

**KINCAID TRADING CORPORATION bvba**

## Terms and Conditions of Delivery and Payment

**Article 1 General**

1. Kincaid Trading Corporation bvba, hereinafter referred to as "KINCAID", supplies solely based on these General Terms and Conditions of Delivery and Payment. The party to which KINCAID sends a quotation or with which KINCAID enters into an agreement is referred to in these terms and conditions as the "Buyer".

2. By approving an offer generated by or taking receipt of a product ordered from KINCAID, the Buyer accepts the applicability of these General Terms and Conditions of Delivery and Payment.

3. These terms and conditions apply to all offers and/or agreements made by KINCAID in respect of a Buyer, who/which is not a consumer, and all the contracts ensuing from such offers and/or agreements.

4. The General Terms and Conditions are communicated to the purchasing party beforehand and are always available for reference on the following website : [www.KINCAID.eu](http://www.KINCAID.eu) (hereinafter referred to as: the "Website") and can also be downloaded as a PDF file from that URL. If a copy of the General Terms and Conditions is requested, it shall be sent at no charge.

5. These terms and conditions apply to the exclusion of any (general) terms and conditions applied by the Buyer.

6. The Buyer may only invoke deviations from these terms and conditions in so far as any such deviations have been accepted by KINCAID in writing (which in the context of these terms and conditions is also understood to mean in digital form or in the form of a facsimile).

7. If KINCAID does not demand adherence to any specific provision in these terms and conditions on any occasion, this does not in any way prejudice the entitlement of KINCAID to proper compliance on subsequent occasions.

**Article 2 Offers and agreements**

1. All offers made by KINCAID are without obligation. Orders placed by and offers accepted by the Buyer are irrevocable.

2. An agreement arises between KINCAID and the Buyer when KINCAID has confirmed the Buyer's approval of the offer in writing or in digital form or has started fulfilment. KINCAID is nevertheless entitled to accept verbal approval as though this approval had been given in writing. If the Buyer places an order with KINCAID, that order is final from the time when the Buyer receives an order confirmation via email. A binding agreement arises between the parties at the latest when the Buyer receives a confirmation message from KINCAID via email.

3. KINCAID is not bound to comply if the Buyer's approval differs from the offer proposed in the quotation (regardless of whether this applies to trivial points or not). In such cases, no agreement is entered into in accordance with the change(s) made by the Buyer relative to the original offer, unless KINCAID indicates otherwise.

4. Any inaccuracies or disputed points in the order confirmation must be communicated by the Buyer in writing or in digital form to KINCAID within one working day following the date of the order confirmation, failing this, the order confirmation is considered to correctly and fully reflect the agreement.

5. Images, descriptions, calculations, catalogues and advertising material are not binding for KINCAID.

6. Verbal promises, or agreements made by or with its staff are only binding for KINCAID after KINCAID has confirmed them in writing or in digital form.

7. These General Terms and Conditions also apply integrally to any changes that may be made to the agreement.

**Article 3 Verification**

1. The Buyer undertakes to inspect the products it has ordered immediately after delivery. Any complaint relating to visible faults must, subject to forfeiture of the right to make a complaint, be communicated to KINCAID in writing within seven days after delivery and, in the case of perishable goods, verbally immediately after delivery and in writing immediately after the verbal complaint. Shipping or collection of the products counts in all cases as acceptance of visible faults and shortcomings.

2. In the event of a hidden defect, the complaint must, subject to forfeiture of the associated right, be communicated in writing to KINCAID within 7 days of discovery, including a detailed and if possible documented description of the defects.

**Article 4 Delivery and transfer of risk**

1. Delivery of the products takes place in accordance with C&F (Cost & Freight) (see Incoterms 2010), unless KINCAID and the Buyer explicitly agree upon other INCOTERMS.

**Article 5 Retention of ownership**

1. KINCAID retains ownership of the products until all related receivables pertaining to the Buyer, including charges for costs that arise in connection with non-fulfilment of the agreement, have been paid in full.

2. For as long as ownership has not transferred to the Buyer, the Buyer will not sell the products or encumber them in any way other than that required for normal operations within the Buyer's company.

3. The Buyer must store products that have been delivered subject to retention of ownership carefully and identify them as originating from KINCAID. As soon as the Buyer defaults in complying with any of its obligations vis-à-vis KINCAID, the Buyer shall grant KINCAID, at its first request, free access to the place where the products are stored so that KINCAID can freely exercise its rights (inspection or removal of the products, at the discretion of KINCAID).

4. If the Buyer is domiciled or has its registered office in Belgium, the Belgian legal code applies to retention of ownership, in deviation from the stipulation below relating to the applicable law that applies to this agreement.

**Article 6 Force majeure**

1. Force majeure pertaining to KINCAID is to be understood as any circumstance - not attributable to KINCAID and falling outside the risks borne by KINCAID, even if the circumstance could already have been anticipated at the time of entering into the agreement -which makes it permanently or temporarily impossible for KINCAID to comply with its obligations ensuing from the agreement and which includes at all events

traffic delays and stoppages, restrictions relating to import/export or other restrictions imposed by the government, the lack of raw materials, unexpected problems in production or during shipping, or employee illness, business disruption, armed conflict, the threat of armed conflict, terrorism, rioting, acts of war, strikes, transport problems, fire, water damage and other disruptions to how KINCAID runs its business.

