

General Terms of Business for TIMEONE – PERFORMANCE

Updated on 25/05/2018

ARTICLE 1 - Scope

The TIMEONE – PERFORMANCE company, hereinafter referred to as “TIMEONE – PERFORMANCE”, is a French public liability company (société anonyme) with capital of EUR191,240, registered on the NANTERRE Trade and Companies Register (Registre du Commerce et des Sociétés) under number 481 117 000, whose registered office is situated at 20-24 rue Jacques Ibert - 92300 LEVALLOIS PERRET, France.

TIMEONE – PERFORMANCE has created, developed and currently operates a technical performance marketing Platform on the Internet, which can be accessed via its Website <http://performance.timeonegroup.com>.

TIMEONE – PERFORMANCE markets promotional Services to its Clients, which are produced by publishers of websites and suppliers of Traffic that are affiliated to the Platform, in the framework of a marketing Campaign.

The fact of ordering a marketing campaign from TIMEONE – PERFORMANCE implies the full and unconditional acceptance of these General Terms of Business, expressly acknowledged by the Client, which permanently waives recourse to any conflicting documents, including its own General Terms of Purchase.

Pursuant to the regulations in force, TIMEONE – PERFORMANCE reserves the right to depart from certain clauses of these General Terms of Business, according to negotiations conducted with the Client, by defining Special Terms of Business.

Furthermore, TIMEONE – PERFORMANCE may be induced to define category-specific General Terms of Business that depart from these General Terms of Business, according to the type of clientele in question and determined on the basis of objective criteria. In this case, category-specific General Terms of Business shall apply to all of the operators meeting these criteria.

It is understood that TIMEONE – PERFORMANCE is free to enter into contracts with advertisers that are competitors of the Client, as the fact of ordering a marketing Campaign shall grant no exclusive rights to the Client.

ARTICLE 2 - Definitions

"Post-Redirection Action": an action (purchase, registration, form validation, etc.) carried out by a Web user on the Client's Website after being directed to the Client's Website from a Publisher's Website or via the Traffic supplied by a Publisher. A Web user may be redirected towards the Client's Website after clicking a promotional Element or when the Client's Website opens after the Web user has consulted a Publisher's Website. The redirection triggers the activation of the TIMEONE – PERFORMANCE Tracking technology.

The Post-Redirection Action may be carried out by the Internet user directly after the redirection towards the Client's Website.

The Post-Redirection Action may also be indirect: occurring after the closure and subsequent reopening of the Client's Website by the Web user. The period of time for the consideration of indirect Post-Redirection Actions is specified on the purchase order.

"Post-Impression Action": an action (purchase, registration, form validation, etc.) carried out by a Web user on the Client's Website after:

Consulting a page of a Publisher's Website on which one of the Client's promotional Elements was displayed.
Consulting via the Traffic supplied by a Publisher—an electronic medium (website page, e-mail, etc.) on which one of the Client's promotional Elements was displayed.

The consultation of the page of a Publisher's Website or of the electronic medium on which the Client's promotional Element is displayed triggers the activation of the TIMEONE – PERFORMANCE tracking technology.

The Post-impresion Action may be carried out by the Web user directly, after he or she has opened the Client's Website

following the consultation of the page of a Publisher's Website or the electronic medium on which the Client's promotional Element was displayed.

The Post-Impression Action may also be indirect: occurring after the subsequent opening of the Client's Website by the Web user. The period of time for the consideration of indirect Post-Impression Actions is specified on the purchase order.

"Publisher": any natural or legal person that has entered into an Affiliation Contract with TIMEONE – PERFORMANCE in order to carry out Promotional Services on behalf of TIMEONE – PERFORMANCE' Clients in return for remuneration. The Publisher may be the owner or operator of a Website or a supplier of Traffic.

"Marketing Campaign": the marketing Campaign developed by a Client in order to define the nature of the promotional services that it is seeking and the Remuneration terms.

"Click": redirection of a Web user to the Client's Website from a Publisher's Website or via the Traffic supplied by a Publisher.

"Promotional Element": a resource used to publicise the Client's marketing Campaign (banners, links, logos, texts, e-mails, etc.). The promotional Elements are supplied by the Client to TIMEONE – PERFORMANCE, which makes them available to Publishers on its technological performance marketing Platform.

"Impression": a display of one of the Client's promotional Elements:

on a page of a Publisher's Website;

or on an electronic medium (website page, etc.) consulted by a Web user, via the Traffic supplied by a Publisher.

"Technical performance marketing Platform" or "Platform": TIMEONE – PERFORMANCE' online services which include bringing Publishers and Clients closer together for the provision of promotional Services and the recording of Impressions, Clicks, Post-Redirection Actions and Post-impression Actions.

