



# Kalmar General Terms and Conditions for Indirect Procurement

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## 1. Definitions

**Kalmar** means Kalmar Corporation and/or affiliate company of Kalmar entering into the Supply Agreement.

**Documentation** means Reports, documents, files and other material or information which has been created, acquired or developed by the Party for the performance of the Services prior, in connection with or after the performance of the Services and/or delivery of the Results.

**Delivery** means delivery of goods and/or performance of the Services and delivery of the Results, where applicable, by the Supplier to Kalmar in accordance with these Terms and the Supply Agreement.

**Party/Parties** means the Supplier or Kalmar as well as both of them together respectively.

**Product** means the goods delivered or the work or service performed by the Supplier to Kalmar including but not limited to drawings and attached documents relating thereto.

**Terms** means these General Terms and Conditions for Indirect Procurement.

**Results** means all material, including but not limited to reports, documents, files or any other material, which has been specifically developed for Kalmar in connection with the performance of and delivered to Kalmar as a result of the Services and/or which has resulted from action of the Supplier or results from the Parties' cooperation in connection with the performance of the Services.

**Service Fees** means agreed one-time or recurring fees payable by Kalmar to Supplier in consideration for provision of the Services.

**Services** means all work and services that shall be performed by the Supplier for Kalmar in accordance with the Supply Agreement and these Terms. The Services shall also include other necessary works, components, software, materials and spare parts, even if they are not expressly included in the Specifications, service descriptions or other documentation relating to the Services.

**SLA** means a service level agreement applicable to on-going Services as agreed by the parties.

**Specifications** means, at each given time, existing detailed specifications of the goods, Services and Results provided by Kalmar including but not limited to technical or functional specifications and documentations, instructions and drawings connected to the Services and/or Results.

**Supplier** means the company delivering the Services, Results and/or Products to Kalmar.

**Supply Agreement** means the order by Kalmar to which these Terms are applied to.

## 2. Applicability of these Terms

These Terms shall apply exclusively for any and all purchase of Services and Products by Kalmar from Supplier unless otherwise agreed in writing between the Parties. These Terms shall supersede and exclude any other terms and conditions of sale or purchase even if Kalmar has not explicitly excluded them.

The Supply Agreement may comprise following documents:

1. Kalmar's order (optional)
2. These Terms
3. Supplier's offer (optional)

Should the contents of the above-mentioned documents be in conflict, they shall be valid in the sequence numbered with no 1 as the highest priority.



### **3. General Obligations of the Supplier**

The Supplier undertakes to perform the Services and deliver Products and Results in conformity with these terms and conditions with due care and with the professional skills required for the task.

The Supplier shall supervise the possible tasks agreed to be taken by Kalmar and notify Kalmar in writing, without undue delay, of all errors, inaccuracies or inadequacies the Supplier detects in Kalmar's performance that may endanger Supplier's ability to deliver the Products and/or Services in accordance with the Supply Agreement and/or these Terms.

The Supplier agrees to cooperate openly with any third party contractors of Kalmar subject to industry standard confidentiality obligations (as applicable).

### **4. Changes**

The Supplier shall not without the prior written permission of Kalmar introduce any changes or modifications to the design, manufacture or workmanship of the Products as set out in the Supply Agreement and/or other relevant related documents.

The Supplier shall not make or undertake any changes to the Services, Results, Specifications or any other agreed requirements, or any other comparable changes that possibly may affect the quality of Services or Results or the correct fulfillment of the Supply Agreement without Kalmar's prior written consent.

Kalmar shall have the right to require reasonable changes or modifications to design, manufacture or workmanship of the Products and request the Supplier to make any changes to the Results at any time prior to the Delivery. The Supplier shall promptly undertake to perform any changes required by Kalmar. Justifiable adjustments to the purchase price and delivery time arising therefrom may be requested by either Party.

No claim for compensation for increased costs or for changed delivery time or other changes to the Supply Agreement and/or these Terms shall be made by the Supplier unless the changes are agreed separately in writing and in accordance with the pricing level and other terms of the Supply Agreement.

The rights and obligations of the Parties under the Supply Agreement and these Terms shall extend apply to all changes

### **5. Technical Documents**

Supplier shall be responsible for ensuring that all technical documents, instructions for safety, use and maintenance, spare parts manual, certificates and drawings related to the Product are included in the price of the delivery of Products and shall be issued and supplied to Kalmar prior to delivery of the Product.

