel the Order without liability.

**Article 15: APPLICABLE LAW-GOVERNMENT COMPLIANCE-OSHA.**

15.1 This Order shall be construed, and performance will be determined, according to the laws of the State of Michigan without reference to such state’s principles of conflicts of law, and the state and federal courts of Michigan shall have exclusive jurisdiction over any claim arising under this Agreement. Seller and Buyer agree that venue for all disputes regarding this Order shall be in the 44<sup>th</sup> Circuit Court for the County of Livingston, Michigan. Each party shall pay its own attorney fees, and arbitration costs shall be paid equally by the parties.

15.2 Seller agrees to comply with all Federal, State and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to Seller’s performance of its obligations under this Order, including but not limited to, compliance with Section 503, Title V of the Veterans Employment and Readjustment Act of 1972; Section 60-1.7 of Title 41 relating to the filing of the Employer Information Report; Section 60-1.40 of Title 41 relating to the development of a written affirmative action compliance program;

Executive Order 11625 relating to the utilization of Minority Business Enterprises; Executive Order 11758 promulgated pursuant to Section 503 of the Rehabilitation Act of 1973 concerning the employment of handicapped persons; and the Economic Stabilization Act of 1970; Robinson-Patman Act and/or any amendments or regulations issued under the above Acts or Executive Orders to the extent that such Executive Orders or Acts are applicable to the Seller, and any other State, Federal or local laws.

15.3 Seller shall not require employees used in furnishing material ordered to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to their health or safety, and shall comply with the Occupational Safety and Health Act of 1970 in performing all acts in connection with this Order. Seller warrants that all equipment to be furnished under this Order shall meet the safety requirements for such equipment as established by Occupational Safety and Health Act of 1970 as currently amended, and that OSHA Form 20 will be furnished for all materials supplied whose characteristics or use could be hazardous to health or safety of any person contacting the material.

**Article 16: ILLEGALITY AND SEVERABILITY.**

16. If any term of this Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Order shall remain in full force and effect.

**Article 17: ASSIGNMENT.**

17. Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent.

**Article 18: NON-WAIVER OF RIGHTS.**

18. The failure of either party at any time to require performance by the other party of any provision of this Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Order constitute a waiver of any succeeding breach of the same or any other provision.

**Article 19: LANGUAGE.**

19 All communications with Manufacturing, Engineering, and Sales must be in English unless otherwise directed. Examples of documents which must be submitted in the appropriate language include, but are not limited to, PPAP Documentation, Seller Warrants, Shipping Labels, Capability Studies and Data.

**Article 20: ENTIRE AGREEMENT.**



20. The entire agreement is constituted by, and in the following order of precedence, the Purchase Order Document, Thai Summit Terms and Conditions, supplements, attachments and exhibits specifically referenced on the P.O. Document. This entire agreement super supersedes all prior oral or written representations and agreements. This Order may be modified only by a purchase order amendment/alteration issued by Buyer.