



General Terms and Conditions of Timothy Mercenary

August 2019

1 Agreement, offer and confirmation

- 1.1 These General Terms and Conditions (“General Terms and Conditions”) govern all offers and the preparation, content and performance of all agreements concluded between the client and Timothy Mercenary. Deviations from these General Terms and Conditions may be agreed on between the client and Timothy Mercenary only in writing.
- 1.2 All offers are without commitment and are valid for two months. Prices quoted may be subject to change due to unforeseen changes in the work. Prices are exclusive of VAT. The rates and offers quoted do not automatically apply to future commissions. The client warrants that the information provided to Timothy Mercenary by it or on its behalf and on which Timothy Mercenary bases the offer is correct and complete.
- 1.3 Commissions are confirmed in writing by the client. If the client fails to do so but consents to Timothy Mercenary commencing the work commissioned, the terms of the offer are deemed to have been agreed on and these General Terms and Conditions apply. Any subsequent oral agreements and stipulations are not binding on Timothy Mercenary until he has confirmed them in writing.

2 Performance of the agreement

- 2.1 Timothy Mercenary must make every effort to perform the work commissioned carefully and independently, to promote the client’s interests to the best of his or her ability and to aim to achieve a result that is useful to the client, as can and may be expected of a reasonably and professionally acting designer. To the extent necessary Timothy Mercenary must keep the client informed of the progress of the work.
- 2.2 The client must do any and all things that are reasonably necessary or required to enable Timothy Mercenary to deliver punctually and properly, such as supplying (or causing the supply of) complete, sound and clear data or materials in a timely manner of which Timothy Mercenary states or of which the client understands or should reasonably understand that they are necessary for the performance of the agreement.
- 2.3 Terms stated by Timothy Mercenary for the performance of the work commissioned are approximations only, unless otherwise agreed in writing.
- 2.4 Prior to the execution of the work, the client must have paid all invoices billed by Timothy Mercenary to the client, before starting the implementation of the agreement.
- 2.5 Unless otherwise agreed, the following do not form part of the work commissioned to Timothy Mercenary:
 - a. performing tests, applying for permits and assessing whether the client’s instructions comply with statutory or quality standards;
 - b. investigating any existing rights, including patents, trademarks, drawing or design rights or portrait rights of third parties; and
 - c. investigating the possibility of the forms of protection referred to in (b) for the Client.
- 2.6 Prior to performance, production, reproduction or publication, the parties must give each other the opportunity to check and approve the final draft, prototypes or galley proofs of the result.
- 2.7 If it has been agreed that the agreement will be performed in phases, Timothy Mercenary is authorized to postpone the commencement of the work that from part of a subsequent phase until the client has approved the results of the prior phase in writing.

- 2.8 Timothy mercenary is not obliged to follow instructions that alter or add to the content or scope of the agreement; if such instructions are followed, the activities concerned will be paid in accordance with Timothy mercenary 's usual rates and Timothy mercenary will notify the client of this.
- 2.9 Results of the assignment will be deemed by the parties to have been accepted if the client has not substantiated in writing and in detail within five (5) working days after delivery of the results concerned why the results have not been accepted.
- 2.10 Timothy Mercenary is entitled to have the agreement carried out by third parties wholly or in part, or to engage third parties for the performance of the agreement.
- 2.11 Differences between the (final) result and the agreements made cannot serve as grounds for rejection, discount, damages or dissolution of the agreement if those differences are reasonably of minor importance, taking all the circumstances into account.
- 2.12 Any complaints must be filed with Timothy Mercenary in writing at the earliest possible time but no later than ten business days after completion of the work commissioned, failing which the client is deemed to have accepted the result of the work commissioned in its entirety.

3 Engagement of third parties

- 3.1 Unless otherwise agreed, instructions to third parties in the context of the performance of the work commissioned are given by or on behalf of the client. At the client's request Timothy Mercenary may act as an agent for the client's account and risk. The parties may agree on a fee for such agency.
- 3.2 If Timothy Mercenary provides an estimate of third-party costs at the client's request, that estimate is an approximation only. If required, Timothy Mercenary may apply for quotations at third parties on the client's behalf.
- 3.3 If Timothy Mercenary procures goods or services from third parties in the performance of the work commissioned, for Timothy Mercenary's own account and risk and on the basis of an express agreement, whereby those goods or services are passed on to the client, these general conditions of and/or any separate agreements made with that supplier with regard to warranties and liability also apply to the client.
- 3.4 If Timothy Mercenary gives commissions or instructions to production companies or other third parties in the client's name or otherwise, the client will confirm in writing at Timothy Mercenary's request the approval referred to in Article 2.6 of these General Terms and Conditions.
- 3.5 The client may not engage any third parties without consultation with Timothy Mercenary if that may influence the performance of the work commissioned as agreed on with Timothy Mercenary. The Parties will consult, if necessary, as to which other contractors will be engaged and which work will be assigned to them.
- 3.6 Timothy Mercenary is not liable for any errors or defects of products or services of third parties engaged by or on behalf of the client, irrespective of whether they have been introduced by Timothy Mercenary. The client itself must hold those parties accountable. Timothy Mercenary may assist in that regard if necessary.

