

## **General Terms and Conditions of Delivery (B2B) of Kingfish Zeeland B.V.**

These are the general terms and conditions of delivery for Business to Business (B2B) Buyers (the “**Conditions**”) of Kingfish Zeeland B.V. (“**Kingfish**”). Kingfish is a sustainable fish farm based in the Dutch province of Zeeland. Sustainability and respect for our fish and the environment are our key values. Our Dutch Yellowtail is of high quality and raised without polluting the environment. For more information, please see our website: [www.kingfish-zeeland.com](http://www.kingfish-zeeland.com) (the “**Website**”).

Excluding any conditions or stipulations of third parties, these Conditions apply to all offers, agreements and other dealings between Kingfish and its clients (the “**Buyer**”). Kingfish offers its Products on the condition that the Buyer accepts these Conditions. Kingfish may amend these Conditions. The latest version of the Conditions always applies between Kingfish and the Buyer.

### **1 DEFINITIONS**

- 1.1 **Agreement:** the agreement established between Kingfish and the Buyer at the time that Kingfish accepts an Order or when Kingfish executes the Order, including any amendment or supplement thereto.
- 1.2 **Buyer:** the legal entity who purchases the Products from Kingfish and enters into an Agreement with Kingfish or negotiates with Kingfish to conclude an Agreement.
- 1.3 **Cut Off Time:** The latest time upon which an Order can be accepted by Kingfish, at its own discretion, always as communicated to Buyer.
- 1.4 **Kingfish:** Kingfish Zeeland B.V., a company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), incorporated under Dutch law, having its registered office in (4485 PM) Kats at Oost-Zeedijk 13, registered with the Dutch Chamber of Commerce under registration number: 81226136. In these Conditions, Kingfish is also referred to as “**we**”, “**us**” and “**our**”.
- 1.5 **Order:** any order that the Buyer grants to Kingfish to deliver Products, in writing, such as but not limited to by e-mail.
- 1.6 **Products:** the seafood products farm raised by Kingfish.

### **2 OFFERS AND QUOTATIONS**

- 2.1 All offers and quotations of Kingfish are without obligation, unless agreed to otherwise in writing. No rights can be derived from an offer or quotation for a future Order or Agreement.
- 2.2 All images, specifications and details in offers and quotations are indicative and cannot be a reason for compensation of damages or termination of the Agreement.

### **3 ORDER**

3.1 The Buyer can place an Order per e-mail via [order@kingfish-zeeland.com](mailto:order@kingfish-zeeland.com) exclusively. Buyer has to specify within the Order i) which Products and ii) the date and time the Buyer wants to receive the Products. After placing the Order, the Buyer shall receive an Order confirmation, an e-mail with the packing list, and an email with the invoice.

3.2 To place an Order and for us to fulfil the shipment of the Order, (the contact person of) the Buyer may create an account and shall provide us with its company information. This data must be entered truthfully, and it must be up to date.

### **4 ESTABLISHMENT AND EXECUTION OF THE AGREEMENT**

4.1 The Agreement between Kingfish, and the Buyer is established either at the time that Kingfish accepts an Order from the Buyer in writing (including, but not limited, by e-mail), or when Kingfish executes the Order. Kingfish has the right to refuse Orders without giving any reason.

4.2 The Buyer cannot unilaterally amend and/or cancel an Order after the Agreement is established.

4.3 If, before Cut Off Time, Buyer wishes to add Products to an Order that was already placed but not yet shipped, Kingfish shall add such Products to the Order and shall deliver such Products in addition to the Order. Kingfish will send a new Order confirmation to the Buyer, replacing previous Order confirmation.

4.4 Kingfish offers both fresh and frozen Products. Delivery takes place while stocks last and depends on the availability. Kingfish executes the Order to the best of its knowledge and ability. If Kingfish cannot perform an Order due to limited stocks or availability, a discontinued Product or any other valid reason, Kingfish may reject or cancel the Order and shall inform the Buyer as soon as possible.