"Remuneration": remuneration owed by the Client. A proportion of the remuneration is payable to the Publishers and the other proportion is payable to TIMEONE – PERFORMANCE.

"TIMEONE – PERFORMANCE network": all of the Publishers.

"Promotional services": the different promotional services for websites, services and products that the Clients may use on the Internet.

"Website": all of the pages that constitute the Website belonging to a Publisher, a Client or TIMEONE – PERFORMANCE.

"Tracking": monitoring of a Web user's journey on the Internet, including Impressions, Clicks, Post-Redirection Actions and Post-Impression actions.

"Traffic": audience acquisition services on the Internet.

ARTICLE 3 - Orders

3.1. - Placement of an order by the Client

Prior to placing any order, the Client must imperatively read and accept all of TIMEONE – PERFORMANCE' General Terms of Business, which can be found on its Website: <http://performance.timeonegroup.com>.

To order a marketing Campaign, the Client or its authorised agent must send a purchase order to TIMEONE – PERFORMANCE. The purchase order must be signed by the Client or, if necessary, by its authorised agent.

The purchase order includes the following information:

the Client's identity;

the identity of the Client's authorised agent, if applicable;

the characteristics of the Client's marketing campaign;

the characteristics and terms of the calculation of the Remuneration owed by the Client;

the aims of the marketing Campaign in terms of the number of Impressions, Clicks or the number of Post-Redirection or Post-Impression Actions, if applicable;
the duration of the inclusion of indirect Post-Impression or Post-Redirection Actions, if applicable.

A sale only becomes final after TIMEONE – PERFORMANCE has accepted the purchase order in writing.
It is expressly stipulated that if the purchase order sets a target in terms of the number of Impressions, Clicks, Post-Redirection or Post-Impression Actions, this target shall not impose any performance obligation upon TIMEONE – PERFORMANCE.

The Client shall refrain from claiming any sum or compensation from TIMEONE – PERFORMANCE on grounds of its failure to attain the target set on the purchase order at the end of the marketing Campaign.

In the event of the attainment of the target set on the purchase order prior to the expiry of the marketing Campaign, this shall automatically trigger the end of the campaign.

3.2 - Modification of orders

Any modifications to orders requested by the Client are not likely to be taken into consideration, subject to TIMEONE – PERFORMANCE' capabilities and at its sole discretion, unless they have been submitted in writing.

TIMEONE – PERFORMANCE can only accept a Client's request for modification in writing.

3.3. - Cancellation of orders

Any request to cancel an order must imperatively be made in a letter sent by the Client by recorded delivery with a return receipt.

Article 4 - Marketing Campaign

4.1. - Promotional Services

For information only, it is specified that the following different promotional Services are likely to be provided by Publishers belonging to the TIMEONE – PERFORMANCE network, in the context of their participation in Affiliation Programmes:

redirection links to Clients' Websites;
advertising banners;
e-mailing campaigns;
retargeting/remarketing;
coregistration;
white label / co-branded;
XML feeds/ product catalogues;
Search engine / HTML scripts.

4.2. - Characteristics of the marketing Campaign

The characteristics of the marketing Campaign are defined by the Client.

For each marketing Campaign, the Client must specify:

the promotional Services that it wishes to receive;
the launch date and duration of the marketing Campaign;
the rules for participating in the marketing Campaign;
any special instructions intended for Publishers.

4.3. - Publishers' participation in the marketing Campaign

The Client shall choose the Publishers participating in the marketing Campaign.

TIMEONE – PERFORMANCE is likely to advise the Client regarding the choice of Publishers participating in the marketing Campaign.

4.4. - The Client's obligations relating to the performance of the marketing Campaign

4.4.1 To allow for the performance of the marketing Campaign that has been ordered, the Client undertakes to submit to TIMEONE – PERFORMANCE any promotional Elements required for the creation of links between Websites or between the Traffic from Publishers and the Client's Website.

The Client also undertakes to integrate into its Website any technical elements that will be provided by TIMEONE – PERFORMANCE, including the Tracking tool, in compliance with the implementation specifications of which it will be informed (conversion tags, master-tags, clicktags for flash elements, etc.).

4.4.2 If the Remuneration depends on the number of Post-Redirection or Post-Impression Actions, the Client undertakes to integrate the Tracking tool supplied by TIMEONE – PERFORMANCE into its Website. This Tracking tool allows TIMEONE – PERFORMANCE to record the Post-Redirection or Post-Impression Actions carried out by Web users on the Client's Website.