2. If KINCAID is temporarily hindered in fulfilling its obligations due to circumstances as described in paragraph 1 above, KINCAID is authorised to suspend execution of the agreement for the period during which the situation of force majeure continues without giving rise to any entitlement on the part of the Buyer to damage compensation.

3. If KINCAID is permanently hindered in fulfilling its obligations due to circumstances as described in paragraph 1 above, each party is authorised to dissolve the agreement insofar as it has not yet been executed at that point in time, if the circumstance in question lasts for longer than 60 days, without giving rise to any entitlement on the part of the Buyer to damage compensation.

**Article 7 Prices**

1. The prices to be invoiced by KINCAID are the prices stated in the price-list that is valid on the date of delivery - this price-list is available from KINCAID on request. All prices indicated by KINCAID (in price indications, quotations, catalogues, discount overviews, etc.) are exclusive of turnover tax and in euros unless expressly stated otherwise.

2. If special packaging has to be used, KINCAID will invoice an additional charge for this as indicated in the agreement.

3. KINCAID reserves the right to adjust prices at any time. Agreements that have already been entered into are not affected by any such adjustments.

**Article 8 Delivery period**

1. KINCAID shall deliver the products at the time determined in the agreement, or immediately after the delivery period determined in the agreement has ended. The agreed delivery periods will never be considered to be a firm deadline unless explicitly agreed otherwise. KINCAID may, at its own discretion, decide to deliver the order in multiple consignments.

2. Over-running the delivery period does not oblige KINCAID to pay any damage compensation and does not entitle the Buyer to default in complying with, or suspend compliance with, the Buyer's obligations ensuing from the agreement.

3. KINCAID will inform the Buyer when the products will be delivered. If the Buyer is late in collecting or taking delivery of the products, KINCAID is authorised, but not obliged, to place the products in storage and invoice a reasonable charge, at what KINCAID considers to be a normal market rate, up to the time when the Buyer finally collects or takes delivery of the products.

4. If the Buyer continues to default in collecting or taking delivery after receiving due warning, KINCAID may, at its own discretion, either decide to deliver at a time determined by KINCAID or declare the agreement, or the part of the agreement that has not yet been executed, to be dissolved, without any requirement for judicial intervention or formal notification of default, without prejudice to the entitlement of KINCAID to damage compensation and payment of costs and interest.

**Article 9 Payments**

1. Payments must be made to KINCAID within a period of 30 days from the date of invoice, without being subjected to any discount, suspension or set-off, by bank transfer into the bank account stated by KINCAID for this purpose on its quotation or invoice, unless otherwise agreed in writing.

2. If the Buyer does not fulfil one or more of its payment obligations in time or to the full extent, the Buyer is obliged, without any requirement for further formal notification of default, to pay interest of 1% per month on the total outstanding amount inclusive of Belgian VAT (BTW), calculated from the due date up to the day on which payment takes place and subject to part of a month being counted as a full month. All costs associated with collection of the receivable, including, among other costs, any extrajudicial debt collection costs, are for the Buyer's account. The extrajudicial debt collection costs are set at 15% of the amount to be collected, subject to a minimum of 250 euros.

3. KINCAID is at all times entitled to demand prepayment of the purchase price or some other form of payment guarantee. If the Buyer fails to comply with the above, KINCAID is entitled to suspend performance of its contractual obligations, without any requirement for formal notification of default, or dissolve the agreement either partially or in full.

4. The payments made by the Buyer are used, in the first place, to settle any costs owing and, in the second place, any interest that has accumulated and finally the oldest invoices that are due and payable, even if the Buyer indicates that payment has been made against a more recent invoice.

5. Payment via Internet and credit cards takes place at the Buyer's sole risk. KINCAID does not accept responsibility for damage suffered by the Buyer in connection with the above, including damage that arises due to providing data digitally in order to facilitate any payment or order.

**Article 10 Complaints**

If, in the opinion of KINCAID, justified complaints arise and KINCAID is notified of these complaints in good time, the Buyer shall send the product back to immediately, at the first request of KINCAID and at the expense of KINCAID. KINCAID will, at its own discretion, pay for damage, rectify the fault or make a further delivery.

**Article 11 Intellectual property**

1. All intellectual and industrial property rights relating to products and their designations, and in relation to everything that KINCAID develops, produces or supplies, including packaging, manuals, advertising material and images, are the sole property of KINCAID. The buyer shall, at the first request of KINCAID, cooperate in transferring copyright applying to (parts or aspects of) products that KINCAID produces at its instruction and which are destined to be put into volume production.

2. The Buyer is not permitted to make use of the trade names, brands, logos and other marks owned by KINCAID, unless the Buyer has received express written permission for this from KINCAID. In the latter case, the Buyer shall comply with the guidelines and instructions that KINCAID issues in relation to use of the brands, logos and other marks owned by KINCAID.