### **6. Forecasts and stock for Products**

Any possible planned volumes shall be regarded as forecasts only and shall not be binding on Kalmar. However, the Supplier shall maintain sufficient production and delivery capacity to ensure that deliveries can be made in accordance with forecasted volumes in the delivery plans.

### **7. Service Level Agreements for On-Going Services**

In case of on-going Services, Parties shall agree on and attach an SLA containing provisions on the required Service availability, response times as well as other metrics or measurable performance levels and obligations of Supplier.



In the event of non-achievement of the agreed SLA by Supplier, Kalmar shall be entitled to a price reduction and/or refund of the recurring on-going Service Fees as agreed in the SLA or in proportion with the Suppliers failure to reach the agreed performance requirements of the Service.

SLA sanctions and in addition to Supplier's basic obligation to correct any and all deviations for the agreed availability and performance levels as soon as possible.

If Supplier fails to reach the minimum Service level in two (2) subsequent months or during any four (4) months within any twelve (12) month period, Kalmar shall be entitled to terminate the Service or the whole Supply Agreement in question at its sole discretion either (a) with immediate effect, or (b) with a notice period from one (1) to twelve (12) months.

If the Parties have not agreed on specific Service level or Service performance requirements, then Kalmar shall be entitled to a price reduction and/or refund of the recurring on-going Service Fees in proportion with the Suppliers failure to reach the agreed performance requirements of the Service.

## **8. Supplier's personnel**

The Supplier shall assign personnel of appropriate qualification and experience to perform the Services under the Supply Agreement. The Supplier is obligated to replace, without unreasonable delay and at no cost to Kalmar, any member of its personnel assigned to perform the Services and fulfill obligations under the Supply Agreement whom Kalmar considers lacking the necessary competence or with whom Kalmar finds it obviously difficult to collaborate. The Supplier shall use all reasonable efforts to avoid any changes in the personnel assigned to perform its obligations under the Supply Agreement. Kalmar shall be notified of any changes without delay and the Supplier shall make all reasonable efforts to promptly replace such individual with another person of at least equal competence and experience without any additional costs to Kalmar. Notwithstanding any degree of supervision exercised by Kalmar over any Service, including the Supplier's personnel working on the Services, such personnel shall at all times be deemed to be the employees of the Supplier. Under no circumstance shall the relationship of employer and employee be deemed to arise between Kalmar and the Supplier or the Supplier's personnel.

## **9. Supplier's Subcontractors**

If the Supplier wishes to employ subcontractors otherwise than as agreed in the Supply Agreement, the written consent of Kalmar must be obtained before such subcontracting work is ordered. Notwithstanding any such consent, the Supplier shall be liable for the acts and omissions of its sub-suppliers. The Supplier shall inform Kalmar of any change in Supplier's subcontractors.

## **10. Delivery**

The Delivery shall include all agreed and necessary documentation including but not limited to technical documentation and instructions relating to the Products, the Services and the Results.

Unless otherwise agreed the term of delivery of Product(s) shall be DDP (Incoterms 2020).

Kalmar shall not be obliged to inspect the Product at the time of delivery but only when it will be used by Kalmar.

After the Delivery to Kalmar and successful completion of necessary inspections and tests, Kalmar will give acceptance for the Results provided that the Results meet the Specifications and other requirements set in the Supply Agreement and Kalmar has received all agreed documentation.

Acceptance of the Results shall not limit Kalmar's right to compensations or any other remedies, if any Results are later found not to meet the Specifications, quality requirements or any other requirements set for the Results. Any acceptance shall not relieve the Supplier from any of its continuing obligations under the Supply Agreement.



## 11. Transfer of Title and Risk

Title to the Products, the Services and/or the Results and other material, intended for the completion of the Supply Agreement shall pass to Kalmar at the time of: (a) delivery, or (b) payment of the first installment of the purchase price, whichever occurs first. In the event of the Supplier's default, delay or bankruptcy, Kalmar is given the right to take possession of the aforementioned or to transfer the performance of the Services from the Supplier to another Supplier without delay.

