

ACG Kinna Automatic AB - General Terms and Conditions

for delivery and installation

1 APPLICATION

- 1.1 These General Terms and Conditions are applicable to the supply, delivery, and installation of machines from ACG Kinna Automatic AB.

2 DEFINITIONS

In these General Terms and Conditions, the following terms shall have the following meaning:

"**ACG Kinna**": ACG Kinna Automatic AB and any of its affiliates.

"**Contract**": the entire agreement in writing between the parties concerning delivery and installation of the Machine and/or Works and all appendices, including Order Confirmation, these General Terms and Conditions, agreed amendments and additions in writing to the said documents.

"**Contract Price**": the agreed purchase price in the Order Confirmation.

"**Confidential Information** ": information regarding the Contract and any other information which the parties have learned because of the Contract, whether written or oral and irrespective of form.

"**FAT**": the Factory Acceptance Test performed at ACG Kinna.

"**Order Confirmation**": the confirmation of the Purchaser's order containing technical specifications, delivery time and the Contract Price.

"**Machine**": the machinery, components, materials, articles, documentation, software, and other

products to be supplied by ACG Kinna under the Order Confirmation.

"**Purchaser**": any company purchasing an ACG Kinna Machine and/or Works.

"**SAT**": the Site Acceptance Test performed at the Site.

"**Site**": the place where the Machine is to be installed, including as much of the surrounding area as is necessary for unloading, storage and install the Machine.

"**Technical Documents**": drawings, specifications, calculations, computer software and other technical documents of any kind, whether completed or not, as well as any information, design and inventions described therein, and any intellectual property rights with respect thereto.

"**Works**": the installation and implementation of the Machine and any other work to be carried out by ACG Kinna under the Contract.

3 FAT

- 3.1 If ACG Kinna deems it necessary to perform a FAT on the Machine, the FAT shall be performed at ACG Kinna when the Machine is ready for shipment according to ACG Kinna.

- 3.2 The FAT shall be performed on the test materials agreed upon in the Order Confirmation.

- 3.3 Unless otherwise stated in the Order Confirmation, the FAT shall be performed and documented in accordance with routines and practices agreed by ACG Kinna.

- 3.4 ACG Kinna shall notify the Purchaser in writing of the planned FAT in sufficient time to permit the Purchaser to be represented at the FAT. The Purchaser is always entitled to get a copy of the FAT protocol.
- 3.5 If the FAT shows that the Machine does not fulfil the specifications stated in the Order Confirmation, ACG Kinna shall without delay remedy the deficiencies at its own costs. When the deficiencies are remedied, a new FAT may be performed if ACG Kinna consider it necessary. If so, an additional FAT protocol will be issued and send to the Purchaser.
- 3.6 The cost of the test materials used in the FAT shall be borne by the Purchaser.

4 PURCHASERS'S OBLIGATIONS

- 4.1 The Purchaser shall in good time prior to the planned FAT and SAT send/provide to ACG Kinna the test material in the amount as agreed by ACG Kinna necessary for the respective test. The test material must be of the same quality as previously provided to ACG Kinna as material samples in connection with the Order Confirmation.
- 4.2 In the event that the Purchaser fails to adhere to section 4.1, ACG Kinna will procure appropriate test material from a third party. The test materials shall be considered as approved by the Purchaser. These test materials shall then be used in the FAT and SAT respectively. The Purchaser shall reimburse ACG Kinna for its cost of the test materials.
- 4.3 The Purchaser shall in good time undertake preparatory work to ensure that the conditions necessary for the correct operation of the Machine at Site are fulfilled.

- 4.4 The Purchaser shall ensure that:
- a) ACG Kinna's personnel is admitted starting Work in accordance with the agreed time schedule;
 - b) he has made available to ACG Kinna free of charge electricity, Wi-Fi, air, test material and all other tools and machinery needed for ACG Kinna to perform a successful installation of the Machine. ACG Kinna shall specify in writing what tools and machinery are needed; and
 - c) he has made available at least one operator and one serviceman from the Purchaser's organization who shall work with ACG Kinna during performance of SAT and any Works, if needed, and who shall have the main responsibility for the Machine.

5 PURCHASER'S DEFAULT

- 5.1 If the Purchaser anticipates that he will be unable to fulfil his obligations specified in section 4, he shall forthwith notify ACG Kinna in writing, stating the reason and, if possible, the time when he will be able to carry out his obligations.
- 5.2 Without prejudice to ACG Kinna's rights under section 5.3, if the Purchaser fails to fulfil, correctly and in time, his obligations set in section 4 the following shall apply:
- a) ACG Kinna may suspend or delay in whole or in part its performance of the Contract.
 - b) If the Machine has not yet been delivered to the Site, ACG Kinna shall arrange for storage of the Machine at the Purchaser's risk and cost.
- 5.3 If, for any reason which is not attributable to ACG Kinna, the Purchaser fails to remedy his default within a reasonable period, ACG Kinna may by notice in writing terminate the

Contract in whole or in part. ACG Kinna shall then be entitled to receive compensation for the loss it suffers thereof, including any consequential and indirect loss. The compensation shall not exceed the Contract Price.

