

# Service Terms and Conditions

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## 1. Welcome to Koongo as a Service!

The [my.koongo.com](https://my.koongo.com) and Koongo as a Service online application (hereafter referred to as the "KaaS") are owned and operated by NoStress Commerce s.r.o., a Czech registered company at the Czech Chamber of Commerce with number 28977475 located at Vyšehradská 1349/2, Praha 2, Czech Republic (hereafter referred to as "Koongo", "we" or "us"), in accordance with these Service Terms and Conditions ("KaaS Terms"). These KaaS Terms govern your use of the KaaS. By accessing or using the KaaS, you accept these KaaS Terms in full and without reservation.

We recommend that you read these KaaS Terms, furthermore, Koongo may change these KaaS Terms at any time. If the KaaS Terms are updated, we will send a notification and ask you to accept them the first time you use the KaaS. You agree that these terms and conditions and possible changes are legally bounding. By using or accessing any part of the KaaS, you agree that you have read, understand, and agree to be bound by all of these KaaS Terms. If you are using the KaaS on behalf of a company, you represent that you have the authority to bind that company to the terms of the KaaS.

The KaaS Terms are addition terms to the [General Terms and Conditions of Use](#) accepted by the customer. The [Privacy Policy](#) is parallel to the KaaS Terms.

Koongo reserves the right to modify or terminate the KaaS for any reason, without notice at any time. We reserve the right to refuse KaaS to anyone for any reason at any time.

The KaaS is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Unauthorized reproduction or distribution of the software, or any portion of it, may result in severe civil and criminal penalties and will be prosecuted to the maximum extent possible under the law.

**IF YOU DO NOT AGREE TO THESE KAAS TERMS AND/OR THE PRIVACY POLICY OR OTHER POLICIES, GUIDELINES OR INSTRUCTIONS POSTED ON THE KAAS, DO NOT USE THE KAAS.**

**Updated: May 28, 2018**

## 2. User Content

1. By using the KaaS, you grant Koongo a worldwide, irrevocable, non-exclusive, royalty free license to use all material (including without limitation text, images and other visual material, hereafter referred to as the "User Content") you upload or post to the KaaS. The content as given will not be shared with Third Parties except for the Parties as chosen by you. You hereby acknowledge that all content as posted to the KaaS is already publicly available.

2. You may not upload or post to the KaaS or otherwise use in any way in connection with your use of the KaaS User Content which includes any text, images or other material protected by copyright, trademark, or any other proprietary right without the express permission of the owner of such copyright, trademark or other proprietary right. The burden of determining that any material is not protected by any such right is on you. You shall be solely liable for any damage resulting from any infringement of copyrights, trademarks, proprietary rights, or any other harm resulting from your violation of this prohibition. All trademarks and/or service marks displayed on the KaaS are the exclusive property of their respective owners, and may not be used without the owner's permission.

3. Koongo does not claim ownership of the User Content. Although Koongo reserves the right to edit or remove any User Content you upload or post to the KaaS, we do not control or verify the User Content that you upload or post to the KaaS, nor do we undertake to monitor the User Content uploaded or posted to the KaaS.

4. You control who may access your User Content. When you give others access to your User Content on the KaaS, you grant them free, non-exclusive permission to use, reproduce, distribute, display, transmit and communicate to the public such User Content solely in connection with the KaaS. If the User Content includes a photograph or other digital image, you also expressly waive any and all rights of privacy and publicity with respect to the image. If you do not want others to have those rights, do not use the KaaS to share your User Content.

5. Koongo may need, and you hereby grant to Koongo the right, to use, modify, adapt, reproduce, distribute, publish and display any User Content posted on the KaaS. These rights apply solely to the extent necessary for the operation of the KaaS.

6. User Content that violates these KaaS Terms or your local laws is not permitted on the KaaS. Koongo reserves the right to review content for the purpose of enforcing these KaaS Terms. If you share User Content on the KaaS in a way that infringes others' copyrights, other intellectual property or proprietary rights, or publicity or privacy rights, you are breaching these KaaS Terms. You represent and warrant that you have all the rights necessary for you to grant the rights in this section and that the use of the User Content does not violate any law. We may remove your content from the KaaS at any time and for any reason, including if:

- (i) you breach these KaaS Terms;
- (ii) the User Content exceeds limits on storage or file size; or
- (iii) we cancel or suspend your access to the KaaS.