Where payment is to be made by installments or Kalmar has supplied all or part of the materials intended for the completion of the Supply Agreement, all Products, Services and/or Results and all materials intended for the completion of the Supply Agreement, wherever the same shall be, shall, after the payment of the first installment applicable to such work and/or materials or after the first such supply of the materials by Kalmar, be deemed to have been unconditionally appropriated to the Supply Agreement and shall become the absolute property of Kalmar and free from all debts, contracts, liens, other encumbrances and other engagements. The Supplier shall, so far as reasonably practicable, place an identifying mark on the various parts of the work and on all materials supplied by Kalmar or otherwise ordered or intended for the Supply Agreement and separate them from any other work in progress or material. Without prejudice to the foregoing, all the materials and work in progress shall be at the Supplier's risk until the delivery or final completion in accordance with the Supply Agreement, whichever comes later.

The rights set in this Section 11 do not restrict Kalmar's rights to remedies relating to defects or delays available in the Supply Agreement or in applicable law.

## 12. Liens

Supplier shall ensure that title to the Products shall be free and clear of any and all liens.

Supplier agrees that it will be exclusively responsible for and indemnify and hold Kalmar harmless from any such lien as well as all claims for non-payment by Supplier to its suppliers and subcontractors.

## 13. Delays

If the Supplier has reason to assume that he will not be able to meet the delivery time as agreed, the Supplier shall immediately notify Kalmar thereof in writing, stating the cause and estimated duration of the delay. The Supplier shall use its best endeavors to reduce the time of delay. Kalmar shall be entitled to demand the Supplier to arrange on Supplier's cost an express transportation to limit as far as possible the effects of the late delivery.

## 14. Packing, marking and storage

The Supplier shall be responsible for appropriate packing, marking and storing of the Products according industry standards or to the instructions of Kalmar.

## 15. Testing

In order to ensure that Kalmar is given the opportunity, at its sole discretion, to reassure that a Product is free from defects, the Supplier shall, prior to delivery of new or changed Product, manufacture and perform quality control of samples in accordance with Kalmar's instructions.

## 16. Purchase Inspection and Quality

Kalmar or Kalmar's representative or customer shall be entitled to perform inspections related to quality control and/or manufacture of the Product at the Supplier's production plant at times desired by Kalmar both during manufacture of the Product and after completion thereof. For this purpose the Supplier shall



make available to Kalmar all documents in his possession relating to manufacture and manufacturing processes and shall place at the disposal of Kalmar free of charge any necessary equipment and premises.

Furthermore the Supplier ensures that Kalmar, at its own discretion, has the possibility to perform such inspections also at the production plants of the Supplier's subcontractors.

The inspections and tests performed by Kalmar shall in no respect decrease the Supplier's obligations and responsibilities stipulated in the Supply Agreement and do not in any way limit Kalmar's right to present claims.

## **17. Liability for Defects or Shortcomings**

The Supplier appreciates and accepts the fact that time and quality are of the essence. The Supplier shall use its best efforts to fulfill its obligations in respect of the quality, quantity and delivery time.

In the event that a Product is defective or a delivery does not contain the agreed quantity, Kalmar shall be entitled to (i) demand immediate rectification, or (ii) demand immediate delivery of substitute Product(s).

If a defective Product cannot be repaired or replaced without delay or if there is a risk of production disturbances at Kalmar or delivery disturbance from Kalmar, Kalmar shall be entitled, without obtaining the Supplier's consent and at the Supplier's expense, to make the necessary repair work or completely or partly annul the purchase of the Product and other such Products that Kalmar does not consider having any use of due to the defect or shortcoming, and also to undertake substitute purchases from another supplier.

The Supplier shall compensate Kalmar for any and all costs, expenses, losses and/or damages, direct as well as indirect, arising out of or relating to any defect or shortcoming in the Product(s), any error in the design or drawings, any work performed by the Supplier or its subcontractors, faulty or incomplete delivery or any other breach of the Supply Agreement, including but not limited to costs for assembly and disassembly, detection and analysis, scrapping and transportation.

If the agreed delivery time for the Products, the Services or the Results is delayed due reasons not attributable Kalmar or circumstances other than Force Majeure, Kalmar shall be entitled to compensation, as liquidated damages amounting to 2 % of the total purchase price ordered under the Supply Agreement per each calendar day by which the delivery date is exceeded. However, the liquidated damages shall be maximum 20% the total purchase price ordered under the relevant Supply Agreement. The abovementioned liquidated damages shall not in any way limit or exclude Kalmar's right to full compensation of damages, or any other rights. Where Kalmar is entitled to the maximum amount of liquidated damages, Kalmar shall be entitled to terminate the Supply Agreement with immediate effect.

