Kinka

Terms of Use

last updated February 9, 2024

Kinka(BVI) ,Ltd.

These Terms of Use do not constitute a proposal, recommendation, or solicitation of an investment, security, share, interest, or other financial product. These Terms of Use have not been submitted to or registered with any regulatory authority in any jurisdiction and have not been reviewed or confirmed by any regulatory authority.

These Terms of Use must be agreed to in order to purchase, acquire, use, receive, or hold Kinka (as defined in 1.1). If you do not agree to these Terms of Use, please do not acquire Kinka from Company (as defined in 1.1) or any entity authorized to transfer or sell Kinka.

By accessing the information contained on The Site (as defined in 1.1) and using this Service (as defined in 1.1), or by purchasing, acquiring, using, receiving, or holding Kinka, customers are deemed to have read and agreed to be bound by these Terms of Use. If a customer does not agree to all of the provisions set out in these Terms of Use, Customer shall not be deemed an authorized holder of Kinka or user of the Platform (as defined in 1.1), and shall not be able to purchase, acquire, use, receive, or hold Kinka, or use The Site or the Platform.

These Terms of Use may be revised, changed, or updated at any time without prior notice to customers. If Customer does not terminate this Service or continues using this Service following the date of revision, change, or update, Customer shall be deemed to have accepted the revised, changed, or updated Terms of Use. If you have any questions regarding your use of this Service, please contact support@kinka-gold.com.

These Terms of Use, and other documents referenced within these Terms of Use, and White Papers (as defined in 1.1) etc. and other documents created, signed, or issued by Company are not intended to constitute a prospectus or product disclosure, and shall not be a solicitation to sell or purchase any ownership right, governance right, stake, share, security, equivalent right, right to receive any dividend, share in revenue, any form of voting right or participation right, or any other financial product in relation to Company or the Platform.

No regulatory authority has authorized or approved the issue, acquisition, or use of Kinka, and Company has not taken any action with respect to obtaining such authorization or approval under the laws and regulations of any jurisdiction. This Service is currently not regulated by the BVI Financial Services Commission Authority. Therefore, customers shall not be protected by the BVI Financial Services Commission Authority.

1 **DEFINITIONS**

1.1. Unless otherwise specified, the terms below shall have the following meanings in these Terms of Use.

"Affiliate(s)" refers to, in relation to either Party, a direct or indirect subsidiary of the Party, a holding company of the Party, and any other subsidiary of that holding company.

“AML/KYC checks” shall have the meaning set out in clause 14.1.

“Applicable Law(s)” means all laws, statutes, regulations, codes, ordinances, guidelines, notices, orders, permits, approvals of the British Virgin Islands.

“Company” means Kinka (BVI) Ltd, a company limited by shares incorporated in the British Virgin Islands.

“GM LLC” refers to the special-purpose Japanese company Gold Management LLC.

“Kinka” refers to the gold bullion-backed crypto currency issued by the company. An overview of Kinka is given in the White Paper.

“Ethereum Wallet” refers to Ethereum wallets that support the ERC20 token standard.

“Token holder(s)” and “Customer(s)” refer to individuals or corporations (whether legal entities or not) that purchase, acquire, use, receive, or hold, or attempt to do so, in accordance with these Terms of Use.

“Platform” means the system(s), applications, smart contracts and interfaces developed, owned, operated and deployed by for the Company for providing the Services.

“Privacy Policy” refers to the privacy policy posted on the following site: https://kinka-gold.com/wp-content/uploads/2022/11/Kinka_privacy-policy_ver1.pdf.

“The Site” refers to the website with the home page at https://kinka-gold.com/.

“White Paper” refers to the document on The Site that gives an overview of Kinka (https://kinka-gold.com/wp-content/uploads/2022/11/Kinka_white-paper_ver1.pdf).

1.2. The headings and sub-headings in these Terms of Use are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision or provisions to which they refer.