The activation of the Tracking must not be dependent on a Traffic origin or on the Web user's previous Internet journey. The Tracking tool supplied by TIMEONE – PERFORMANCE must be included in the source code of the action confirmation page for the Client's Website so that it can be activated regardless of the origin of the Traffic or the Web user's previous Internet journey.

4.4.3 However, if the Client is required by technical constraints to make the activation of the Tracking dependent on a Traffic origin or on the Web user's previous Internet journey, it undertakes to provide any information and cooperation that may be required in order to allow TIMEONE – PERFORMANCE to determine the number and type of Post-Redirection or Post-Impression actions.

The Client also undertakes to transmit to TIMEONE – PERFORMANCE, in a detailed manner and prior to the launch of the marketing Campaign, its rules for deduplication and the attribution of Post-Redirection and Post-Impression Actions, in addition to all of the marketing channels concerned by this deduplication.

During the marketing Campaign, the Client shall not be authorised to modify its deduplication and Post-Redirection and Post-Impression action attribution rules, or the marketing channels concerned by this deduplication, without TIMEONE – PERFORMANCE' prior written authorisation.

TIMEONE – PERFORMANCE reserves the right to appoint a qualified auditor to monitor the rules for deduplication and the attribution of clicks and actions implemented by the Client. The Client undertakes to allow the appointed auditor to carry out the necessary investigations and, in particular, to examine and make copies of the activity reports listing the recorded actions.

This audit shall be carried out under the following conditions:

The Client shall be notified of the date of the auditor's intervention at least 10 working days before the scheduled date;

The auditor shall perform its assignment in the Client's offices in which the activity reports are kept, during normal opening times.

The Client undertakes to provide reasonable assistance to the auditor designated by TIMEONE – PERFORMANCE, in order to facilitate the performance of his or her assignment.

TIMEONE – PERFORMANCE shall bear the costs of the performance of the audit. However, if the audit should reveal the Client's failure to comply with the rules for deduplication and the attribution of clicks and actions transmitted to TIMEONE – PERFORMANCE, the costs of the audit shall be borne exclusively by the Client.

4.4.4 The Client shall be obliged to keep the Tracking supplied by TIMEONE – PERFORMANCE on its Website.

If the Client removes the Tracking provided by TIMEONE – PERFORMANCE, the Remuneration owed by the Client to the Publishers and TIMEONE – PERFORMANCE during the period in which the Tracking is removed, shall be determined in the following manner:

Application of a theoretical conversion rate of 0.7%: the number of Post-Redirection or Post-impression Actions shall correspond to 0.7% of the number of Clicks or Impressions recorded by the TIMEONE – PERFORMANCE Platform.

4.4.5 The Client authorises TIMEONE – PERFORMANCE to deploy the Tracking tool that allow for the recording of Impressions, Clicks, Post-Redirection or Post-Impression Actions, in addition to Web users' browsing behaviours on the Client's Website. The Client expressly agrees to implement the Tracking Tool on any Customer's Website in which a Marketing Program is active.

The Client authorises TIMEONE – PERFORMANCE to use all the Tracking data thus collected in order to:

determine the amount of Remuneration owed by the Client;
improve its Tracking and advertising targeting technology, in the Clients' best interests;
create behavioural profiles. These behavioural profiles shall be the exclusive property of TIMEONE – PERFORMANCE, which has the sole legal right to exploit them.

4.4.6 To verify the efficient operation of the Tracking in the framework of the marketing Campaign and after informing the Client thereof, TIMEONE – PERFORMANCE may perform Tracking tests on the different actions set out on the purchase order.

In the context of these tests, TIMEONE – PERFORMANCE may be required to create orders and perform payments (online orders, subscriptions, etc.). At TIMEONE – PERFORMANCE' written request and accompanied by supporting documents, the Client undertakes to cancel the orders and refund the payments made by TIMEONE – PERFORMANCE in the framework of Tracking tests.

In the event of the Client's failure to refund the payments, the amounts paid by TIMEONE – PERFORMANCE during the tracking tests shall be invoiced to the CLIENT.

4.4.7 Throughout the entire duration of the marketing Campaign and for the exclusive purpose thereof, the Client shall grant the right to use its brand and any distinctive signs or marks associated therewith to TIMEONE – PERFORMANCE and the Publishers.

4.5. - TIMEONE – PERFORMANCE' obligations relating to the performance of the marketing Campaign

4.5.1 TIMEONE – PERFORMANCE undertakes to promote the Client's marketing Campaign by any means that it deems to be necessary.

TIMEONE – PERFORMANCE undertakes to inform the Client on a regular basis of any difficulty that it may encounter during the period of execution of the marketing Campaign.