In addition to any other right Kalmar is entitled to, (i) completely or partly terminate the purchase of the Product and of other Products which Kalmar does not consider having any use of due to the late delivery, and (ii) make substitute purchases from other suppliers. The Supplier shall compensate Kalmar's losses, costs and damages arising out of or relating to the late delivery.

Kalmar shall not be responsible for any delay, obstruction, hindrance or interference in the commencement, production or completion of the Products by any act, omission, neglect, negligence or default of Kalmar's customer or any other third party other than Kalmar's subcontractor(s).

The Supplier shall indemnify and hold Kalmar harmless against any losses and claims for injuries or damage to any person or property which may arise out of or in consequence of the performance of the Supply Agreement by the Supplier and against all claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto, provided always that the Suppliers liability to indemnify Kalmar as aforesaid shall be reduced proportionately to the extent that an act or omission of Kalmar, its employees or representatives may have contributed to the said loss, injury or damage.



Liquidated damages agreed herein shall not be Kalmar's sole and exclusive remedy for Supplier's delay.

## 18. Reporting

Unless otherwise agreed in writing, the Supplier shall provide a status report and other reports concerning Services and Results to Kalmar in a form and at times reasonably requested by Kalmar.

## 19. Fees and Payment Terms

The Service Fee(s) shall include all applicable taxes and duties, bank charges as well as all other expenses the Supplier may incur through its performance of the Supply Agreement, except for value added taxes (VAT).

Unless otherwise explicitly agreed in writing, the purchase price of each Product/order shall be fixed and shall include packing, packing material, service fees and all costs due to invoicing. All prices and fees are exclusive of VAT.

Any late payment interest shall be in accordance with the Finnish Interest Act. Kalmar shall have no obligation to reimburse for the Supplier's travel expenses or travelling time, unless otherwise agreed in writing. Any adjustment to the Service Fees shall be agreed separately in writing.

The payment term is sixty (60) days net from the date of invoice or accepted Delivery, whichever is later.

Invoices shall contain specific information of the Service/Results/Product detailing the pricing basis and a breakdown of the total invoice value. Invoices charged on a time and materials basis shall be supported by relevant time sheets and receipts upon Kalmar's request.

All invoices to Kalmar shall be submitted in electronic format. All invoices shall be raised in English language and include at least the Supplier's basic information, Supplier's VAT registration number and Supplier's bank details (including IBAN/SWIFT), and at minimum one of the following basic information: Purchaser's name and Purchase order number or Purchaser's name and cost assignment (cost centre, sales/service/internal order, project number). Possible purchase order number is always mandatory. Kalmar shall not be liable for paying invoices with insufficient details.

To the extent permitted by applicable law, and in addition to any other remedy which Kalmar may have, any affiliate entity of Kalmar may deduct from or set off against the purchase price any compensation, damages, indemnity or any other sum payable by the Supplier to any other affiliate of Kalmar. This shall be regardless of the place of payment or currency of either obligation.

If any obligation is unliquidated, unascertained or disputed by amount, Kalmar may set off the undisputed amount or amount estimated by Kalmar in good faith to be the amount of the obligation. Whenever Kalmar is entitled to a set-off, Kalmar can make a declaration to the Supplier that its claim/s will be set off against Kalmar's counterclaim/s which results in the exhaustion of both the parties' obligations up to the amount they are equal in value.

In the event of any dispute between the Parties relating to a specific delivery of Service or Result, amount of a Service Fee, or correctness of an invoice, without prejudice to its other rights and remedies, Kalmar shall, on justified grounds given to the Supplier in writing, have the right to withhold payment of the contested part of the Supplier's invoice until the dispute has been settled. In such event the Supplier shall not be entitled to charge interest for the postponement period of the payment provided that Kalmar's claim is found justified. For the avoidance of doubt, failure to pay the fees in the case of a dispute is not a breach of the Supply Agreement. If the fee is contested only partly, only the respective part of the fee can be withheld.