4.5 Kingfish is entitled to engage third parties for the performance of an Order or Agreement.

### **5 PRICES**

5.1 The Products will be delivered at the prices and under the conditions specified in the Order, unless agreed otherwise in writing.

5.2 Kingfish may increase the prices at any time if unforeseen cost-increasing circumstances occur after establishment of the Agreement.

5.3 Prices are in Euros, GBP, or USD, as indicated on the invoice, exclusive of VAT and other government levies, unless agreed otherwise.

## 6 DELIVERY AND PACKAGING

- 6.1 Kingfish will deliver the ordered Products to the Buyer at the address agreed in writing with the Buyer in the Order in accordance with the DDP Incoterm at the point of delivery set out in the Order, unless agreed otherwise in writing. The Buyer can no longer change the address if Kingfish has already sent the ordered Products. Kingfish cannot ship any Orders to the Wadden islands (*Waddeneilanden*) in the Netherlands.
- 6.2 The Buyer has no right to refuse taking delivery of the Products sold, unless Kingfish has agreed to this in writing. The Buyer guarantees the easy accessibility of the location at which the delivery must actually take place.
- 6.3 The Buyer is liable for the risk associated with the unloading and storage of the Products.
- 6.4 Kingfish is not liable for any damage resulting from failure to deliver, or to deliver on time or in full.
- 6.5 Kingfish shall be entitled to suspend the delivery of the Products if the Buyer has not performed its payment obligations under previous agreements, until such payments have been effected.
- 6.6 Unless agreed to otherwise, packaging costs are included in the price. Acceptance by the carrier without an endorsement on the consignment note or receipt, serves as proof that the packaging was in a good condition.

Kingfish is not liable for (the quality of the Products in the event of) a delivery that takes place beyond the expected delivery date if this delay is attributable to the Buyer.

## 7 BUYER OBLIGATIONS RELATED TO THE PRODUCTS UPON DELIVERY

- 7.1 The Buyer is obliged to check the condition, the quantity and the properties of the Products upon receipt. If the Order does not fulfil the requirements set by the Agreement and/or the Products are not in conformity (*non-conformiteit*), then the Buyer must inform Kingfish immediately.
- 7.2 The Buyer (through its representatives, personnel or the person carrying out the transportation) must check the status of the Products upon receipt. The Buyer can no longer claim for any defects of the delivered Products if it has not protested to Kingfish within twenty four (24) hours upon delivery of the Products, by phone via +31 (0) 113 74 54 61 and per e-mail via [order@kingfish-zeeland.com](mailto:order@kingfish-zeeland.com), including a description of the complaint and stating the Order number and type of issue (e.g. quality defect, weight discrepancy) and, if possible, a photo of the packaging label and the ordered Products concerned.
- 7.3 Buyer shall ensure that, after receipt of the Products, the Products are correctly stored and prepared in accordance with applicable instructions and regulations, not introducing any health related risks,
- 7.4 Buyer will conform with relevant Product specifications and instructions relating to (without limitation) storage, use and shelf life of the Product, as available to Buyer. In the event of

non-conformity (*non-conformiteit*), Buyer will indemnify Kingfish for any damages, including reputational damages.

## **8 NO RETURN POLICY & EXCLUSION FROM THE RIGHT OF WITHDRAWAL**

8.1 Our Products cannot be returned, and the right of withdrawal does not apply, as our Products perish quickly, have a limited shelf life, and are sealed Products that for reasons of health protection or hygiene are not suitable to be returned.

## **9 INTELLECTUAL PROPERTY RIGHTS**

9.1 All intellectual property rights (including such as: copyrights, word trademarks, figurative trademarks, tradenames) vesting in our Products, packaging, Website, webshop, our texts, photographs, images and other (promotional) materials are exclusively owned by Kingfish (or are managed by us with permission of the entitled party) and remain with Kingfish without restrictions. You are prohibited to infringe these intellectual property rights in any way or form.

