

Terms & Conditions of Purchase of ElringKlinger Canada, Inc. (as of September 2021)

935A Southgate Drive, Guelph, Ontario N1L 0B9, Canada

I. Scope and Acceptance

1. These Terms and Conditions of Purchase (“**Terms**”) apply exclusively to all written and oral purchase orders and amendments thereto (collectively referred to as “**Order**”) issued by the Buyer. All goods and services (whether or not ancillary to a sale of goods) (“**Services**”) to be provided by the supplier (“**Seller**”) under an Order are included in the term “**Goods**”. These Terms shall take precedence over the terms and conditions contained in any oral or written offer to sell, quotation, proposal, acceptance, sales order, or other form issued by the Seller, whether or not such form has been acknowledged or accepted by Buyer and notwithstanding Buyer’s act of accepting or paying for any delivery of Goods. Any terms and conditions which are different from or in addition to these Terms are hereby rejected and shall not be binding on Buyer. No waiver, alteration or modification of these Terms shall be binding upon Buyer unless made in writing and signed by a duly authorized representative of Buyer.
2. An Order is an offer. An Order for which written confirmation is requested may be accepted only by returning a copy thereof signed by Seller within fourteen (14) days of its date. However, Buyer may elect to consider Seller’s oral quotation or acceptance of the Order, Seller’s preparation to provide the Goods, or Seller’s delivery of the Goods, as an acceptance of the Order and these Terms (and of no other terms) and enforce the Order. An Order is not a firm offer and may be revoked prior to acceptance.

II. Delivery and Shipment

1. Delivery must be on the date indicated, if any, and otherwise as requested by Buyer. If delivery is “A.S.A.P.” with a date indicated therewith, delivery must be on or before that date. If an Order is identified as a “Blanket” Order, deliveries are to be made only in quantities and at times specified in the delivery schedule set forth therein or as otherwise specified by Buyer. Buyer shall have no liability for payment of Goods delivered to Buyer which are in excess of quantities or scope specified in the Order or delivered after the Order delivery date or times specified in the delivery schedule. Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments or performance of Services. Time is of the essence as to delivery.
2. Buyer reserves the right to cancel the Order if Goods are not delivered by the Order delivery date or times specified in the delivery schedule. Acceptance of Goods delivered after the Order delivery date or times specified in the delivery schedule shall not be deemed a waiver of Buyer’s right to hold Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of Seller’s obligation to make future deliveries in accordance with the delivery schedule.
3. Unless otherwise provided in an Order:
 - (i) All shipping, drayage, demurrage, storage, insurance, packing, and related charges shall be prepaid by Seller, and then billed to Buyer if Buyer is responsible for such charges according to the terms of the Order.
 - (ii) If Buyer is obligated under the Order to pay for shipping, all Goods shall be suitably packed, marked and shipped in accordance with Buyer’s instructions, or otherwise in accordance with the requirements of common carriers in a manner to secure the lowest transportation costs consistent with the requirements of the Order and no additional charge shall be made to Buyer therefor. Seller shall be responsible for all extra charges incurred because of Seller’s failure to follow Buyer’s shipping instructions, including those related to delivery schedules, whether or not Seller’s liability for general damages is excused under other provisions of the Order.

(iii) Seller shall mark each package with the Order number, and where multiple packages comprise a single shipment, each package shall be shown on packing slips, bills of lading, and invoices. Packing slips must accompany each shipment.

(iv) Seller shall describe the Goods on the bill of lading or other shipping receipt and route shipments in accordance with instructions issued by Buyer, if any.

(v) Seller shall pay all express and other charges necessary to speed delivery to enable Seller to meet the delivery schedule. Seller shall ship all late shipments by express or other priority methods of delivery at its expense as requested by Buyer.

(vi) Partial deliveries shall not be permitted.

4. Any costs incurred by Buyer or any loss or damage, whenever occurring, which result from Seller’s improper packing or crating or failure otherwise to comply with Buyer’s packing or shipping instructions shall be borne by Seller.
5. Shipments containing dangerous goods are subject to regulation under the applicable provisions of Transport Canada’s Transportation of Dangerous Goods (“**TDG**”) Regulations, as amended from time to time. Seller is solely responsible for ensuring that all shipments containing dangerous goods are marked, labelled and accompanied with required documentation, as required under the TDG Regulations and all other applicable governmental agreements, directives, laws and regulations.
6. Seller accepts all responsibility for the information on any Certificate of Origin, letter or affidavits. By accepting an Order, Seller accepts full responsibility for the completeness and accuracy of the corresponding Certificate of Origin and all other customs documentation provided to Buyer. Seller accepts any liabilities resulting from inaccurate data on these documents or failure to comply with Certificate of Origin requirements.