1.3. Unless otherwise specified in these Terms of Use, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4. These Terms of Use shall be governed by and construed and enforced in accordance with the Laws of the British Virgin Islands, and shall be interpreted in all respects as a British Virgin Islands contract. Any dispute, controversy, claim or action arising from or related to your use of the Site or these Terms of Use likewise shall be governed by the Laws of the British Virgin Islands, exclusive of choice-of-law principles.

2. **RESTRICTIONS BY PLACE OF RESIDENCE**

2.1. Depending on where Customers live or where they access The Site, it may not be possible to use all the features of The Site and this Service. Customers bear the responsibility for complying with the laws and regulations of the country in which they live or from where they access The Site.

3. **SALE OF AND SERVICES RELATING TO KINKA**

3.1. Token holders shall only have the rights set forth in these Terms of Use and shall have no other rights in relation to Company. Also, Kinka does not represent or grant ownership rights, governance rights, stakes, shares, securities, equivalent rights, right to receive any dividend, share in revenue, or any form of voting right or participation right in relation to Company or the Platform. Token holders who receive Kinka may sell or transfer the Kinka to another person, and in that case shall follow these Terms of Use.

3.2. Kinka is a token which can be exchange for gold bullion in accordance with these Terms of Use, but it is not, nor should be construed as an investment, security, share, interest, or other financial instrument.

3.3. Kinka is not intended to be marketed, bought, sold, or traded in any jurisdiction in which it is prohibited by laws or where further registration with an applicable government authority is required.

3.4. The price of Kinka that is applied when purchasing from The Site shall be determined based on the price of gold bullion provided by a third-party vendor and the price of ETH. The price of 1 Kinka shall be backed by the equivalent of 1 troy ounce of gold bullion, but there will be a difference (spread) between the purchase price of Kinka on The Site and the market price of gold bullion. Spreads shall not be fixed but shall be changed at the discretion of Company in accordance with supply and demand balance and changes in political and economic conditions.

3.5. The purchase price of Kinka on The Site shall be updated from time to time according to the market price of gold bullion, and Kinka may not be available for purchase at the Kinka price displayed on The Site. Company shall bear no responsibility for losses arising from the updating of the price of Kinka.

4. **THE USER'S RIGHTS AND RESPONSIBILITIES**

4.1. Customers agree to these Terms of Use and shall have the right to access The Site and use this Service to the extent that they comply. By using The Site, Customers agree to accept and comply with all the terms and conditions set out in these Terms of Use.

4.2. Customers undertake to read these Terms of Use carefully in their entirety prior to using The Site or this Service.

4.3. Customers commit to comply with all Applicable Laws in relation to the use of this Service.

4.4. Customers commit that they will not use this Service for any criminal activity, including money laundering, illegal gambling, terrorist financing or any other illegal activity.

4.5. Customers shall be responsible for any damage caused to Company or any legal actions resulting from their infringement of the rights of third parties or the violation of laws.

5. **CANCELLATION OF ISSUANCE OR REFUNDS**

5.1. The sale of Kinka to Customers and the exchange of Kinka for gold bullion shall be final, and no refunds or cancellations shall be made except as required by Applicable Laws. Company may, at its sole discretion, reserve the right to refuse or cancel requests for the issue of tokens.

6. **THE USER'S REPRESENTATIONS AND WARRANTIES**

6.1. Customers shall expressly represent and warrant that:

- They have read and agreed to these Terms of Use.
- Customers shall make informed decisions about the purchase, acquisition, use, receipt or possession of Kinka.
- If Customer is an individual, they must be at least 18 years of age and have sufficient legal capacity and meet any other requirements in their jurisdiction for the purchase of Kinka.
- If Customer purchases, acquires, uses, receives, or holds Kinka for a corporation, Customer shall be authorized to accept these Terms of Use on behalf of this corporation, and if Customer, employees of the corporation, or their agent violate these Terms of Use, the corporation shall bear responsibility.
- Customers shall comply with laws and regulations of the countries in which they live or access The Site.
- Customers shall understand these Terms of Use and shall have a sufficient understand and experience in cryptocurrencies, token wallets and blockchain technology.
- Customers shall comply with all applicable taxes arising from the purchase, sale, acquisition, use, receipt, transfer, or holding or Kinka within Customer's jurisdiction.
- Customers shall not reside or register under the laws of jurisdictions that are subject to sanctions.
- Customers shall be domiciled or registered under the laws of a jurisdiction in which the transfer or trading of crypto currencies is not prohibited by law or restricted.
- Customers shall be responsible for compliance with all anti-money laundering and anti-terrorist financing requirements.
- Customers agree that any funds, including crypto currencies, used to purchase Kinka are not derived from or related to any illegal activity including money laundering and terrorist financing and that Kinka will not be used to finance, engage in, or support illegal activities as defined by govern authorities.

