

Swedish Supreme Court clarifies scope of framework agreement's arbitration clause and binding effect of arbitration agreement published on website

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In *KB Components Plastunion AB v Husqvarna AB* (Case No Ö 4116-22), the Swedish Supreme Court found that an arbitration clause in a framework agreement also applied to disputes arising in relation to later call-off agreements. In addition, the court concluded that a party can be bound by an arbitration agreement found in general terms and conditions, even where the counterparty has not seen these, provided that the reference to the general terms is clear and the terms were available for the counterparty.

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In 2007, Husqvarna and KB Components Plastunion AB (KB Plastunion) entered a framework agreement (Supply Agreement). It contained certain provisions on future call-offs, whereby Husqvarna would issue agreed form Purchase Orders and KB Plastunion would make corresponding deliveries. The Supply Agreement contained an arbitration clause stating that disputes "arising out of or in connection with this Agreement or Purchase Order" shall be resolved by arbitration. Notably, the standard form Purchase Order also contained an express reference to Husqvarna's general terms and conditions, which were published on the company's website and contained an arbitration clause in very similar terms to that in the Supply Agreement.

In 2020, KB Plastunion commenced proceedings against Husqvarna before a Swedish district court requesting additional payments for certain deliveries. Husqvarna objected to the court's jurisdiction, relying on the arbitration clause in both the Supply Agreement and the general terms, and requested that the court dismiss the proceedings. KB Plastunion argued that the arbitration clause was no longer valid, since the Supply Agreement had been terminated. Both the District Court and the Court of Appeal held that the arbitration agreement was valid and binding and dismissed proceedings.

On appeal by KB Plastunion, the Supreme Court addressed two issues in relation to the arbitration agreements:

- **Scope of the Supply Agreement's arbitration agreement.** The court held that an arbitration clause contained in a framework agreement did encompass disputes under contemplated, future call-off agreements. The court considered that the arbitration clause complemented, and became part of, the individual call-off agreements, which were concluded when Husqvarna issued a Purchase Order in the agreed form.
- **Existence of the arbitration agreement.** The court also held that, in certain circumstances, an arbitration agreement contained in general terms and conditions may bind a commercial party, even if that party has not actually seen it. This will generally be the case where there is a reference purporting to apply general terms and conditions (containing an arbitration clause), provided that the reference to the general terms is clear and the terms are readily available for the counterparty to review, if it chooses to do so.

The Supreme Court's judgment provides welcome clarity for commercial parties in relation to the scope of an arbitration agreement contained in a framework contract, as well as the circumstances in which a party may rely on an arbitration agreement in its published general terms and conditions.

Case: [KB Components Plastunion AB v Husqvarna AB](#) (Case No Ö 4116-22) (Swedish Supreme Court) (17 May 2023) (PDF).

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