## 20. Insurance

The Supplier shall maintain at its own expense adequate insurance to cover any liability it may incur in connection with the performance of its obligations under the Supply Agreement and these Terms. Upon demand, the Supplier shall submit all requested certificates of the Supplier's insurances to Kalmar.

## 21. Warranty

### *Services*

The Supplier warrants that the Services and the Results comply in every respect with the Specifications and all other quality and technical requirements set in the Supply Agreement and these Terms as well as requirements provided by applicable laws and regulations.

The Supplier also warrants that the Services are performed and delivered in the workmanlike manner and with the accurate and professional diligence and skill to be expected from professional and experienced Supplier and in compliance with all applicable laws and regulations, including but not limited to fulfilling its obligations as an employer.

The Supplier also warrants that the Results are free from any defect in materials, workmanship or design, where design is Supplier's responsibility and are fit for their ordinary and intended purpose. The Supplier is responsible for the actual quality control of the Services and Results, and must immediately report to Kalmar any possible deficiency in the quality of the Results.

The warranty period of deliverable Results shall be twenty-four (24) months from the acceptance of Kalmar (hereinafter "Warranty Period"). During the Warranty Period, without limiting of any rights which the Supplier may have at law by reason of any breach of warranty, all defective or otherwise nonconforming Results shall at the sole discretion of Kalmar be repaired, replaced or refunded by the Supplier without delay and without any cost to Kalmar.

The Warranty Period for the repaired or replaced Results shall be renewed starting from the date when the repair or replacement was approved by Kalmar.

Should the Supplier refuse or fail to fulfill its warranty obligation to Kalmar's satisfaction within a reasonable period of time, Kalmar shall be entitled to have repair, replacement or a correction carried out at the Supplier's expense. The same right shall accrue to Kalmar, if in case of urgency Kalmar finds it inappropriate or impractical to wait for the Supplier to carry out the work. If possible, Kalmar shall inform the Supplier before carrying out the repair, replacement or the correction. In case none of the aforementioned corrections can reasonably be carried out, Kalmar shall have the right to a refund of the Service Fees of the Results not meeting the warranty given by the Supplier.

### *Products*

The Supplier warrants that the Products supplied are free from defects. A Product shall be considered defective if it:

- (i) in any respect deviates from the technical specification;
- (ii) does not possess the characteristics that the Supplier has referred through samples, prototypes or in marketing;
- (iii) is not as safe as Kalmar could reasonably have expected;
- (iv) is not fit for the particular purpose for which Kalmar intended it to be used; or



- (v) otherwise deviates from what the Parties have agreed or what Kalmar reasonably could have expected.

The warranty period is 24 months from the date on which the Product has been taken into use, but shall not exceed 36 months from the date on which the Products have been delivered to Kalmar. Claims shall be presented no later than 6 months after the end of the warranty period.

If any repair under the warranty period is made after Kalmar's customer has deployed the Product(s), or any part thereof, or has otherwise put them into production use, the warranty period in respect of repaired or replaced Products, or any part thereof, shall be extended by 12 months from the date when the repair or replacement work was approved by Kalmar's customer.

The above-stated warranty periods shall, however, not apply, should there be a risk of personal injury or damage to property other than the defective part, or of a repetitive defect.

The warranty shall be in addition to and not in limitation of all other warranties, guarantees, remedies or indemnities required and/or arising pursuant to applicable law.

## 22. Intellectual Property Rights

All right, title and interest in and to all copyrights, patents and other intellectual property rights relating to the Specifications, Results and Kalmar's Documentation as well as other information delivered or paid by Kalmar or its representatives to the Supplier in connection with the Supply Agreement, shall vest in and be the sole and exclusive property of Kalmar and shall not, without prior written consent of Kalmar, be used for any other purposes than for the performance of the Supply Agreement.

The Supplier shall upon request, without any costs to Kalmar, promptly execute all such documents as may be necessary to effectuate the vesting in or transfer to Kalmar of such rights.

The Supplier shall assign and cause its employees and subcontractors to assign any and all such rights to Kalmar and take such additional actions as may be requested by Kalmar to perfect any right of Kalmar thereto. In case and to the extent it is impossible as a matter of law to transfer ownership in any intellectual property rights from the Supplier or its employees or subcontractors to Kalmar, the Supplier hereby grants to Kalmar and warrants to take all necessary steps to ensure that its employees and subcontractors will also grant to Kalmar an exclusive, fully-paid up, unlimited, irrevocable, perpetual and worldwide license to use, modify, distribute and exploit, including right to sublicense, any and all intellectual property rights relating to the Results.