- Any losses incurred by Customer as a result of any failure, of the blockchain, communication lines, telecommunication equipment or computer system equipment, any defect, or any delay, incapacity, or error, etc. in information transmission due to the interference of a third party, shall be borne by Customer.
- All information and documents provided by Customers to Company shall be true, accurate and complete.

7. **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

7.1. Company shall expressly represent and warrant to Customers that:

- Company is qualified to do business and exist under laws.
- Company has the capabilities and rights necessary to perform this Service under these Terms of Use, and except where enforcement is limited by Applicable Laws, these Terms of Use shall constitute a valid legally binding obligation enforceable on Company pursuant to its terms.

8. **COMPANY'S RIGHTS AND RESPONSIBILITIES**

8.1. Company reserves the right to terminate the provision of this Service to Customers if it becomes aware of a failure to meet these Terms of Use.

8.2. Company undertakes to exercise the utmost effort and due diligence in the provision of this Service in accordance with these Terms of Use.

9. **USE OF KINKA AND RETURNING THE GOLD**

9.1. Customers can become Token holders by acquiring Kinka in accordance with the following method.

- Submit to Company’s AML/KYC checks in applying to acquire Kinka from the Platform.
- Acquire Kinka by purchasing it or having Kinka transferred from another token holder.

9.2. There is a minimum purchase amount for Kinka sales on the Platform. The set minimum purchase amount can be confirmed from The Site. Customers shall bear the cost of gas fees incurred when acquiring Kinka from the Platform.

9.3. Kinka can be exchanged for gold bullion in increments of 1 kg, with a minimum exchange of 10 kg. Token holders wishing to exchange their Kinka for gold bullion must hold at least 10 kg worth of Kinka. GM LLC shall be obliged to respond to the exchange of Kinka and gold bullion from Token holders. If you would like to exchange Kinka for gold bullion, please contact support@kinka-gold.com.

9.4. When exchanging Kinka for gold bullion, AML/KYC checks must be undergone, regardless of how the Kinka was acquired. If, as a result of this check, Company determines in our sole discretion that it would be inappropriate to make this exchange, the Kinka will not be exchanged for gold bullion.

9.5. When exchanging Kinka for gold bullion, the Kinka will need to be sent to the Ethereum wallet designated by GM LLC.

9.6. Kinka can be exchanged for gold bullion at the inquiry desks of storage service company contracted by GM LLC. Token holders may choose the inquiry desk that is most accessible to them to exchange their Kinka for gold bullion.

9.7. As Token holders, Customers can sell or transfer their Kinka to a third party. This sale or transfer can be conducted on the Ethereum blockchain, but Company shall not bear any responsibility for any costs associated with this sale or transfer, such as gas fees or brokerage commissions, etc.

10. **RELEASE FROM THE OBLIGATION**

10.1. With the issue of Kinka, the ownership of gold bullion shall be transferred to GM LLC in compensation for relieving Company from obligations (return of gold bullion upon request for redemption by Token holders).

10.2. GM LLC shall entrust the storage of gold bullion to the storage service company. When a request is made from a token holder to exchange Kinka for gold bullion, GM LLC shall instruct the storage service company to return gold bullion to the token holder according to the amount of Kinka.