## **10 CONFIDENTIALITY**

10.1 All confidential information which Kingfish and the Buyer exchange within the context of the Agreement and any negotiations will remain undisclosed in respect of third parties. Information is considered confidential if this results from the nature of the information or the information is explicitly regarded as confidential by Kingfish and/or the Buyer.

10.2 Kingfish and the Buyer will not use or disclose the confidential information for any purpose other than is necessary in connection with the execution of the Agreement.

## **11 LIABILITY**

11.1 Except insofar as damage is the result of wilful misconduct or gross negligence on the part of Kingfish, Kingfish, including (without limitation) its directors, employees, partners, agents, suppliers, and affiliates, shall not be liable to pay compensation for direct damages of any nature whatsoever suffered by anyone as a result of or in connection with the Products delivered by Kingfish.

11.2 Kingfish's liability for indirect damages, including but not limited to consequential damages, lost profits, lost savings, reduced goodwill, loss due to business interruption, losses as a result of claims from the Buyer's customers and damages in connection with engagement of third parties by the Buyer, is excluded.

11.3 Kingfish is not liable for any loss arising in the execution of the Agreement due to Kingfish acting on incorrect or incomplete information provided by the Buyer.

- 11.4 Kingfish is not liable for any damage or loss, in any form whatsoever, caused to or by the Products as a result of errors, defects or non-conformity in relation to the Products, as a result of improper packaging and/or shipping or as a result of non-compliance with the Order and/or Conditions, such as non-delivery or late delivery of the Products, due to unforeseen circumstances and/or force majeure. If there are defects to the Products, Kingfish will discuss with Buyer to find a solution.
- 11.5 Kingfish is not liable for any damage and loss arising from or as a result of acts and omissions by the Buyer, its personnel or third parties involved by the Buyer and/or Kingfish in the performance of the Agreement.
- 11.6 The Buyer shall, at its own expense, take out adequate insurance to cover all contractual and extra-contractual liability, whereby recourse against Kingfish is excluded.
- 11.7 If, for any reason, Kingfish is liable, then liability is limited to the net amount of the purchase price of the Products delivered to which the loss relates. Kingfish's liability, in any case, is limited to losses for which it is insured and the amount that Kingfish's insurer pays out in that particular case.

## 12 INDEMNITY

- 12.1 Insofar as is permitted by law, the Buyer indemnifies Kingfish against all liabilities, damages, losses and costs (including settlement costs and reasonable attorneys' fees) arising from claims of third parties who suffer damages caused by execution of the Agreement, unless the cause is attributable to Kingfish.
- 12.2 If third parties challenge Kingfish in situations as described in the first paragraph, the Buyer shall support Kingfish both outside and in legal proceedings and do all that can be expected of it.

## 13 COOPERATION IN PRODUCT RECALL

- 13.1 A "**Product Recall**" is understood to be the recall of unsafe or defective Products from the marketplace.
- 13.2 In the case of a Product Recall, the Buyer grants its cooperation to Kingfish, inter alia in the implementation of corrective measures, to limit the loss as a result of the Product Recall. Insofar as is possible, the Buyer will immediately make an effort to recall the Products from the market.
- 13.3 The Buyer will inform Kingfish about every defective and/or unsafe Product that may be eligible for a Product Recall, as soon as such a Product is discovered or as soon as the Buyer becomes aware of it.
- 13.4 The Buyer will ensure that the Products only circulate further in the market in a manner in which the Products are and remain traceable for the purpose of e.g. a Product Recall.

13.5 The provisions in these Conditions regarding liability equally apply in the case of a Product Recall.

## 14 PAYMENT

14.1 Unless expressly agreed otherwise in writing, the Buyer must pay within thirty (30) days after the invoice date. If the Buyer, fails to pay the invoice within the prescribed term, the Buyer is immediately in default without notice of default being required.

14.2 If the Buyer is in default of any payment obligation, Kingfish has the right to suspend execution of any current Agreement until payment has been made, even if a fixed delivery time has been agreed upon, unless the Buyer has provided security for payment at the request of and to the satisfaction of Kingfish.