4.5.2 If the Remuneration depends on the number of Post-Redirection or Post-Impression Actions, TIMEONE – PERFORMANCE undertakes to provide technical assistance to the Client that will allow it to insert the Tracking tool described in article 4.4.2. of these General Terms of Business into its Website.

4.5.3 Throughout the entire duration of the Client's marketing Campaign, TIMEONE – PERFORMANCE undertakes to record and save the Impressions, Clicks, data relating to the Web users' origins and the number and types of Post-Redirection or Post-Impression actions performed by Web users on the Client's Website, by methods of its own choosing.

Article 5 - Remuneration owed by the Client

5.1. - Setting of the Remuneration owed by the Client

The type of Remuneration owed by the Client and the methods used to calculate it, in the framework of the marketing Campaign, shall be freely defined by the Client.

The type of Remuneration owed by the Client and the methods used to calculate it shall be specified on the purchase order.

The Remuneration owed by the Client may depend on the number of Impressions or Clicks, or on the number of Post-Redirection or Post-Impression Actions carried out by the Web users on the Client's Website.

5.2. - Recording of Impressions, Clicks and Post-Redirection or Post-Impression Actions by TIMEONE – PERFORMANCE

The number of Impressions or Clicks, in addition to the number and type of Post-Redirection or Post-Impression Actions carried out by Web users on the Client's Website, shall be exclusively determined on the basis of the records compiled by the TIMEONE – PERFORMANCE Platform.

The Client shall refrain from disputing the records compiled by the TIMEONE – PERFORMANCE Platform in any manner and cannot demand any other proof of the Impressions, Clicks and Post-Redirection or Post-Impression Actions performed by the Web users.

5.3. - Validation by the Client of the Post-Redirection or Post-Impression Actions recorded by TIMEONE – PERFORMANCE

When the Remuneration owed by the Client depends on the number of Post-Redirection or Post-Impression Actions, TIMEONE – PERFORMANCE shall, on a monthly basis, send the Client a file specifying all of the Post-Redirection or Post-Impression Actions recorded during the previous month.

Upon receipt of this file, the Client shall have a period of 4 calendar weeks in which to validate or reject—in writing—the Post-Redirection or Post-Impression Actions recorded by TIMEONE – PERFORMANCE.

In the absence of a response by the Client during this period, all of the Post-Redirection or Post-Impression Actions recorded by TIMEONE – PERFORMANCE shall be definitively validated.

In the event of the Client's rejection of the Post-Redirection or Post-Impression Actions, the Client undertakes to send supporting documents to TIMEONE – PERFORMANCE for each of the actions concerned. If the required supporting documents are not transmitted within a period of 5 business days, the Post-Redirection or Post-Impression Actions concerned cannot be rejected and shall be validated.

Article 6 - Invoicing and payment of the Remuneration owed by the Client

6.1 - Invoicing of the Remuneration by TIMEONE – PERFORMANCE

TIMEONE – PERFORMANCE shall produce a statement of accounts at the end of each month. At the start of the following month, TIMEONE – PERFORMANCE shall send the Client an electronic invoice for the Remuneration owed by this Client.

This invoice shall specify the number of Impressions or Clicks, or the number of Post-Redirection and Post-Impression Actions billed to the Client.

The Client declares having been expressly informed of the fact that TIMEONE – PERFORMANCE has sole responsibility for the invoicing and collection of all remuneration owed to the Publishers in the framework of the implementation of its marketing Campaign. Consequently, the Client shall refrain from paying the Publishers some or all of the Remuneration that they may be owed, either directly or via any third party.

6.2. - Payment of the Remuneration by the Client

The total price of the invoices issued by TIMEONE – PERFORMANCE must be paid within 30 (thirty) days of their issue.

The invoices issued by TIMEONE – PERFORMANCE are payable by bank wire transfer or cheque made payable to TIMEONE –

PERFORMANCE.

In the event of a delayed payment for which the Client or its authorised agent is responsible, late-payment penalties corresponding to a percentage of the total tax-inclusive amount of the sums owed by the client shall be automatically payable to TIMEONE – PERFORMANCE by operation of law, as of the day after the due date of the invoice, without the need for any formality or prior notice.

The calculation of these late payment penalties shall be based on a rate equal to the interest rate applied by the European Central Bank to its most recent refinancing operation plus 10 percentage points.

In addition to the late payment penalties provided for herein above, in the event of the failure of the Client or of its authorised agent to pay the entire amount of the invoice by the end of a period of one month from its due date, the Client shall owe TIMEONE – PERFORMANCE damages corresponding to 20% of the remaining balance due excl. VAT. These damages shall be due by operation of law, without prior notice.