3. The Buyer is not permitted to remove or change any mark, symbol or text relating to copyright, brands, trade names or other rights of intellectual and industrial property that are placed on the products.

**Article 12 Dissolution**

1. Notwithstanding the other provisions of these terms and conditions, KINCAID is entitled to dissolve the agreement extrajudicially without any requirement for judicial intervention or formal notification of default, with immediate effect, fully or partially, at the time when the Buyer, either due to force majeure or some different cause, defaults in complying with one or more provisions of this agreement, is declared to be bankrupt, applies for suspension of payments, liquidates its business fully or partially, or through seizure, appointment of a curator or otherwise loses the authority to dispose of its capital or part of its capital, without prejudice to the other statutory rights of KINCAID. In such cases, KINCAID is entitled to payment of all financial damages including any loss suffered, lost profit and costs that have been incurred.

2. By the act of dissolution, all receivables owed to KINCAID by the Buyer, even to the extent that these ensue from other agreements entered into by the parties, become immediately exigible.

**Article 13 Liability**

1. KINCAID denies all liability vis-à-vis the Buyer for all damages, including all direct and indirect damages, other than liability for damages that are attributable to malicious intent or gross negligence on the part of KINCAID, the employees of KINCAID and/or contractors used by KINCAID.

2. In cases where KINCAID, despite the stipulations of paragraph 1 of this article, is obliged to pay damage compensation, the amount of damage compensation shall, other than in cases of malicious intent or gross negligence on the part of the persons referred to in paragraph 1, never exceed, at the discretion of KINCAID, either the net invoice value of the products or services that have been delivered and which have caused the damage or in association with which the damage has risen, or, if the damage is covered by the business liability insurance held by KINCAID, the amount that is actually paid by the insurer.

3. While notifications made by or on behalf of KINCAID with regard to the quality, composition, treatment, applicability, properties, etc. of the products, via images or some other method (in the broadest sense), are drawn up by KINCAID to the best of its 5 ability, they are solely approximations and estimates and cannot be considered to offer any guarantee unless this has been expressly agreed in writing.

4. The Buyer indemnifies KINCAID, its employees and any contractors it involves in order to execute the agreement against all third-party claims, including claims based on product liability, that are related to execution of the agreement by KINCAID, regardless of the cause, as well as the costs ensuing from such claims for KINCAID.

5. If the Buyer has its registered office outside of the Kingdom of Belgium and arranges transportation of the products, the Buyer undertakes vis-à-vis KINCAID that it will actually export products out of the Kingdom of Belgium. The Buyer indemnifies KINCAID against all claims made by the fiscal authorities and/or third parties if the Buyer acts contrary to the above.

6. Exclusion from liability on the part of KINCAID also applies if KINCAID has made use of its right of suspension or right to dissolve the agreement, even if, at a later date, it is irrevocably determined that this took place mistakenly.

7. All claims of the Buyer vis-à-vis KINCAID lapse by force of law one year after the day following the date on which they have become exigible, or, depending on which date falls first, after the date of delivery of the product in question.

**Article 14 Cancellation**

The Buyer may not cancel an order that has been placed. If the Buyer nonetheless cancels an order that has been placed either fully or partially, the Buyer is obliged to pay to KINCAID all reasonable costs that have been incurred for the purpose of executing this order, the work performed by KINCAID and the lost profit suffered by KINCAID, plus Belgian VAT (BTW).

**Article 15 Personal data**

1. KINCAID treats all personal data it receives in accordance with the Belgian Personal Data Protection Act.

2. All information provided by the purchaser is only processed by KINCAID if it is required in order to create and comply with the agreement with the Buyer, or any statutory obligation to which KINCAID is subject.

**Article 16 Applicable law**

All offers made by and agreements entered into with KINCAID are solely governed by Belgian law, including the Vienna Sales Convention.

**Article 17 Disputes**

All disputes ensuing from or caused by offers made by KINCAID and/or orders placed with and/or agreements entered into with KINCAID shall in the first instance be exclusively submitted to the court of Antwerp for settlement. In deviation from the above, KINCAID is authorised to submit a dispute to the competent court in the town where the Buyer has its registered office.

**Article 18 Invalid Provisions**

1. The nullity or voidability of any provision in these terms and conditions or the agreement to which these terms and conditions apply does not affect the validity of the other provisions.

2. The Buyer and KINCAID are obliged to replace provisions that are null or have been voided by provisions that are valid and that reflect the purpose and essence of the original provisions to the greatest possible extent.

**Article 19 Return of transport packing (pallets, tofu and soy crates, etc.)**

The Buyer must return transport packing immediately and free of charge to KINCAID. In the case of an ongoing business relationship, this takes place at the time of the next delivery. An ongoing business relationship is to be understood as a relationship where the Buyer places an order with KINCAID at least once every 4 weeks. The transport packing will be invoiced if it has not been returned after this period has elapsed.

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