Koongo performs monitoring activities to ensure suitability of content as set out in these KaaS Terms, and, whether as a result of such monitoring or upon receiving notification of unsuitable content from third parties, Koongo reserves the right to remove any or all User Content from the KaaS. You agree to immediately take down any Content that violates the KaaS Terms, including pursuant to a take down request from Koongo. In the event that you elect not to comply with a request from Koongo to takedown certain User Content, Koongo reserves the right to directly take down such Content or to disable access to the KaaS.

7. You are responsible for backing up the User Content that you store on the KaaS. We may permanently delete your User Content from the KaaS if your access to the KaaS is suspended or canceled. We do not have any obligation to return User Content to you after your access to the KaaS has been suspended or canceled. If User Content is stored with an expiration date, we may also delete the User Content as of that date. User Content that is deleted may be irretrievable.

8. You agree that Koongo is not responsible for any Product or Professional KaaS that is shown within the KaaS and originates from a source other than Koongo. All matters concerning the Products or Professional KaaS offered by Third Parties, including, but not limited to, purchase terms, payment terms, warranties, guarantees, maintenance, and delivery, are solely between you and the Third Parties. We make no warranties or representations whatsoever with regard to any Products or Professional KaaS by Third Parties. You will not consider us (and we will not be construed as) a party to such transactions, whether or not we may have received some form of revenue or other remuneration in connection with such transactions, and we will not be liable for any costs or damages arising out of, either directly or indirectly, you or any other person involved or related to the transactions.

### 3. Payment

All functionalities and features of the KaaS are paid functionalities (hereafter collectively referred to as "Functionalities"). You agree to pay the charge associated with the use of Functionalities within 30 days. We may suspend or cancel your access to the KaaS if we do not receive such charge on time. Suspension or cancellation of your access to the KaaS for nonpayment could result in a loss of access to and use of your Account, as well as loss of your User Content stored on the KaaS.

You must pay for all reasonable costs we incur to collect any past due amounts. These include reasonable attorneys' fees and other legal fees and costs, in event of default.

If Koongo owes you a payment, then you agree to timely and accurately provide us with any information we need to get that payment to you. You are responsible for any taxes and charges you may incur as a result of this payment to you. You must also comply with any other conditions we place on your right to any payment. If you receive a payment in error, we may reverse or require the return of the payment. You agree to cooperate with us in our efforts to do this. We may also reduce the payment to you without notice to adjust for any previous overpayment.

#### 3.1. Modification of the KaaS and prices

Koongo may change, suspend, or discontinue all or any part of the KaaS at any time, with or without reason. You acknowledge that the operation of the KaaS may from time to time encounter technical or other problems and may not necessarily continue uninterrupted or without technical or other errors and we shall not be responsible to you or others for any such interruptions, errors or problems or an outright discontinuance of the KaaS.

Koongo may change the price of the KaaS at any time and will notify you by email at least 30 days before the price change. If you do not agree to the price change, you must cancel and stop using the KaaS prior the price change takes effect. If there is a fixed term and price for your KaaS offer, that price will remain in force for the term.

#### 3.2. Subscription Term

The Subscription Term is either a period of one year for an annual subscription or a period of one month for a monthly subscription. During the Subscription Term, the Registered User receives access and use of the KaaS after payment of the Subscription Fee.

#### 3.3. Subscription Fee

The Subscription Fee is based upon the Subscription Plan that the Registered User has chosen. Fees for annual subscriptions are to be paid per year. Fees for monthly subscriptions are to be paid per month. Subscription fees are nonrefundable.

#### 3.4. Subscription plan

The KaaS is made available through several subscription plans. The Koongo retains the right to change subscription plans, at any time. You may not downgrade their subscription plan to a lower cost version unless their subscription plan expires. In case a subscription plan will change, Koongo will notify you at least thirty (30) days in advance. You will then get the option to accept the new subscription plan, or you have the right not to accept the new subscription plan if this is harmful or detrimental to you.

Koongo will provide you with an invoice via email. We will later update the KaaS in such a way that you are able to view your invoices in your MyKoongo settings, Subscription. If we make an error on your bill, you must tell us within 30 days after the error first appears on your bill. We will then promptly investigate the charge. If you do not tell us within that time, you release us from all liability and claims of loss resulting from the error and we will not be required to correct the error or provide a refund. If Koongo has identified a billing error, we will correct that error within 30 days.