6 SAT

- 6.1 When the Works in the view of ACG Kinna has been completed, a SAT shall be performed with no delay.
- 6.2 The SAT shall be performed with the test materials as approved by ACG Kinna and used in the FAT. The Purchaser shall ensure that enough amount of test material is available to perform the SAT. The cost for the test materials used in the SAT shall be borne by the Purchaser.
- 6.3 ACG Kinna shall notify the Purchaser in writing when the SAT is ready to be performed. ACG Kinna shall in the notice give a date for the SAT, giving the Purchaser sufficient time to prepare for and be represented at the SAT. If, after having been notified the Purchaser fails to attend the SAT or otherwise prevents the SAT from being carried out, the SAT shall be regarded as having been satisfactorily completed at the date of the SAT performed by ACG Kinna. Any costs incurred by ACG Kinna (i.e. travel costs, man hours) due to a planned SAT which cannot be performed for reasons attributable to the Purchaser, shall be borne by the Purchaser.
- 6.4 The SAT shall be carried out during normal working hours and in accordance with routines and standard as specified by ACG Kinna.
- 6.5 ACG Kinna shall prepare a protocol of the SAT. The protocol shall be sent to the Purchaser after completion of the SAT. A protocol of the SAT shall be drafted and signed by both Parties. If

the Purchaser was not represented at the SAT, the SAT protocol shall be considered as correct and accurate.

- 6.6 If the SAT shows that the Machine does not fulfil the specifications stated in the Order Confirmation, the SAT Protocol shall include a list of the deficiencies. ACG Kinna shall without delay remedy the listed deficiencies at its own costs. If the deficiencies are hindering a Take Over and start of use of the Machine, a new SAT shall be carried out in accordance with this section 6.

7 TAKING-OVER

- 7.1 The Purchaser's taking-over of the Machine shall take place when the SAT have been satisfactorily completed and the SAT protocol has been signed by both parties ("**Taking-Over**"). If the Purchaser delays its signing of the SAT protocol or refuses to sign it without presenting fair and reasonable grounds, the Machine shall be considered as taken over by the Purchaser when ACG Kinna has signed and submitted the SAT Protocol.
- 7.2 Minor deficiencies which do not affect the function or efficiency of the Machine shall not be a legal ground for Purchaser not signing the SAT protocol.
- 7.3 If the Purchaser starts to use the Machine before the SAT is completed or before deficiencies listed in the SAT Protocol have been remedied, the Machine shall be deemed to have been Taken Over.

8 ACG KINNA'S DELAY

- 8.1 If ACG Kinna anticipates that it will not be able to fulfil its obligations stated in the Contract, ACG Kinna shall notify the Purchaser in writing, stating the reason and, if possible, the time when it will be able to carry out his obligations.

- 8.2 ACG Kinna shall be entitled to an extension of the delivery time if delay occurs:
- a) because of any circumstances attributable to the Purchaser as stated in section 4
 - b) because of suspension due to force majeure. If the Works are not completed at the agreed time for Taking-Over, the Purchaser shall be entitled to liquidated damages from the date starting two (2) weeks after Taking-Over should have taken place.
- 8.3 The liquidated damages shall be payable at rate of 0,1 per cent of the Contract Price for each commenced week of the delay. The liquidated damages shall not exceed 5 per cent of the Contract Price.
- 8.4 If the delay is such that Purchaser is entitled to maximum liquidated damages under section 8.4 and the Machine is still not ready for Taking-Over, the Purchaser may in writing demand completion of the Works within a final reasonable period which shall not be less than one month.
- 8.5 If ACG Kinna does not complete the Works within such final period, and this is not due to any circumstance which is attributable to the Purchaser, the Purchaser is entitled to terminate the Contract in whole or in part.
- 8.6 If the Purchaser terminates the Contract, he shall be entitled to compensation for the loss suffered due to ACG Kinna's delay. The total compensation, including liquidated damages shall not exceed 15 per cent of the Contract Price.
- 9 CONTRACT PRICE, DELIVERY TERM AND PAYMENT**
- 9.1 Contract Price, payment plan and delivery terms are stated in the Order

Confirmation. Regardless the payment terms in the Order Confirmation, Purchaser shall always be obligated to pay the Machine in Full when the Machine has been Taking-Over by the Purchaser under section 7.

- 9.2 In the event of late payment, a yearly interest on overdue payment will be charged corresponding to the Swedish reference rate plus eight (8) per cent.
- 9.3 In case of late payment ACG Kinna may suspend his performance of the Contract until payment is made.

