These General Terms of Sale shall apply to sale of the Products to the Customer by Kalmar, except to the extent the Parties have agreed otherwise in writing.

1. DEFINITIONS

a) “Order” means an order/contract, whether in written or oral form, of sale of the Products entered into between the Parties.

b) “Price” means the total price of the Products as specified in the Order, and any applicable taxes, duties, interest, liquidated damages and similar calculations.

c) “Customer” means the entity identified in the Order to which Kalmar agrees to sell the Products.

d) “Delivery” means completion of the delivery of the Products as specified in the Order.

2. PRODUCTS

a) “Products” means the Equipment and the Spare Parts.

b) “Equipment” means the equipment as specified in the Order.

3. SALE AND PURCHASE OF THE PRODUCTS

Kalmar agrees to sell and deliver, and the Customer agrees to purchase and pay the Products in accordance with the Order and these General Terms of Sale.

4. DELIVERY AND OWNERSHIP

4.1. Products shall be delivered in accordance with the Order. Unless otherwise specified in the Order, any supplied accessories and spare parts shall be supplied Ex Works Kalmar factory or warehouse (Incoterms 2020). Kalmar shall not be liable for any damages towards the Customer due to deliveries made within a reasonable time before the agreed delivery date. If the Customer fails to take delivery, Kalmar may store the Products at the Customer’s cost.

4.2. If the Parties have agreed upon a specific date for the Delivery and Kalmar is delayed in completion of the Delivery due to a reason solely attributable to Kalmar, and provided that the Customer has suffered damage, the Customer shall be entitled to liquidated damages, as its sole and exclusive remedy for such a delay, in the amount of 0.5 percent of the value of the delayed Products for each full week of delay. Liquidated damages shall not exceed 7.5 percent of the value of the delayed Products.

4.3. Ownership of the Products shall transfer from Kalmar to the Customer upon full payment of the Price. Until full payment of the Price, Kalmar shall be entitled to repossess the Products. Risk of damage to or loss of the Products shall transfer from Kalmar to the Customer in accordance with the applicable delivery term.

4.4. Delivery is deemed accepted if the Customer does not report a fault to Kalmar within 14 days after the Delivery.

5. WARRANTY

5.1. Kalmar warrants that the Equipment shall be free from defects in materials, design, workmanship, use, and installation as specified in the applicable Kalmar warranty terms, and b) the Spare Parts shall be free from defects in materials, design, workmanship for 12 months from the Delivery or 1500 cumulative hours of operation, whichever occurs first. The applicable warranty terms will be provided to the Customer upon request. Kalmar rejects all other warranties, whether express or implied.

5.2. The Equipment does not cover defects arising out of a) materials or design provided by the Customer, b) the Customer’s faulty maintenance, installation, use, service or inspection, c) normal deterioration or wear and tear, d) use beyond acceptance, e) accidents and external factors.

5.3. Under the warranty, Kalmar agrees, at its option and as the Customer’s exclusive remedy, to repair or replace a defective Product.

6. LIMITATION OF LIABILITY

6.1. Kolmar shall not be liable for loss of production, loss of profit, loss of contracts, loss of use, loss of business, loss of data, or increased expense of use of the Products, or for any indirect or consequential damage or loss. Remedies of the Customer set forth in the Order are exclusive. Unless otherwise prohibited by law, the Customer shall have no remedy in an event that Kalmar’s total liability under the contract exceeds 15 percent of the Price.

6.2. Kolmar shall not be liable for any damage to property caused by the Products, including damage to the Customer’s property.

6.3. Customer agrees to indemnify, defend and hold Kalmar harmless from and against all injuries, losses, damages, costs, fees, expenses, judgments and settlements caused by, related to or arising out of the Customer’s acts or operations, use of the Products, or other claims however arising in connection with the Order, unless caused by gross negligence or willful acts of Kalmar.

6.4. Kalmar shall not be liable to compensate the Customer for any cost, expense, loss or damage if Kalmar has been given an appropriate opportunity to inspect and remedy any alleged defect that caused the liability.

6.5. Kalmar reserves the right to change the design or specifications of the Products, or discontinue manufacturing and sale of the Products, at any time without incurring any liability to carry out identical or similar changes to any previously manufactured Products.

6.6. Recommendations, advice and training material provided by Kalmar to the Customer are only for information purposes, and Kalmar assumes no liability for the Customer’s actions or decisions made based on that information.