Subscription to our KaaS is automatically renewed each billing period. The charge for each billing period is based on the Functionalities of the KaaS you use in combination with other factors including, but not limited to, the number of imported products, number of shops and number of channels. Calculation of the height of the charge is done automatically and may vary each billing period. More information on pricing can be found at <https://www.koongo.com/pricing>. To stop your subscription, you must cancel the subscription before the next billing date to avoid being billed for the renewal. If you cancel your recurring payment option, your account will remain active until its next renewal date. In case of such cancellation, you will not be given any refund. If you delete your account before the end of the period for which you paid, your cancellation will take effect immediately. In case of deletion of your account, you will not be given any refund.

#### 3.5. Payment methods

To pay the charges for Functionalities delivered through the KaaS, you will be asked to provide a payment method at the time you sign up for such Functionalities. You can access and change your billing account information and payment method by contacting Koongo. You agree to keep your billing account information current at all times.

Subscription plans are billed monthly and are payable by credit or debit card, PayPal or bank transfer. You must provide and validate a payment method at the end of the trial period if you decide to upgrade your trial plan to a regular subscription plan. By accepting a billing agreement using credit or debit card, bank transfer or PayPal you allow Koongo to initiate payment collection without further consent from you.

Koongo supported payments methods are:

- **Ingenico** - Payment Services - performs credit card processing  
Financial Solutions NV/SA Da Vincilaan 3  
B-1930 Zaventem, Belgium
- **PAYONE GmbH** - performs credit card processing  
Lyoner Strasse 9 · 60528, Frankfurt/Main, Germany | HRB 116860 | Managing  
Directors: Niklaus Santschi, Frank Hartmann, Björn  
Hoffmeyer, Roland Schaar | Chairman of the board: Ottmar Bloching
- **PayPal** - transaction is processed directly through PayPal website.
- **Stripe** - transaction is processed directly through Stripe website.

Koongo accepts payments through **Visa** and **MasterCard**. If you choose to pay with a credit card, the money is instantly withdrawn from your account upon confirmation of the payment.

The VISA/MasterCard payments are processed under the conditions below:

- standard debit time of credit card
- the payment can be refunded in special cases once approved by Koongo
- all data transfers and exchanges are protected by SSL encryption
- special aspects of 3D-Secure/Verified by VISA - 3D Secure provides an additional layer of security for eCommerce transactions prior to authorization. It enables the exchange of data between the merchant, card issuer and, when necessary, the consumer, to validate that the transaction is being initiated by the rightful owner of the account.

All subscription fees are refundable within 7 days from the payment.

By providing Koongo with a payment method, you

- (i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true and accurate;
- (ii) authorize Koongo to charge you for the Functionalities using your payment method and
- (iii) authorize Koongo to charge you for the Functionalities. We will bill you in advance of each billing period and on a recurring basis.

## 4. Trial period

A 30-day free trial KaaS period is available for all support Koongo shopping platform except the CCV Shop platform. Due to the CCV Shop technical restrictions, the KaaS trial period is limited to the month of the CCV Shop app installation - e.g. if the app is installed anytime in April, the free trial is available by the end of the April. The Trial license key is valid from the date of KaaS installation. After the trial period expiration the KaaS is completely disabled.

## 5. Termination

Koongo may at any time and without notice terminate your Account in its sole discretion, including, without limitation, for breach by you of any of your representations, warranties or obligations under these KaaS Terms. Koongo may also suspend or terminate your access to the KaaS if you have a free Account and have not accessed it for ninety (90) or more consecutive days, in which case Koongo will provide notice of any such suspension or termination at least seven (7) working days prior to the Account being terminated.

You may terminate your access to the KaaS at any time, with or without cause. Information and direction on how to terminate your access to the KaaS will be provided on request by Koongo. Upon any termination of your access to the KaaS: (i) your Account may be canceled and closed or suspended and your username and password shall be deactivated; (ii) all User Content uploaded by you shall be removed from the KaaS;

Cancellation of your Account shall not relieve you of any payment obligations that may have arisen prior to such termination, or any other obligations pursuant to any other agreement that has not been specifically terminated.

## 6. Data Processing Agreement

If the customer transfers the personal data of the third-parties (e.g. orders of the customer's clients) the Data Processing Agreement below is applied.

1. Based on the Article 28, Regulation (EU) 2016/679 of the European Parliament, (hereafter referred to as the "GDPR"), the Koongo is in relation to the customer's client personal data referred as "Data Processor". The customer is the "Client Data Administrator".