4 Intellectual and other property rights

- 4.1 All intellectual property rights arising from the work commissioned – including patents, trademarks, drawing or design rights and copyrights – in respect of the results of the work commissioned are vested in Timothy Mercenary. Insofar as any of such rights can be acquired only by means of an application or registration, Timothy Mercenary will have the sole and exclusive power to effect that application or registration, unless otherwise agreed.
- 4.2 The parties may agree that the rights referred to in paragraph 1 are transferred in whole or in part to the client. Such transfer and the conditions, if any, on which the transfer takes place must always be recorded in writing. Until the moment of transfer, a right of use is granted as regulated in Article 5 of these General Terms and Conditions.
- 4.3 Timothy Mercenary is entitled at any time to imprint his name on or in, or to remove it from, the result of the work commissioned (or publicity related thereto) or to have his name imprinted on or in, or removed from, the result of the work commissioned, in a manner that is customary for that result. Without Timothy Mercenary's prior consent, the client may not publish or reproduce the result without identifying Timothy Mercenary by name.
- 4.4 Unless otherwise agreed, the (original) results (such as designs, design sketches, drafts, advice, reports, budgets, estimates, specifications, design drawings, illustrations, photographs, prototypes, scale models, templates, prototypes, products and partial products, films audio and video or other presentations, source codes and other materials or (electronic) data files etc.) made by Timothy Mercenary as part of the work commissioned remain Timothy Mercenary's property, irrespective of whether they have been made available to the client or to third parties.
- 4.5 Timothy Mercenary reserves the right to use the knowledge gained through the performance of the work for other purposes, provided that no confidential information is disclosed to third parties.
- 4.6 Timothy Mercenary has the right at all times to use what it has produced for the implementation of the agreement for its own promotion and / or publicity, including inclusion in his portfolio, unless otherwise agreed.
- 4.7 Timothy Mercenary has the right at all times to edit and modify what Timothy Mercenary has produced for the implementation of the agreement at Timothy Mercenary's own discretion and without prior permission from the client for its own promotion and / or publicity, including inclusion in his portfolio, unless otherwise agreed.
- 4.8 Timothy Mercenary is entitled to rid the promotional material referred to in this article 4 from confidential information as referred to in article 12. Hereby Timothy Mercenary will exercise a degree of care that may reasonably be expected of him.
- 4.9 On completion of the work commissioned, neither the client nor Timothy Mercenary will be under any custodian duty in respect of any of the materials and data used, unless otherwise agreed.

5 Use of the result

- 5.1 Once the client has fulfilled all his obligations under the agreement with Timothy Mercenary, he acquires the right to use the result of the work commissioned in accordance with the agreed purpose. If no such specific purpose has been agreed on, the right of use is limited to that use of the design for which the commission was (manifestly) given. The right of use is exclusive, unless otherwise apparent from the nature of the agreement or otherwise agreed.
- 5.2 If the result also relates to works that are subject to third-party rights, the parties will make additional agreements on how the use of those works will be regulated.
- 5.3 Without Timothy Mercenary's prior written consent, the client is not entitled to change the result of the work commissioned, or to use or reuse it in a broader or different manner than agreed, or to allow third parties to do so. Timothy Mercenary may make that consent subject to conditions, including payment of a reasonable fee.
- 5.4 In the event of broader or different use on which no agreement was reached, including any modification, mutilation or infringement on the provisional or final result, Timothy Mercenary is entitled to compensation on the grounds of infringement of his rights of at least three times the agreed fee, or a fee that is reasonably proportional to the infringement committed, without losing any other rights.
- 5.5 The client is not (or no longer) permitted to use the results made available, and any right of use granted to the client in the context of the work commissioned will lapse, unless the consequences conflict with the rules of reasonableness and fairness:
- a. the moment that the client fails to perform or to fully perform his payment or other obligations under the agreement, or is otherwise in default;
 - b. if the work commissioned is terminated prematurely for the reasons referred to in Article 8.1 of these General Terms and Conditions; or
 - c. if the client is declared bankrupt, unless the rights in question have been transferred to the client in accordance with Article 4.2 of These General Terms and Conditions.
- 5.6 With due observance of the client's interests, Timothy Mercenary may use the results at his discretion for his own publicity, to secure commissions, for promotional purposes, including competitions and exhibitions, etc., and to obtain them on loan, if physical results are involved.