14.3 The Buyer waives its right to invoke suspension (*opschorting*) or settlement (*verrekening*) in respect of Kingfish.

14.4 In the event of a failure to pay any invoice within the applicable payment term, all outstanding invoices, including those in respect of which the payment term has not yet expired, shall be immediately due and payable.

14.5 If the Buyer does not pay the invoice within the prescribed period it is immediately in default, without notice of default being required.

14.6 Payments made by the Buyer shall always serve to settle costs and interest owed by the Buyer and subsequently those invoices that have been outstanding for the longest time.

## 15 DURATION AND TERMINATION OF THE AGREEMENT

15.1 Kingfish and the Buyer conclude an Order for the period indicated in the Order, unless agreed otherwise in writing.

15.2 If an Agreement is explicitly limited regarding its contents or duration, the Agreement will automatically terminate on fulfilment of the contents or duration.

15.3 Kingfish may terminate the Agreement immediately, without being obliged to pay compensation of damages or indemnify, in the following cases:

15.3.1 the Buyer is bankrupt or in suspension of payment;

15.3.2 the Buyer is being dissolved or liquidated;

15.3.3 the Buyer is placed under guardianship or dies;

15.3.4 if, due to other circumstances, the Buyer no longer has the right to freely manage its assets.

15.4 Kingfish may cancel or terminate the Agreement immediately, without notice of default being required, if the Buyer does not comply, does not fully comply, or does not comply in

good time with its obligations under the Agreement. On non (proper) compliance of its obligations, the Buyer must pay compensation of damages to or indemnify Kingfish.

- 15.5 In the event of termination of the Agreement based on paragraphs 3 and 4 of this article, the full purchase price for Products that have already been delivered is immediately due and payable.

## 16 **FORCE MAJEURE**

- 16.1 If it is temporarily not possible for Kingfish to perform an obligation under the Agreement due to circumstances (beyond its sphere of influence or of which it was not aware), Kingfish shall be entitled to terminate the Agreement or suspend the performance of its obligations, without being obliged to pay any compensation whatsoever. The Buyer shall in any case be obliged to perform its obligations towards the user for that part of the contract that has been performed by the user.
- 16.2 If, prior to force majeure entering into force, Kingfish has complied with the obligations under the Agreement and this part independently has value, then Kingfish may submit an invoice for such fulfilled part.

## 17 **PRIVACY**

- 17.1 Kingfish complies with the EU's General Data Protection Regulation and other relevant legislation and regulations concerning the protection of personal data. Kingfish's Privacy Notice describes which personal data Kingfish processes.

## 18 **MISCELLANEOUS**

- 18.1 If Kingfish does not enforce parts of these Conditions and/or the Agreement, this cannot be regarded as a waiver of the right to enforce this at a later stage against the Buyer.
- 18.2 The Buyer cannot transfer its rights and obligations under these Conditions and/or the Agreement to third parties. Kingfish can assign and/or transfer all rights and obligations under these Conditions and/or the Agreement to a third party, without consent from the Buyer being required.
- 18.3 If any provision of these Conditions and/or the Agreement is deemed unlawful, void, voidable or otherwise unenforceable, this does not affect the validity and enforceability of the remaining provisions of these Conditions and/or the Agreement. The unlawful, void, voidable or otherwise unenforceable part shall be deemed replaced by a valid and enforceable provision that achieves the aim and scope of the replaced provision closely.

## 19 **APPLICABLE LAW AND DISPUTES**

- 19.1 These Conditions and all Agreements between the Buyer and Kingfish are exclusively governed by Dutch law. The provisions of international treaties, including the Vienna Sales Convention (CISG) (*het Weens Koopverdrag*), shall be excluded insofar as such treaties do not contain mandatory rules of law.
- 19.2 Unless contrary to mandatory law, all disputes and claims that may arise in connection with these Conditions and/or the Agreement shall be adjudicated exclusively by the district court in Amsterdam, the Netherlands.