2. These terms and conditions govern the mutual rights and obligations in the processing of personal data to which the Data Processor has gained access in the framework of the fulfillment of the license agreement concluded in the form of approval of the [General Terms and Conditions](#) concluded with the Client Data Administrator on the day of setting up the user account.

3. The Data Processor will for the Client Data Administrator process personal data to the extent and for the purposes set out in Articles 4 - 7 of these terms and conditions. Processing resources will be automated. The Data Processor will collect, store, store, block, and disassemble personal data in the processing. The Data Processor is not authorized to process personal data in violation or beyond the limits set by these terms.

4. The Data Processor undertakes for the client to process personal data in the following extent:

- common personal data,

which the Client Data Administrator obtained in connection with his own business.

5. The Data Processor undertakes for the Client Data Administrator to process personal data in order to provide the Koongo service in the form of a service agreement.

6. Personal data may only be processed at the workplace of the Data Processor or his subcontractors under article 8 of these conditions, within the territory of the European Union.

7. The Data Processor will process for the Client Data Administrator the personal data of the clients, all for the time necessary to exercise the rights and obligations arising from the contractual relationship between the Data Processor and the Client Data Administrator and to claim the said contractual relations (for 10 years from the termination of the contractual relationship).

8. The Client Data Administrator grants permission to engage a subcontractor further processors under Article 28 (2) of the GDPR, this could be the hosting provider of Koongo service and person contracted for the Koongo service maintenance and development purposes. In addition, the Client Data Administrator grants the Data Processor a general authorization to engage in the processing of another personal data processor, but the Data Processor must inform the user in writing of any intended changes to the acceptance or replacement of the other processors and give the user the opportunity to object to these changes. The Data Processor must impose on its subcontractors as personal data processors the same personal data protection obligations as set out in these terms.

9. The Data Processor undertakes that the processing of personal data will be ensured in particular as follows:

- Personal information is processed in accordance with the law and on the basis of the Client Data Administrator's instructions, to perform all the activities required to provide the Koongo service in the form of a license agreement.
- The Data Processor undertakes to provide technically and organizationally the protection of the processed personal data in such a way that unauthorized or accidental access to the data, its modification, destruction or loss, unauthorized transmissions, any other unauthorized processing as well as other misuse may not occur throughout the data processing process.
- The technical and organizational measures adopted correspond to the degree of risk. Data Processor ensures the continued confidentiality, integrity, availability, and resilience of processing systems and services, and timely restores the availability of and access to personal data in the event of physical or technical incidents.
- The Data Processor hereby declares that the personal data protection is subject to the Data Processor's internal security regulations.
- Personal data will only be accessible to authorized Data Processor and subcontractors pursuant to article 8 of these conditions, which will provide the Data Processor with the conditions and scope of data processing and any such person will access personal data under his/her unique identifier.
- Authorized Individuals of the Data Processor who process personal data under these terms and conditions are required to maintain confidentiality about personal data and security measures whose disclosure would jeopardize their security. Data Processor shall ensure their demonstrable commitment to this obligation. The Data Processor will ensure that this obligation for both the Data Processor and the authorized persons will continue after the termination of the employment or other relationship with the Data Processor.

- Data Processor will assist the Client Data Administrator, through appropriate technical and organizational measures, if possible, to meet the Client Data Administrator's obligation to respond to the data subject's requests for the data set out in the GDPR; as well as ensuring compliance with the obligations under GDPR Articles 32 to 36, taking into account the nature of the processing and the information available to the Data Processor.
- Upon termination of the provision of the performance associated with the processing under article 7 of these conditions, the Data Processor is obliged to delete all personal data or to return it to the Client Data Administrator if he is not obliged to store personal data under a special law.
- The Data Processor will provide the Client Data Administrator with all the information necessary to demonstrate that the obligations under this Agreement and the GDPR have been met, will allow audits, including inspections, performed by the Client Data Administrator or another auditor the user has authorized.

10. The Client Data Administrator undertakes to promptly report any facts known to him that could adversely affect the proper and timely fulfillment of the obligations arising from these conditions and to provide the Data Processor with the necessary cooperation to meet these conditions.

## 7. Questions

If you have any questions about this KaaS Terms, please contact us. Koongo will be happy to answer any questions or concerns you might have.

Please feel free to contact us through our website or write to us at:

**NoStress Commence s.r.o**

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