III. Risk of Loss and Title to Goods

All shipments are at the risk of Seller, regardless of the F.O.B. point. If risk of loss is assumed by Buyer in writing, all risk casualty insurance must be provided by Seller for the benefit of Buyer. The cost of any insurance must be paid by Seller unless otherwise agreed to in writing by Buyer. Under no condition will the risk of loss be that of Buyer unless such insurance is provided. Title shall remain with Seller until the earliest of payment or receipt of the Goods by Buyer at its plant. Risk of loss shall not be governed by transfer of title.

IV. Force majeure

Neither Seller nor Buyer shall be liable in the performance of its obligations under the Order to the extent that performance of such is delayed or prevented due to causes beyond the reasonable control of said party, including, but not limited to, acts of God, war, revolution, civil commotion, blockade or embargo, the order of any civil or military authority, fires, floods, earthquake, elements of nature, explosion, power failure, terrorism, acts of public enemies, or labour unrest such as strikes, slowdowns, picketing or boycotts, and other causes beyond the reasonable control of either party. A party affected by such an event will immediately notify the other, describing the event and estimating its duration. The parties will cooperate in good faith to mitigate the effects of the event. The affected party shall immediately inform the other party when the event has come to an end.

V. Specification Changes

Buyer reserves the right at any time to make changes in scope of work, quantities, drawings, specifications, packing, shipment, and other terms of an Order. Any purported change shall be binding on Buyer only if

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made in a writing signed by Buyer. Any difference in price or time for performance necessarily resulting from such changes shall be adjusted as determined by Buyer in its discretion, and the Order or delivery schedule shall be amended in writing accordingly, provided Seller makes demand for such adjustments within ten (10) days of receipt of Buyer's change. Time is of the essence for such demand. The price shall be adjusted to compensate only Seller for increased costs necessarily incurred as a result of the changes contained in an amendment to an Order. Seller may not substitute materials or change the specifications of the Goods in any way without written authorization from Buyer.

VI. Inspections

1. All Goods shall be received subject to Buyer's right of evaluation, inspection and rejection. Buyer shall have a reasonable time, but not less than fourteen (14) days after delivery, to inspect delivered Goods prior to accepting the Goods. Defective Goods and Goods otherwise not in conformity with Buyer's specifications or the Order will be held for Seller's instructions at Seller's risk and, if Seller so directs, may be returned at Seller's expense. Goods returned as defective or nonconforming shall not be returned to Buyer without Buyer's approval. Transfer of title and payment for the Goods prior to inspection shall not constitute an acceptance thereof. Acceptance, whether or not it has been revoked, shall not release Seller's responsibility for latent defects, non-conformities, or warranty claims.
2. All Goods (which term throughout the Order includes, without limitation, Services, raw materials, components, intermediate assemblies, end products and accessories such as tooling) shall be subject to evaluation, inspection and test by Buyer and its customer to the extent practicable at all times and places, including the period of manufacture and the provision of Services, and in any event prior to final acceptance by Buyer and its customer.
3. If any inspection or test is made on the premises of Seller or its supplier, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests on the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay Seller.
4. Seller shall provide and maintain an inspection and process control system acceptable to Buyer and its customer covering the Goods. Records of all evaluation, inspection, and testing by Seller shall be kept complete and available to Buyer and its customer during the performance of the Order and for such longer periods as may be specified in the Order, but not less than three (3) years after delivery of the Goods to Buyer.

VII. Prices and Terms of Payment

1. The Goods shall be furnished at the price in the Order. All prices shall be DDP destination (place of delivery).
2. Seller warrants that the prices in the Order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent, including but not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating.
3. Buyer shall not be liable to Seller for any expense paid or incurred by Seller unless agreed to in a writing signed by Buyer.
4. If no payment terms are provided for in the Order, Buyer shall pay the Order price within sixty (60) days of receipt of a proper and correct invoice for Goods delivered and accepted. Where early delivery is accepted by Buyer in writing, the sixty (60) day payment period shall begin with the later of the date of

receipt of the invoice and the originally scheduled delivery date.