7. CHANGES

Either Party may request changes to the Products. After a change request, the Parties shall agree upon adjustments to be made to the Order. Kalmar shall not be obliged to carry out any adjustment, and before the Parties have agreed upon the adjustment, the Parties shall have no right to unilaterally effect the adjustments to be made to the Order. In the event of a change in any applicable law, rule or regulation or in the administration or interpretation thereof by the appropriate government authority, or in case of any official approval or certification provided in connection with the manufacture or sale or installation of the Equipment, the Customer shall advise Kalmar of such change and Kalmar shall be entitled to terminate the Order at the end of the 30 day period.

8. TERMINATION

8.1. Either Party may terminate the Order with immediate effect if the other Party breaches the Order in a way that can be considered material, and the breaching Party has not remedied the situation within 30 days from the receipt of written notice thereof.

8.2. Upon termination of the Order for whatever reason, the Customer shall pay for the Products ordered and delivered as well as costs accrued until the termination. If Kalmar terminates the Order in whole or in part due to the Customer’s breach, Kalmar may, at its sole discretion, suspend Kalmar for the loss it suffers because of the Customer’s breach.

9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

The Parties agree to keep all information disclosed to each other confidential with no other confidential information of either Party received in connection with the Order for three years after the Delivery.

10. ARBITRATION

10.1. All drawings and technical documents relating to the Products submitted by either Party to the other Party shall remain the property of the submitting Party. Drawings, technical documents and other technical information submitted by either Party shall not, without a prior written consent of the submitting Party, be used for any other purpose than for which included in the submitting Party. The Customer may not, without a prior written consent of the submitting Party, be copied, reproduced, transmitted or communicated to any third party. Kalmar shall not be bound to make any changes or adjustments to drawings or other technical information.

10.2. Ownership of all intellectual property rights related to the Products, including without limitation any software, documentation and data, delivered by Kalmar shall remain exclusively with Kalmar.

11. FORCE MAJEURE

11.1. Either Party shall be entitled to suspend performance of its obligations under the Order to the extent such performance is impeded or made unreasonably onerous by an event that is beyond the control of the Party preventing performance of the Order, occurs after signing the Order, was not reasonably foreseeable at the time of signing of the Order and cannot be overcome by the affected Party. Party affected by a force majeure event shall promptly notify the other Party thereof in writing, specifying the nature of the event and the estimated duration of it. Similarly, the affected Party shall give notice to the other Party when the force majeure event has ceased to exist.

11.2. Either Party shall be entitled to terminate the Order by notice to the other Party if performance of the Order is suspended due to a force majeure event for more than 6 months. Customer shall purchase from Kalmar materials and semi-finished products manufactured or purchased only for the Customer, and which shall not be sold to other Parties without agreement with Kalmar.

12. ASSIGNMENT AND SUBCONTRACTORS

Neither Party shall have the right to assign its rights or obligations under the Order to any third party. Notwithstanding the aforesaid, Kalmar may assign the Order to any third party without the Customer’s consent. Kalmar shall have the right to subcontract to fulfill its obligations under the Order.

13. ENTIRE AGREEMENT

Order constitutes the entire agreement between the Parties relating to the subject matter thereof and supersedes all prior communications, whether written or oral, between the Parties.

14. PROVISIONS SEVERABLE

In case any provision or any part of a provision of the Order is held invalid or unenforceable, the validity of the remaining provisions of the Order shall not be affected thereby and each remaining provision or part thereof will be valid and enforceable to the fullest extent permitted by law.

15. NO WAIVER

No failure or delay on the part of either Party in exercising any right or remedy shall preclude such Party from exercising any other right or remedy. No waiver granted hereunder must be in writing and shall be valid only in the specific instance in which it is given.

16. COMPLIANCE WITH LAWS

Parties will comply with all applicable laws and regulations including without limitation anti-money laundering, embargoes, sanctions and any applicable corruption legislation.

17. GOVERNING LAW AND DISPUTE SETTLEMENT

These General Terms of Sale and the Order shall be governed by the laws of Finland, excluding rules for choice of law. United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. All disputes arising in connection with the Order shall be finally settled in the English language in arbitration in accordance with the Rules of Arbitration of the Finland Chamber of Commerce by one arbitrator appointed in accordance with the said rules. Place of the arbitration shall be Helsinki, Finland. Kalmar is entitled to seek judgment from a court of competent jurisdiction to collect any overdue payments.