6 Fees and additional costs

- 6.1 Timothy Mercenary is entitled to a fee for the performance of the work commissioned. That fee may consist of an hourly rate, a consultancy fee, a fixed amount, whether or not related to the project sum, or any other fee agreed on between the parties.
- 6.2 In addition to payment of the agreed fee, Timothy Mercenary is entitled to reimbursement of any costs incurred by him in the performance of the work commissioned, such as administrative overheads, travel and accommodation expenses, costs of prints, copies, (galley) proofs and prototypes, and costs of third parties related to advice, production, supervision, etc. Those costs must be itemized beforehand to the extent possible, unless a mark-up percentage is agreed on.

6.3 If Timothy Mercenary is required to perform more or other work due to late delivery or non-delivery of complete, sound and clear information and/or materials, any change or error in instructions or briefings, or any external circumstances, such additional work is charged separately on the basis of Timothy Mercenary's usual fees.

Timothy Mercenary will then inform the client accordingly beforehand, unless that is impossible due to circumstances or the nature of the work does not allow any delay.

6.4 If the performance of the work commissioned is delayed or interrupted due to circumstances beyond Timothy Mercenary's control, the costs involved, if any, are payable by the client. Timothy Mercenary must attempt to limit those costs to the extent possible.

7 Payment and suspension

7.1 All payments must be made without any deduction, set-off or suspension within 14 days of the invoice date, unless otherwise agreed in writing or stated in the invoice.

7.2 All payments for production and media costs must have been received by Timothy Mercenary from the client before the time when Timothy Mercenary is obliged to pay these to third parties.

7.3 Timothy Mercenary is entitled to fully invoice agreements with a fee of up to € 5,000 to the client prior to the execution of the work. Timothy Mercenary is also entitled to invoice the client for agreements with a fee of at least € 5,000 50% of the fee prior to the execution of the work.

7.4 All goods delivered to the client remain Timothy Mercenary's property until all the amounts that the client owes Timothy Mercenary under the agreement concluded between the parties have been paid to Timothy Mercenary.

7.5 If the client fails to pay all or part of the amounts due, it owes statutory interest and out-of-court costs of collection, amounting to at least 10% of the invoice amount, subject to a minimum of € 150, excluding VAT.

7.6 Timothy Mercenary must arrange for timely invoicing. In consultation with the client Timothy Mercenary may charge the agreed fee and costs as an advance, in the interim or periodically.

7.7 Timothy Mercenary may suspend the performance of the work commissioned after the term for payment has expired and the client, after a written demand to make payment within 14 days, fails to make that payment, or if Timothy Mercenary is forced to conclude on the grounds of a statement or act on the part of the client that payment will not be made.

8 Notice of termination and dissolution of the agreement

- 8.1 If the client gives notice of termination of the agreement, without any breach on the part of Timothy Mercenary, or if Timothy Mercenary dissolves the agreement on the grounds of breach by the client in the performance of the agreement, the client is liable for damages in addition to Timothy Mercenary's fee and the costs incurred in connection with the work performed until that time. In this context any conduct by the client on the grounds of which Timothy Mercenary cannot reasonably be required to complete the work commissioned is also regarded as breach.
- 8.2 The damages referred to in the preceding paragraph of this Article include at least the costs arising from obligations undertaken by Timothy Mercenary in his own name with third parties for the performance of the work commissioned, as well as at least 30% of the balance of the fee that the client would owe Timothy Mercenary if the work commissioned were completed in full.
- 8.3 Both Timothy Mercenary and the client have the right to terminate the agreement in whole or in part with immediate effect, and all amounts due are payable immediately, if a petition in bankruptcy or a petition for a suspension or provisional suspension of payment or for application of the debt rescheduling arrangement is filed in respect of the other party.
- 8.4 If Timothy Mercenary's work consists of recurrently performing work of a similar nature, a continuing performance agreement is involved, unless otherwise agreed in writing. Such an agreement may be terminated only by written notice given while observing a reasonable notice period of no less than three months, during which period the client must continue to purchase the customary amount of work from Timothy Mercenary or must provide financial compensation.

9 Warranties and indemnities

- 9.1 Timothy Mercenary warrants that the result has been designed by him or her or on his or her behalf and, if the result is copyright-protected, that Timothy Mercenary is the author within the meaning of the *Auteurswet* (Dutch Copyright Act) and as the copyright owner has power of disposition of the work. Timothy Mercenary warrants that, as far as he/she knows or reasonably ought to know, the result of the work commissioned does not infringe any third-party rights and is not otherwise unlawful.
- 9.2 If the client uses the results of the work commissioned, it indemnifies Timothy Mercenary or persons engaged by Timothy Mercenary in the performance of the work commissioned against any third-party claims arising from the application or use of the result of the work commissioned. This is without prejudice to Timothy Mercenary's liability towards the client for failure to comply with the warranties referred to in the preceding paragraph and any other liability as referred to in Article 10 of these General Terms and Conditions.
- 9.3 The client indemnifies Timothy Mercenary against any claim or action relating to intellectual property rights in materials or information supplied by the client and used in the performance of the work commissioned.
- 9.4 In the event the client provides Timothy Mercenary with information carriers, electronic files or software etc., the client guarantees these to be free of viruses and defects.