Upon request of Kalmar the Supplier shall at any time, including upon expiry or termination of the Supply Agreement deliver to Kalmar any and all the Results whether or not completed. Copyright and other intellectual property rights relating to the Supplier's Documentation shall remain vested in the Supplier. The Supplier hereby grants Kalmar a worldwide, unlimited, royalty-free, perpetual, irrevocable, non-exclusive and sub-licensable license to use, copy and modify the Supplier's Documentation.

The Supplier acknowledges and agrees that the materials in all manuals, instructions, drawings, text, visual designs and displays, and other related materials (copyrighted or not copyrighted) provided by Supplier to Kalmar (hereinafter "Supplier's Materials") may be incorporated by Kalmar into the manuals, instructions, drawings, text, visual designs and displays, and other related works created or used by Kalmar in connection with the sale of Kalmar's goods and services (hereinafter "Kalmar's Materials").

Supplier hereby grants to Kalmar an unlimited, royalty-free, worldwide, irrevocable, perpetual, non-exclusive sublicensable license to use, reproduce, modify and incorporate Supplier's Materials with and into Kalmar's Materials without use of any copyright or other mark that distinguishes the contents of Supplier's Materials that are used, reproduced and/or incorporated into Kalmar's Materials as being owned by any party other than Kalmar or its affiliates.



Supplier hereby acknowledges and agrees that Kalmar may place a copyright or other mark on Kalmar's Materials (that contain Seller's Materials) that would identify Kalmar or its affiliates as the owner thereof.

Unless otherwise agreed by the Parties in writing, the Supplier shall not have the right to use or make any other reference to any of Kalmar's trademarks. The Supplier shall not use any of Kalmar's trademarks in connection with sales to third parties.

The Supplier warrants that the Services and Results do not infringe any patents, trademarks, copyrights, design rights or any other intellectual property rights of any third parties. In case of infringement the Supplier shall at its own expense defend, indemnify and hold Kalmar harmless against all claims, demands, proceedings, losses, damages, costs, charges and expenses which may arise out of any infringement of any third party intellectual property rights.

### **23. Limitation of Liability**

Notwithstanding anything contained in these Terms neither Party shall be liable for any indirect damage or loss unless such damage is caused by gross negligence or willful misconduct, breach by the Supplier of the Sections 22 Intellectual Property Rights and 25 Confidentiality or damages arising out of death or personal injury or damages resulting from a Party's gross negligence or intentional misconduct.

### **24. Force Majeure**

Neither Party shall be liable to the other for delay or nonperformance to the extent such delay or nonperformance is caused by an event of Force Majeure. Force Majeure shall mean unforeseen events, which occur after the signing of the Supply Agreement and which are beyond the reasonable control of the Parties including but not limited to war, acts of government, natural disasters, fire and explosions, insofar as such an event prevents or delays the affected Party from fulfilling its obligations and such Party is not able to prevent or remove the Force Majeure without unreasonable expense. The Party affected by Force Majeure shall immediately take reasonable steps to limit or minimize the consequences of such Force Majeure. The Party claiming Force Majeure shall inform the other Party in writing and without delay of the Force Majeure, of the time it began and its expected duration.

The end of the Force Majeure shall also be reported in writing. The Party who has claimed Force Majeure shall prove its effect on the fulfilling of the Supply Agreement. If the performance of the Supply Agreement is delayed more than three (3) months as a result of a Force Majeure, either Party may terminate the Supply Agreement by sending a written notice of termination to the other Party.

### **25. Confidentiality**

The Supplier shall keep confidential and shall not disclose to any third parties or use for any other purposes than those defined in the Supply Agreement any confidential information received in connection with the Supply Agreement, such as, including but not limited to technical, commercial, business related, financial or company information. No confidential information may, without Kalmar's express written consent, be copied, reproduced, transmitted, communicated or disclosed to a third party or in any other way brought to the knowledge of a third party or utilized by the Supplier for any other purposes than proper performance of the Supply Agreement. The Supplier shall ensure that no information regarding the existence and contents of the Supply Agreement is brought to the knowledge of any third party without obtaining prior consent thereto from Kalmar. The Supplier shall not use Kalmar's name or make reference to it for any purpose in any releases for public or private dissemination without prior written consent of Kalmar.