5. Payment of an invoice may be withheld or portions thereof deducted or set-offs made against Seller if Seller is not performing work in accordance with the provisions of the Order.

VIII. Warranty

1. Seller warrants that it has clear title to all Goods furnished pursuant to an Order and that they are being delivered free and clear of any lien or encumbrance. Seller further warrants and represents to Buyer and its customer that all Goods shall be: (i) of merchantable quality; (ii) free from all defects in design, workmanship and materials; (iii) fit for the particular purposes for which they are purchased; (iv) in strict compliance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Buyer; and (v) provided with due care.
2. The warranty period applicable to Goods ("**Warranty Period**") shall begin on the date of acceptance of the Goods by Buyer and shall run for a period of forty-eight (48) months where Goods are being assembled with or integrated into products delivered or sold by Buyer to its customers and in all other cases, for a period of thirty (30) months. With respect to any replacement or repaired Goods provided by Seller pursuant to these Terms, the Warranty Period shall re-start from the date of acceptance by Buyer of the replacement Goods and, in the case of repaired Goods, from the date of completion of the repair obligations, as determined by Buyer.
3. In addition, Seller warrants that the Services shall be performed in a diligent, skillful and workmanlike manner, satisfactory to Buyer, and consistent with the highest professional standards and any standards established by Buyer for work done by Buyer's employees. Under no circumstances shall Services performed by Seller's employees or subcontractors be of less quality than as that performed by Buyer's own employees. Buyer shall review the results of the Services provided and, if such results are unsatisfactory, Buyer shall advise Seller. Seller shall immediately undertake at its sole expense whatever steps may be required by Buyer to remedy such unsatisfactory results. Seller warrants that Seller may freely provide the Services contemplated by the Order without restriction.
4. Seller warrants that Seller's employees or subcontractors, when on Buyer's or Buyer's customers' premises, shall comply with all of Buyer's or its customers' rules, regulations and policies. Buyer may bar any employee, representative, agent or subcontractor of Seller from Buyer's premises for failure to obey such rules. At the request of Buyer, Seller shall promptly remove any such person who does not comply with such rules.
5. Any attempt by Seller to limit, disclaim, or restrict any warranties or any remedies of Buyer, by acknowledgement or otherwise, in accepting or performing the Order, shall be null, void, and ineffective unless placed in the Order. All of Seller's warranties are cumulative with any others provided by law. Approval by Buyer of Seller's design drawings, specifications, samples, etc. does not waive or limit any warranty of Seller.
6. Seller warrants and represents to Buyer that the prices charged and to be charged Buyer are the same or lower than all prices charged others for the Goods or similar goods during the twelve (12) months prior to the date of the Order. Prices charged in violation of this clause shall be reduced and any overpayment refunded by Seller to Buyer.

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IX. Default and Remedies

1. Seller shall be in default: (1) if Seller fails to perform any obligation within the time specified in the Order or any extension thereof or upon Buyer's demand if no time has been specified; (2) if Seller fails to perform any of the other provisions of the Order, or so fails to make progress as to make Buyer reasonably apprehensive about Seller's ability or willingness to perform its obligations; or (3) if Seller shall become insolvent or make a general assignment for the benefit of creditors or if a petition under any bankruptcy or similar statute is filed by or against the Seller, and if in any of these circumstances Seller does not cure such failure within a period of five (5) days or such longer period as Buyer may authorize in writing. Upon such default, Buyer may by written notice of default to Seller: (i) terminate the whole or any part of the Order; and (ii) procure alternative goods or services upon such terms as it shall deem appropriate. Seller shall continue performance of the Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar Goods and other direct or indirect, incidental, special or consequential damages. As an alternative remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect (1) to extend the delivery schedule and/or (2) to waive other deficiencies in Seller's performance in which case an equitable reduction in the Order price shall be established by Buyer to compensate Buyer for its damages. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of the Order, Seller shall promptly notify Buyer in writing.
2. If any of the Goods ordered are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of the Order, Buyer, in addition to such other rights, remedies and choices as it may have under the Order or by law, at its option and sole discretion may: (i) reject and return such Goods or discontinue such Services at Seller's expense; or (ii) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to the Order. If Buyer elects option (ii) above and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller's cost, inspect and repair or replace the Goods.
3. In the event of any recall or similar campaign involving the Goods, whether initiated by Buyer, Seller, an original equipment manufacturer, or any regulatory or other governmental body, both Buyer and Seller shall use their best efforts to minimize costs in connection with such campaign. If it shall be determined that failure of Goods supplied by Seller to conform to Seller's warranty is a proximate cause of any such campaign, Seller shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees, agents and other representatives from and against all reasonable expenses and costs of such recall.
4. Buyer's remedies herein provided are not exclusive and shall be additional to any other or further remedies provided under the Order or in law or equity, including, but not limited to, the recovery of direct, incidental and consequential damages and the entry of injunctive relief. No waiver of a breach of any provision of the Order by Buyer shall constitute a waiver of any other breach, or of the breached provision itself.
5. Buyer shall not be responsible for lost revenue, lost profit, increased costs or other incidental, special, consequential, punitive, exemplary, or indirect damages of Seller, its employees or subcontractors arising out of contract, tort or otherwise. Under no circumstances shall Buyer be liable other than for payment of Goods provided as required by the Order.