11. **ACKNOWLEDGMENT AND ASSUMPTION OF RISKS**

11.1. Customers shall acknowledge and agree that the issue of Kinka does not constitute the sale or offer of an investment, security, share, interest, or other financial product. These

Terms of Use, and other documents referred to in these Terms of Use do not constitute a prospectus, product disclosure statement, or offering document, and are not intended to be an offer to sell or a solicitation of an offer to purchase an investment, security, share, interest, or other financial product.

12. **SECURITY**

12.1. Customers are responsible to implementing reasonable measures to protect the Ethereum Wallet used to receive and hold Kinka. Customers should note that if Customer loses the private key or other credentials for the Ethereum Wallet used to store Kinka, they may lose access to their Kinka. Company does not accept any liability for such losses. Customers recognize and agree that there are no refunds or cancellations for the purchase and transfer of Kinka.

12.2. Company shall make all reasonable efforts to ensure that this Site can be accessed normally. Company may suspend the use of The Site for maintenance purposes and will make all reasonable efforts to notify Customers. Customers agree that in emergency situations it may not be possible to notify Customers. Company shall not bear any responsibility or obligation for damages incurred by Customers as a result of maintenance or downtime.

13. **PERSONAL DATA**

13.1. Customers may need to provide the following information to Company to purchase or acquire Kinka, or to exchange for gold bullion.

[If Customer is an individual]

- Customer’s full name
- A copy of a passport, ID card or other identification issued by the government of the jurisdiction in which Customer resides.
- Customer’s address
- Customer’s email address
- Customer’s telephone number
- Other personal information required to be acquired by Company for the provision of this Service

[If Customer is a corporation]

- The name of the corporation
- The legal form of the corporation
- The registered address where the corporation is incorporated
- The certificate of incorporation and corporate number of the corporation
- Customer's telephone number
- Other personal information required to be provided to Company for the provision of this Service
- The address of the registered office and the principal place of business of the corporation.
- The identity and personal information of each beneficial owner of the corporation.
- Other corporate information required to be acquired by Company for the provision of this Service

13.2. Customers shall agree to the collection, use and disclosure of their personal information by Company, Affiliates, GM LLC, and their business partners and agents (hereinafter collectively "our Group") for purposes reasonably required by our Group.

13.3. However, this shall not apply when it is required to disclose Customer personal information or other information about Customer by order of Applicable Laws or courts, or competent government agencies.

13.4. If there are changes to information provided by Customers to Company, Customer shall be obliged to provide the updated information to Company as soon as possible.

13.5. Customers shall read and agree with the Privacy Policy posted on The Site.

14. **KNOW YOUR CUSTOMER AND ANTI-MONEY LAUNDERING PROCESSES**

14.1 When deemed necessary by Company to comply with Applicable Laws and in good faith efforts to avoid money laundering, or when required by Applicable Laws, the "Know Your Customer" and "Anti-Money Laundering" checks ("AML/KYC checks") of Token holders shall be performed. Customers shall agree to abide by the following during this process.

14.1.1 Customers must provide to Company the personal information, identity verification documents and Ethereum Wallet address for receiving Kinka as requested by Company. If Customer is a corporation, Customer must provide to Company the full name and trading

name, registration number or other identifying number of the corporation, and the registered address and mailing address etc. in the country of incorporation of the company as requested by Company.

14.1.2 If, following the AML/KYC checks, Customer does not provide additional information or documents, etc. requested by Company, or when Company suspects that Customer is acquiring Kinka for money laundering, terrorist financing, or other illegal activity, Customers shall acknowledge that Company may refuse the exchange of Customer's Kinka for gold bullion.

14.1.3 Kinka will be allocated to the address of the Ethereum Wallet approved in the AML/KYC checks process according to the amount of ETH sent to the address designated by Company. Kinka will not be sent to an Ethereum Wallet address that has not been approved in the AML/KYC checks process.

15. **TERMINATION OF THE SERVICE**

15.1. Company reserves the right to terminate all or part of this Service, for any reason, by notifying on The Site, and may particularly terminate (without prejudice to the generality of this provision) in any of the following circumstances;

15.1.1. When all or part of this Service is requested to be terminated for any reason according to Applicable Laws.

15.1.2. When this Service is deemed illegal or fraudulent in accordance with the Applicable Laws of any jurisdiction, and when the government of any jurisdiction prohibits or causes this Service to cease.