10 Liability

- 10.1 In the event of breach, Timothy Mercenary must first be given written notice of default, setting a reasonable term in which to perform his/her obligations, to correct any errors or to limit or reverse the loss.
- 10.2 Timothy Mercenary is liable towards the client only for direct damage attributable to Timothy Mercenary. Timothy Mercenary's liability for indirect damage, including consequential damage, loss of profits, loss savings, mutilated or lost data or materials, or damage due to business interruption is excluded.
- 10.3 Except in the event of intent or willful recklessness on the part of Timothy Mercenary, Timothy Mercenary's liability is limited to the fee that he or she charged for the work commissioned, or in any event the part of the work commissioned to which the liability relates. That amount may not exceed EUR 75,000 and may in no event be higher than the benefit paid to Timothy Mercenary by the insurance company in the case in question. The amount for which Timothy Mercenary is liable in the case in question is reduced by any sums insured by the client.
- 10.4 Any and all liability expires two years from the date on which the work commissioned has ended on the grounds of completion, termination or dissolution.

11 Force majeure

- 11.1 In the event of force majeure there is no attributable failure in the performance of the agreement by the parties.
- 11.2 Force majeure includes, among other things, disruptions in the supply of electricity, strikes, riots, government measures, fire, natural disasters, floods, failure on the part of the parties' suppliers, failure on the part of third parties enlisted by the Parties, disruptions in the internet connection, hardware malfunctions, malfunctions in networks, including telecommunication networks, and other unforeseen circumstances.
- 11.3 If the force majeure lasts at least thirty (30) days, the Parties are entitled to dissolve the Agreement without being obliged to reimburse any damage, to undo any work or to pay any compensation for such dissolution.
- 11.4 If Timothy Mercenary can still perform in part at the time of the force majeure, or if it has performed, it is authorized to perform this service and to invoice it separately, as if it concerned a separate Agreement.

12 Other provisions

- 12.1 The General Terms and Conditions of Timothy Mercenary will always prevail about any purchasing or other terms and conditions used by the Client. The applicability of the purchasing or other terms and conditions of the client is hereby explicitly rejected.
- 12.2 Once the Terms and Conditions of Timothy Mercenary have been applicable to a legal relationship between Timothy Mercenary and the client, the client is deemed to have agreed in advance to the applicability of these Terms and Conditions to agreements concluded and to be concluded thereafter.
- 12.3 If the client wishes to commission the work at the same time to parties other than Timothy Mercenary, or has previously already commissioned the work to another party, it must inform Timothy Mercenary accordingly, stating the names of those third parties.
- 12.4 The client is not permitted to transfer or assign to third parties any of the rights under an agreement concluded with Timothy Mercenary, except in the event of transfer of the client's entire business or with Timothy Mercenary's written consent.

- 12.5 Both parties must keep confidential any and all confidential information, facts and circumstances that come to their knowledge in the context of the work commissioned, from each other or from any other source, of which they can reasonably understand that their publication or disclosure to third parties might damage Timothy Mercenary or the client. The same duty of confidentiality in respect of such facts and circumstances must be imposed on any third parties engaged in the performance of the work commissioned.
- 12.6 If any provision of these General Terms and Conditions is void or voided, the other provisions of these General Terms of Conditions continue to apply in full. In that case the parties will consult in order to agree on new provisions to replace the void or voided provisions that are as closely as possible in keeping with the purpose and scope of the void or voided provisions.
- 12.7 The headings of these General Terms and Conditions have been included for easy reference only and do not form part of these General Terms and Conditions.
- 12.8 All agreements between Timothy Mercenary and the client are governed by Dutch law. The parties will first attempt to settle any dispute that arises in consultation. Unless the parties have expressly agreed in writing on arbitration, the court that has jurisdiction by law or the court in the district in which Timothy Mercenary has its registered office has jurisdiction to hear and decide on any disputes between Timothy Mercenary and the client.

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General Terms and Conditions of Timothy Mercenary are available for download at: www.timothymercenary.com/legal/General-Terms-and-Conditions-of-TimothyMercenary.pdf
These General Terms and Conditions are a translation of the “Algemene Voorwaarden van Timothy Mercenary”, available for download at: www.timothymercenary.com/legal/Algemene-voorwaarden-van-TimothyMercenary.pdf
In the event of any differences between these two Terms and Conditions, the Dutch text will prevail.