The Supplier will use its best efforts to protect all confidential information from improper, unauthorized, negligent or other inadvertent transfer to any third party. The Supplier shall agree to protect the confidentiality of the information at least with the same degree of care as it exercises with respect to its own confidential information and business secrets.



The Supplier shall limit access to the confidential information of Kalmar to those of its own personnel and Kalmar's subcontractors for whom such access is necessary for the proper performance of the Supply Agreement. Such personnel and Kalmar's subcontractors shall be bound by written confidentiality obligations not less restrictive than those provided herein. The Supplier shall, upon the termination of the Supply Agreement or at Kalmar's request, immediately return all confidential material to Kalmar, including but not limited to any copies of the Specifications and Kalmar's Documentation held by the Supplier. The obligation of confidentiality shall survive the termination of the Supply Agreement.

## 26. Privacy and Data Security

In connection with the Services Kalmar may provide personal data to Supplier in accordance with the applicable data protection laws and regulations.

Supplier may process personal data on behalf of Kalmar only to the extent necessary for providing the Services and complying with mandatory legal and regulatory obligations. Supplier shall at all times:

- a) take appropriate technical and organizational measures to safeguard against unauthorized and unlawful processing of personal data and against accidental loss, alteration or destruction of, or damage to the personal data and will ensure that such measures are no less rigorous than those maintained by Supplier in respect of its own information and data of a similar nature;
- b) only process the personal data in accordance with Kalmar's written instructions;
- c) not engage subcontractors or subprocessors to process Kalmar's personal data without Kalmar's consent;
- d) promptly provide such information to Kalmar, as Kalmar may require to allow its data subjects comply with their under applicable laws and regulations, including subject access rights, or with information notices served by the data protection ombudsman;
- e) promptly notify Kalmar of any queries from data subjects, the data protection authorities or any other law enforcement or regulatory authority, which Kalmar may decide to resolve at their discretion.

In case of transfers of personal data from the European Economic Area Kalmar shall at all times, at its sole discretion, have the right to require that Supplier enter into the contractual clauses issued by the European Commission by the decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to the EU General Data Protection Regulation (2016/679, as amended), or any subsequent legal instrument permitting the lawful transfer of personal data to non-European Economic Area countries according to Data Protection Regulations.

Upon termination or expiry of the applicable Service, Supplier shall (and shall procure that its subcontractors shall) destroy all Kalmar's personal data in tangible form and delete all personal data from all computer hardware (including storage media) and software and shall confirm in writing that this has been done. Supplier shall always (and shall procure that any subcontractors shall) process personal data on behalf of Kalmar in accordance with Kalmar's instructions.

If Kalmar has agreed that Supplier may engage subcontractor(s) to process personal data, then (i) such engagement will be under a written contract, and (ii) the subcontract will require the subcontractor to comply with the same obligations applicable to Supplier under this Section 20 and the applicable laws and regulations. In any event, Supplier covenants to Kalmar that Supplier will remain fully liable for the acts and omissions of its subcontractors and affiliates.

Supplier shall implement and maintain at all times appropriate operational, managerial, physical and technical measures to protect the personal data against accidental, unauthorized or unlawful



destruction, loss, alteration, disclosure or access so that all processing is in compliance with applicable laws and regulations.

## **27. Term and Termination**

These terms shall be valid from the date of the Supply Agreement.

In addition to any other right or remedy available to Kalmar at law or set in the Supply Agreement, Kalmar has a right to terminate the Supply Agreement or any part of it with immediate effect and without any liability towards the Supplier in the event that the Supplier is in material breach of its obligations under the Supply Agreement or these Terms and has failed to remedy such breach within thirty (30) days of a written notice thereof by Kalmar. The Services and Results failing to meet the specified quality and/or safety requirements shall always be considered a material breach of the obligations of the Supplier.

Kalmar is entitled to terminate the Supply Agreement with immediate effect and without any liability towards the Supplier if any proceeding of bankruptcy, liquidation, receivership or insolvency shall be commenced by or against the Supplier or its property, the Supplier is made to be governed by an appointed receiver or trustee or to execute an assignment for the benefit of the creditors, or it becomes otherwise clear that the Supplier as a result of its financial or other difficulties is unable to fulfill its obligations in accordance with the Supply Agreement.