15.1.3. When the operation of Company or the Platform is suspended and cannot be resumed including as a result of force majeure.

15.1.4 When Company decides, at our own discretion, to suspend this Service for other reasons.

15.2. When this Service is terminated, a 2-month winding down period shall commence. During this period;

15.2.1. New Kinka will not be issued.

15.2.2. Token holders are instructed to terminate their holdings of Kinka by exchanging Kinka for gold bullion or ETH or USDT through the Site, and must follow those instructions.

15.2.3. If a token holder does not request redemption within two months after the Company announces the termination of this service on this website, the token holder will be deemed to have waived all rights.

16. **COMPANY'S RIGHT TO REFUSE ISSUE OR RESTRICT TRANSFER**

16.1. In the following cases, Company shall, at any time, and at our own discretion, reserve the right to refuse, restrict, or deny the issue or transfer of Kinka, or the exchange for gold bullion (including blacklisting Customer's Ethereum address).

- When insufficient, inaccurate or misleading information is provided by Customer.
- When Customer fails to comply with any of the requirements stated in these Terms of Use.
- When Company suspects that Customer is using Kinka for money laundering, terrorist financing, or any other illegal activity.
- When Customer attempts to gain unauthorized access to The Site or assists another party in attempting to gain unauthorized access to The Site.
- When Company determines, for certain jurisdictions, that it is necessary to refuse, restrict, or deny the issue or transfer of Kinka, or the exchange for gold bullion.
- When required of Company by a valid subpoena, court order, or binding order of a government authority.

17. **DISRUPTION EVENT**

17.1. Company reserves the right to suspend this Service. If Company suspends this Service, the resumption of this Service shall be at our sole discretion.

18. **TAXES**

18.1. Customers must declare, bear, and pay all taxes, customs duties, levies, or surcharges, etc., which may be imposed by all Applicable Laws and regulations as a result of or in relation

to the purchase, sale, acquisition, use, receipt, transfer or holding of Kinka.

18.2 Customers shall be solely responsible for all penalties, claims, fines, and liabilities, etc. arising from the non-payment, underpayment, improper payment, or late payment of applicable taxes.

18.3. Company does not give any advice or make any representations regarding the tax impact of Customer's participation in this Service.

18.4. Company shall not bear any responsibility for any tax consequences arising for Customer.

19. **GOVERNING LAW AND DISPUTE RESOLUTION**

19.1. Unless otherwise expressly provided herein, these Terms of Use shall comply with and be interpreted in accordance with the laws of BVI. All disputes and arguments caused or related to this Service and these Terms of Use shall be subject to the exclusive jurisdiction of the BVI courts in the first instance. If any part of these Terms of Use is deemed to be invalid or unenforceable for any reason, those parts shall be considered severable, and this shall not impact the effectiveness of the remaining parts or the enforceability.

20. **SEVERABILITY**

20.1. If any of the provisions of these Terms of Use are deemed under the rules, laws, or regulations of any country, state, or federal agency to be invalid or unenforceable, that provision shall be interpreted so as to achieve the purpose of said provision, to the extent possible under the applicable law, and this shall not affect the validity or enforceability of any other provision of these Terms of Use.

21. **MISCELLANEOUS**

21.1. Company reserves the right to revise these Terms of Use at any time. If these Terms of Use are revised, Company shall post the revised Terms of Use on our website and Platform. Changes to these Terms of Use shall go into effect immediately upon notice of upon the revised Terms of Use being posted to our website or Platform.

21.2. The presence of hyperlinks or advertisements of third parties on The Site shall not be taken to mean that Company recommends those websites, products, or services, etc. Customers shall access and use third party websites, products, and services at their own risk, and Company shall bear no responsibility.

21.3. All trademarks, trading names, service marks and logos (hereinafter “trademarks”) used on this Site shall be the property of Company or their respective owners. All software, applications, text, images, pricing data, trading, charts, graphs, videos and audio materials used on this Site belong to Company.

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