

William E. Coutts Company, Limited (d.b.a. Hallmark Canada)

Terms and Conditions

THIS ORDER IS PLACED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS WHICH MAY NOT BE VARIED WITHOUT THE EXPRESS WRITTEN CONSENT OF WILLIAM E. COUTTS COMPANY, LIMITED (COUTTS) and referred to as Coutts below.

(1) ACCEPTANCE

- (A) Acceptance of the terms and conditions contained herein shall be deemed to have been made upon receipt by Coutts of the Seller's written acknowledgement and in the absence thereof, any performance by the Seller shall constitute acceptance of Coutts' order in accordance with the terms and conditions herein stated. Unless the Seller expressly repudiates the terms and conditions contained on the face page of written acknowledgement, the Seller shall be deemed of having accepted these terms and conditions and to have waived its terms and conditions.
- (B) None of the terms and conditions contained in this Purchase Order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Coutts and delivered by Coutts to Seller. Each shipment received by Coutts from Seller shall be deemed to be only upon the terms and conditions contained in this Purchase Order except as they may be added to, modified superseded or otherwise altered, notwithstanding any terms and conditions that may be contained in any acknowledgement, invoice or other form of Seller and notwithstanding Coutts' act of accepting or paying for any shipment or similar act to Coutts.

(2) WARRANTIES

- (A) Seller warrants that all articles furnished hereunder shall be free from defects in workmanship and material, shall comply with the terms of this Purchase Order and any drawings and specifications incorporated herein. If any article delivered hereunder does not comply with all warranties under the Sale of Goods Act (Ontario) and express warranties contained herein, Coutts may require the Seller to correct at no cost to Coutts, or return such defective or nonconforming article to the Seller and recover from the Seller the contract price thereof.
- (B) Seller expressly warrants that the goods covered by this order are of merchantable quality and fit and are safe for consumer use. Acceptance of this order shall constitute an agreement upon Seller's part to indemnify and hold Coutts harmless from all liability, loss, damage and expense, including reasonable counsel fees incurred or sustained by Coutts by reason of the failure of the goods to conform to such warranties. Such indemnity shall be in addition to any other remedies provided by law.
- (C) The labelling of goods furnished hereunder shall comply with the Consumer Packaging and Labelling Act (Ontario) and the National Trade Mark and True Labelling Act (Canada), and all regulations thereunto and amendments thereto in effect or proposed as of the date of this Purchase Order and all standards common to the industry.
- (D) Seller represents and warrants that all articles and services covered by the Purchase Order shall meet or exceed the safety standards established under the Hazardous Products Act (Canada) and all regulations thereunder and amendments thereto in effect or proposed as of the date of this Purchase Order and all standards common to the industry.
- (E) The Seller warrants to Coutts the use or sale of the goods delivered hereunder shall not infringe the claims to any patent, copyright or trademark covering or affecting the goods themselves and Seller agrees to indemnify Coutts against liability for such infringement.
- (F) Seller warrants that the goods covered by this Purchase Order have been manufactured in accordance with the applicable federal, provincial and local laws, rules and regulations included but not limited to the statutes referred to above and to the Explosives Act, the Foods and Drug Act, the Pest Control Act and the Textile Labeling Act, regulations thereunder and amendments thereto in effect as of the date of this Purchase Order.

(3) INSPECTION

- (A) Any article purchased hereunder shall be subject to inspection and test by Coutts, to the maximum extent practicable at all times and places including the period of manufacture in any event prior to final acceptance. Final inspection and acceptance of articles shall be made by Coutts after delivery or as otherwise indicated in this Purchase Order. No inspection and acceptance shall relieve the Seller from responsibility for defects or other failure to meet the requirements of the Purchase Order.

(4) CHANGES

- (A) Coutts may at any time by a written change order issued by an authorized purchasing representative, increase or decrease the quantity of articles to be furnished hereunder, extend the time of delivery or make changes within the general scope of the Purchase Order in any one or more of the following:

- Drawings, Designs, or Specifications
- Method of Shipment or Package
- Place of Delivery

An equitable adjustment in price shall be made as a result of the above and in the event Coutts and Seller are unable to agree as to the amount of such adjustment, the matter will be submitted to arbitration and the Arbitration Act (Ontario).

(5) INVOICES

(A) Invoices shall be submitted in duplicate and shall contain the following information:

- Purchase Order Number
- Quantities
- Item Number
- Unit Prices
- Description of Articles
- Extended Totals
- Sizes
- Payment Terms

(B) If transportation charges are prepaid by Seller and charged to Coutts, the amount thereof must be separately stated on the invoice for the goods (not billed separately) and must be supported by the receipted transportation bills.

(6) DEFAULT

(A) Time of delivery is the essence of this Purchase Order. Coutts may, by a written notice of default to the Seller, cancel the whole or any part of this Purchase Order if the Seller fails:

- To make delivery of the articles or to perform the services within the time specified herein, or any extension thereof by authorized change notice;
- To replace or correct defective articles in accordance with the provisions of the paragraph entitled "Warranties"; or
- To perform any of the other provisions of the Purchase Order or fails to make progress so as to endanger performance of this Purchase Order.

(B) Cancellation of this contract by Coutts as aforesaid shall be without prejudice to any rights which Coutts may have against Seller for damages suffered by Coutts as a result of the Seller's failure aforesaid.

(7) TERMINATION

(A) Coutts may at any time and by written notice terminate this contract or any part thereof for any reason and not limited to default of the Seller but in the event of cancellation other than for default by the Seller or other proper cause, Coutts shall be liable to Seller for reasonable cancellation charges. Such cancellation charges shall be limited to the actual cost of any work done by the Seller and Coutts shall not be liable for consequential damages of any amount including loss of profit and in no event shall such cancellation charges exceed the contract price.

(8) SHIPMENT

(A) All articles are to be packed in accordance with sound commercial practice unless otherwise specified in this Order.

(B) A complete packing list shall be enclosed with all shipments hereunder.

(C) The Seller shall mark containers with the necessary shipping information including the Purchase Order number, dates of shipment, and addresses of consignee, and the Seller with whom the Order was originally placed.

(D) Direct shipments by other than the Seller as shown on the Purchase Order may not be made without prior notifications and approval by Coutts.

(E) Coutts will not pay any additional charges for inspecting, packing, trucking, insurance, or similar items, unless authorized herein or subsequently agreed to by Coutts in writing.

(9) COPYRIGHT

(A) Seller agrees that if the articles designated in this order are to be manufactured by Seller in accordance with any ideas, designs or specifications, the essential, secret, or novel features of which originated with Coutts or were developed by Coutts or are owned or controlled by Coutts:

- Seller will not disclose any such essential, secret, or novel features to anyone, and
- Seller will not file, or attempt to file, any application for a Canadian or foreign patent thereon, and
- Seller will, upon Coutts' request, execute any document necessary or desirable to confirm title thereto in Coutts.

(B) Coutts thereby reserves the right to ownership and copyright in all drawings, documents, illustrations, specifications and other data which the Seller agrees not to divulge to any third party.

(10) GENERAL

(A) Coutts assumes no responsibility for any materials or goods shipped without a signed Purchase Order having been issued.

(B) When furnished or made by Coutts, tools or dies together with incidental fixtures and materials necessary for the manufacture of goods ordered shall remain the property of Coutts, be used in production of goods for Coutts and kept in repair, by the Seller for the reasonable life expectancy of the tools or dies. In the event that Coutts does not reorder goods produced by such tools or dies for a period of two years, the Seller shall have the right to dispose of such tools at Coutts' direction.