X. Termination by Buyer

In addition to any other rights of Buyer to cancel or terminate an Order, Buyer may at its option immediately terminate all of any part of an Order at any time and for any or no reason by giving written notice to Seller. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning disposition of completed and partially completed Goods, work in progress and materials acquired pursuant to this Order. In the event of such termination, Buyer shall pay to Seller the following amounts without duplication: (i) the Order price for all Goods which have been completed in accordance with the Order and not previously paid for; and (ii) the actual direct costs of work in process and raw materials incurred by Seller in furnishing the Goods under the Order to the extent such costs are reasonable in amount and are properly allowable or apportionable, under generally accepted accounting principles, to the terminated portion of the 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. Notwithstanding the foregoing, Buyer shall not be liable to pay for finished Goods, work in process or raw materials fabricated or processed by Seller in amounts in excess of those authorized in delivery releases (if required by the Order), for any undelivered Goods which are Seller's standard stock or which are readily marketable, or for any finished Goods which remain undelivered after request by Buyer. Payments made under this Section 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. In no event shall the Seller be entitled to recover indirect, incidental, special or consequential damages of any nature including, without limitation, loss of anticipated profit, unabsorbed overhead, mobilization or demobilization costs, or product development and engineering costs. Seller shall advise Buyer, in writing, of Seller's claim, if any, for termination costs within ten (10) days after receipt of the notice of termination. Buyer, however, shall have no obligation to Seller if Buyer terminates its purchase obligations under the Order because of default by Seller. Payment under this Section shall constitute the only liability of Buyer in the event the Order is terminated.

XI. Set Off

Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer in connection with the Order.

XII. Indemnity and Insurance

1. To the fullest extent permitted by law, Seller agrees to indemnify, save harmless, and defend Buyer and its parent and affiliated companies, their customers, directors, officers, employees and agents, from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Buyer and any reasonable legal fees and any other cost of litigation (hereinafter collectively referred to as "**Liabilities**") arising out of injuries to persons, including death, or damage to property, caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance and prosecution of an Order by Seller, including without limitation breach of Seller's warranties or product liability, except that Seller's obligation herein to indemnify Buyer shall not apply to

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any Liabilities arising exclusively from Buyer's sole negligence.

2. Seller shall maintain commercial general liability insurance with a minimum coverage of \$2,000,000 per occurrence, which can be met through an umbrella or standard policy or any combination thereof. The insurance shall be evidenced by a Certificate of Insurance naming Buyer as an additional insured.
3. If Seller's work under an Order involves Services by Seller on the premises of Buyer or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such Services, and, unless any such injury or damage is due solely and directly to Buyer's negligence, Seller shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of Seller, its agents, employees or subcontractors.

XIII. Proprietary Rights

Seller represents and warrants that neither the Goods nor the sale thereof covered by an Order will infringe upon or violate any trademarks, patents, copyright or other legal rights of third parties. Seller agrees to indemnify and save Buyer harmless from and against any and all claims, liability, loss, costs, legal fees, expenses and damages due to or arising from any such alleged infringement or violation.