10 RETENTION OF TITLE

The Machine shall remain the property of ACG Kinna until Purchaser has paid it in full.

11 LIABILITY FOR DEFECTS

- 11.1 ACG Kinna shall remedy any defect or nonconformity (hereinafter termed defect(s)) in the Machine and/or Works resulting from faulty design, materials, or workmanship.
- 11.2 ACG Kinna shall not be liable for defects arising out of materials provided by the Purchaser or a design stipulated or specified by the Purchaser.
- 11.3 ACG Kinna shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Machine.
- 11.4 ACG Kinna shall not be liable for defects caused by circumstances which arise after the risk has passed to the Purchaser, e.g., defects due to faulty maintenance or faulty repair by the Purchaser or to alterations carried out without ACG Kinna's consent in writing. ACG Kinna shall neither be liable for consumables such as belts, gaskets, hoses, seals, springs, sewing

heads/parts, ultrasonic welding parts/device etc.

12 WARRANTY

- 12.1 ACG Kinna's liability shall be limited to defects in the Machine and/or Works which appear within a period of twelve (12) months from the day of the Purchaser's Taking-Over of the Machine, provided that the Machine has been running in accordance with the Machine's maximum use, as defined to eight (8) hours a day, five (5) days a week. If Taking-Over has been delayed for reasons which are attributable to the Purchaser, the warranty period shall never exceed eighteen (18) months from a successfully completed FAT.
- 12.2 The Purchaser shall without undue delay notify, and not later than eight (8) weeks after a defect was discovered in the Machine, in writing notify ACG Kinna. The notice shall contain a description of the defect.
- 12.3 If the Purchaser fails to notify ACG Kinna in due time, he shall lose his right to have the defect remedied.
- 12.4 On receipt of the notice of a defect, ACG Kinna shall at his own cost remedy the defect without undue delay. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.
- 12.5 If the Purchaser has given notice for a defect and no defect is found by ACG Kinna, Purchaser shall reimburse ACG Kinna for the costs incurred (i, e travel costs to the Site).
- 12.6 If ACG Kinna does not fulfil its warranty obligations, the Purchaser may by notice in writing fix a final reasonable period for fulfilment of ACG Kinna's obligations, which shall not be less than one month.

- 12.7 If ACG Kinna fails to fulfil his obligations within such a final period, the Purchaser may himself undertake or employ a third party to undertakes necessary repair work at the risk and expense of ACG Kinna. ACG Kinna will only reimburse the Purchaser if the Purchaser has taken reasonable measures to limit its expenses. Expenses that exceed 15 per cent of the Contract Price will not be covered by ACG Kinna.
- 12.8 When a defect has not been successfully remedied, the Purchaser shall either be entitled to:
- a) a reduction of the Contract Price in proportion to the reduced value of the Machine, provided that under no circumstances shall such reduction exceed 15 per cent of the Contract Price; or,
 - b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Machine, the Purchaser may terminate the Contract.
- 12.9 In case of termination of the Contract, the Purchaser shall then be entitled to compensation for his loss, costs, and damages up to a maximum of 15 per cent of that part of the Contract Price.

13 CONFIDENTIALITY

The parties undertake, during the term of the Contract and thereafter, not to disclose to any third party any Confidential Information. The parties agree and acknowledge that the Confidential Information may be used solely for the fulfilment of the obligations under the Contract and not for any other purpose. The receiving party further agrees to use, and cause its directors, officers, employees, sub-contractors, or other intermediaries to use, the same degree of care (but not

less than reasonable care) to avoid disclosure or use of Confidential Information as it uses with respect to its own confidential and/or proprietary information.

14 INTELLECTUAL PROPERTY RIGHTS

Unless otherwise agreed in the Order Confirmation, ACG Kinna shall hold all right, title and interest in and to its respective intellectual property rights, including but not limited to patents, patent applications, copyrights, mask work rights, trademarks, trade secrets, inventions, and any other form of intellectual property in the Machine.

15 FORCE MAJEURE

ACG Kinna is entitled to postpone the performance of its obligations and is relieved from the consequences of non-performance of its obligations under the Contract where such performance is prevented, rendered significantly more complicated, or unduly rendered more costly due to a circumstance beyond the control of the party, and which the party neither could nor reasonably have foreseen at the time of execution of the Contract.

16 TRANSFER OF RIGHTS AND OBLIGATIONS

ACG Kinna is entitled to, without the Purchaser's consent, transfer all or part of its rights or obligations under the Contract to another company within the ACG Group.

17 DISPUTES AND APPLICABLE LAW

17.1 The Contract shall be governed by the substantive law of Sweden.

17.2 All disputes arising out of or in connection with the Contract shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

17.3 The seat of the Arbitration shall be Gothenburg and English shall be the language.