Notwithstanding anything in this Section 27 Kalmar reserves the right to terminate all or any part of the Supply Agreement at its convenience with immediate effect following Kalmar's issuance of written notice to the Supplier. In the event of such termination, the Supplier shall immediately stop all work referenced in Kalmar's notice of termination. In such case, the Supplier shall be paid a reasonable termination charge consisting only of the actual direct costs associated with the Services and Results already produced by the time of Kalmar's notice of termination.

## **28. Effects of termination**

In case of termination, the Supply Agreement is deemed to be terminated as from the termination date. Any terms and conditions that by their nature or otherwise reasonably should survive a termination shall be deemed to survive.

By the termination of the Supply Agreement the Supplier shall immediately return all Specifications, Kalmar's Documentation, drawings and technical documents, material and any other Kalmar's property, which the Supplier has received from Kalmar or which has otherwise become property of Kalmar.

## **29. Compliance With Laws and Anti-Bribery**

Each Party will comply at all times with all applicable laws and regulations, including without limitation European Union, UK and U.S.A. legislation pertaining to anti-bribery, anti-money laundering, embargoes and/or sanction requirements.

Both Parties agree that they have not, in conjunction with any business transactions involving the other Party, made, offered or promised to make, and will not make, offer or promise to make, any payment or other transfer of anything of value, including without limitation the provision of any service or gift or entertainment to: any government official, employee of the other Party; any political party, official of a political party; or any other person or entity for the purpose of obtaining or influencing the award of or carrying out of this Agreement to the extent that to do so is or would be in violation of the anti-bribery laws of any relevant jurisdiction, including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act, as may be amended.

## **30. Miscellaneous**



**Amendments.** Any modifications or amendments to these Terms and/or the Supply Agreement and any of its appendices shall be valid and binding only when made in writing and executed by both Parties. Under no circumstances shall any terms or conditions in the order acknowledgement or other corresponding document sent by the Supplier that are conflicting with or additional to the Supply Agreement and/or these terms be binding on Kalmar.

**Entire Agreement.** The Supply Agreement and the appendices listed in the Supply Agreement shall constitute the entire agreement between the Parties and it shall precede any other document exchanged between the Parties before the date of the Supply Agreement.

**Assignment.** The Parties shall not be entitled to assign or delegate any of their rights and/or obligations under the Supply Agreement and/or these Terms in whole or in part to any third party without the prior written consent of the other Party. Notwithstanding the aforesaid, Kalmar is entitled to assign rights and/or obligations under the Supply Agreement and/or these Terms, in part or in whole, to any company belonging to the same group of companies with Kalmar as well as in connection with a transfer of business or any other corporate transaction, including divestments and outsourcing. The Supplier shall be liable for the work of his subcontractors as for his own.

**No Waiver.** No provision or right under the Supply Agreement or these Terms shall be considered waived without an explicit written statement or agreement signed by the waiving Party in each specific case. A waiver of any term, provision or right under the Supply Agreement or these Terms shall not be construed as a waiver of any other term, provision or right hereunder.

**Ethical Principles.** Supplier confirms that it follows at its own expense and is aware of Kalmar's Supplier Code of Conduct and Principles of social responsibility as published at Kalmar's web site ([www.kalmarglobal.com](http://www.kalmarglobal.com)) from time to time. Supplier's failure to implement any reasonable requirement will grant Kalmar the right to terminate the Supply Agreement.

**Severability.** If any term or condition of the Supply Agreement or these Terms is found to be invalid, illegal or unenforceable, all other terms and conditions of the Supply Agreement or these Terms shall remain unaffected and in full legal force and effect. The Parties agree to replace, to the extent permitted by the applicable legislation, such individual term or condition by a provision of the same or similar effect or meaning or having as close as possible the same economic purpose initially pursued by the Parties through such individual term or condition.

### **31. Applicable Law and Disputes**

In case a Kalmar unit and the Supplier have the same domicile, the Supply Agreement and these Terms will be governed and constructed in accordance with the law in that country. In other cases the Supply Agreement is to be governed and constructed in accordance with the laws of Finland. Choice of law and the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

Any dispute, controversy or claim arising out of or in connection with the Supply Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The arbitration proceedings shall be held in Helsinki, Finland and the language shall be English.