XIV. Confidential Information

1. Seller shall keep confidential any technical, process or economic information derived from drawings, specifications and other data furnished by Buyer in connection with the Order and shall not divulge, directly or indirectly, such information for the benefit of any other party without obtaining Buyer's prior written consent. Except as required for the efficient performance of the Order, Seller shall not use such information or make copies or permit copies to be made of such drawings, specifications, or other data without the prior written consent of Buyer. If any reproduction is made with prior consent, notice referring to the requirements of this Section shall be provided thereon. Upon completion or termination of the Order, Seller shall promptly return to Buyer all materials incorporating any such information and any copies thereof, except for one record copy.
2. Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer, and which in any way relates to the Goods, shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary information, and shall be acquired by Buyer, free from any restrictions (other than a claim for patent infringement), as part of the consideration for the Order.

XV. Materials Furnished by Buyer and its Customer

Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by Buyer or its customer or paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Buyer or its customer and held in trust for the benefit of Buyer or its customer. Such property, and wherever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer or its customer and shall be safely stored separate and apart from Seller's property. Buyer may enter Seller's premises and inspect such property and all related records during normal business hours. Seller shall not substitute any of its own property for Buyer's or Buyer's customer's property and shall not use such property except in filling the Orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in

an amount equal to the replacement cost with loss payable to Buyer or its customer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and shall redeliver it to Buyer or its customer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Seller shall deliver to Buyer a Certificate of Insurance when requested. All such property not used in the manufacture of the Goods shall, as directed, be returned to Buyer at Buyer's expense and if not accounted for or so returned, shall be paid for by Seller to Buyer. Seller shall have no right to retain possession of such property to secure payment of amounts owed or for any other reason.

XVI. Compliance

1. Seller warrants that all Goods provided under an Order have been produced and all Services performed in compliance with applicable federal, provincial and local laws, ordinances, codes, rules, regulations or standards, including without limitation, those pertaining to the manufacture, labeling, invoicing and sale of such Goods or Services, environmental protection, immigration, employment and occupational health and safety, including Transport Canada's Transportation of Dangerous Goods Regulations and the Hazardous Products Act, both as amended from time to time.
2. If any of the Goods ordered contain "hazardous substances" as defined by any applicable federal, provincial or local law, rule or regulation, Seller shall provide at the time of delivery all required notices and information, including without limitation all Material Safety Data Sheets in approved form, in English and in French. Seller agrees to maintain such information current and shall provide Buyer with any amended, altered or revised information on a timely basis or when requested by Buyer. When an Order or the specifications referred to therein requires documentation or certification, this requirement is a material requirement of the Order; Seller's failure to provide such information prior to or at the time of delivery may result in withholding of payment until such is provided.
3. Seller will comply with all applicable and current import and export rules and regulations of the countries from which the Goods originate, transit and arrive and shall take all steps to keep itself advised of any changes to all such rules and regulations. Seller shall be responsible to procure and furnish any and all documentation, permits, approvals and/or licenses required for the international transit of the Goods.

XVII. Miscellaneous Provisions

1. An Order (including these Terms) is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior agreements, written or oral. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term used in the Order. All modifications must be in a writing signed by Seller and Buyer, except as otherwise provided in an Order.
2. If any term of an Order is invalid or unenforceable under any statute, regulation, ordinance, or any 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 the Order shall remain in full force and effect.
3. Assignment of an Order or any interest herein or any payment due or to become due hereunder, without the written consent of Buyer, shall be void.
4. The failure of either party at any time to require performance by the other party of any provision of the

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

5. These Terms are governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to conflict of law principles. Any dispute with respect thereto shall be submitted to the courts in the Judicial District of Toronto, Province of Ontario, and the parties submit to the jurisdiction of the courts in that judicial district as the exclusive venue for the adjudication of any and all disputes hereunder and waive any claim of *forum non conveniens*. If any dispute falls under the jurisdiction of the Federal Court of Canada, then the parties agree to submit the dispute to the exclusive jurisdiction of the Federal Court sitting in the judicial district of Toronto, Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any transaction between Buyer and Seller.
6. The parties hereto expressly confirm that these Terms, as well as all notices and documents in connection herewith, be drafted in English. *Les parties aux présentes conviennent expressément que cette convention ainsi que tous les avis et documents s'y rattachant soient rédigés en anglais.*