Article 7 - TIMEONE – PERFORMANCE network

7.1. - Conditions to which Publishers must conform

The Website of any Publisher in the TIMEONE – PERFORMANCE Network must imperatively satisfy all of the following cumulative conditions and must not contain any:

illicit content or material that is obscene, offensive or likely to constitute a threat to public order;
content of a violent, pornographic, erotic, paedophile, religious, political or racist nature;
content likely to breach the rights of third parties and particularly any intellectual property rights (illegal "peer-to-peer" sites in particular are prohibited);
content that could breach the rights or damage the image or reputation of TIMEONE – PERFORMANCE, the TIMEONE – PERFORMANCE network or its clients.

If the Publisher is a Traffic provider, the audience acquired by the Traffic must imperatively originate from a Website, network or content that satisfies all of the cumulative conditions stipulated herein above.

TIMEONE – PERFORMANCE undertakes always to ensure the strictest compliance by the Publishers of the TIMEONE – PERFORMANCE Network with the requirements set out in this article. However, it is stipulated that this is a best endeavours obligation rather than a performance obligation.

7.2. - Ownership of the TIMEONE – PERFORMANCE Network

TIMEONE – PERFORMANCE is the sole owner of the TIMEONE – PERFORMANCE Network which shall be mobilised throughout the period of execution of the marketing Campaign. The Client shall acquire no property rights over the Publishers and any profit made by the Client from the mobilisation of the TIMEONE – PERFORMANCE network during the marketing Campaign shall end immediately upon the expiry of this Campaign, without entitling the Client to initiate any grievance against TIMEONE – PERFORMANCE.

Throughout the entire duration of the marketing Campaign and for a period of 6 months after its expiry, the Client shall refrain from approaching and/or obtaining the participation of any active Publisher in the promotion of its Website and/or products and/or services, either directly or indirectly. An "active" Publisher means any Publisher that is participating in or has participated in the Client's marketing Campaign and that has generated at least one Impression, one Click or one Post-Redirection or Post-Impression Action.

In the event of any breach of the clause provided for herein above, the Client undertakes to pay TIMEONE – PERFORMANCE compensation of 5,000 Euros per active Publisher whose services have been illicitly used.

Article 8 - LIABILITY

8.1. - The Client's liability

The Client shall have sole liability for:

the content delivered via its Website;
the products and services proposed or supplied via its Website;
the content of the promotional Elements supplied to TIMEONE – PERFORMANCE.

The Client undertakes to conform to all of the applicable regulations concerning personal data protection and, in particular, to provide adequate declarations concerning the electronic processing of personal data.

The Client shall have sole liability for any and all damaging consequences that might arise from the failure to comply with any of the obligations for which it is responsible pursuant to this article.

The Client undertakes to cover TIMEONE – PERFORMANCE against any legal action engaged against it on these grounds by any third party whatsoever.

8.2. - TIMEONE – PERFORMANCE' liability

8.2.1 TIMEONE – PERFORMANCE shall have sole liability for:

the content delivered via its Website;
the services proposed or supplied via its Website;
the technological or technical solutions used by its Platform.

It undertakes to ensure that its Website shall satisfy all of the cumulative conditions set out in article 7.1. of these General Terms of Business.

TIMEONE – PERFORMANCE undertakes to conform to all of the applicable regulations concerning personal data protection and, in particular, to provide adequate declarations concerning the electronic processing of personal data.

8.2.2 The Client acknowledges and declares that TIMEONE – PERFORMANCE cannot be held liable for any harmful direct or indirect consequence that might arise due to a malfunction or a temporary suspension of the services provided by TIMEONE – PERFORMANCE. Consequently, the Client shall refrain from claiming any sums or compensation from TIMEONE – PERFORMANCE on these grounds.

Article 9 - COMMUNICATION

TIMEONE – PERFORMANCE shall have the right to inform the public, press and its commercial contacts about the existence of the commercial collaboration with the Client, without, however, specifying the special conditions—particularly financial—set out on the purchase order. On a temporary basis and exclusively for the purpose of publicising the commercial collaboration with the Client, TIMEONE – PERFORMANCE is authorised to use the Client's brand and the distinctive signs and marks associated therewith.

Similarly, the Client shall have the right to inform the public, press and its commercial contacts of the existence of the commercial collaboration with TIMEONE – PERFORMANCE, without, however, specifying the special conditions—particularly financial—set out on the purchase order. On a temporary basis and exclusively for the purpose of providing information about the commercial collaboration with TIMEONE – PERFORMANCE, the Client is authorised to use the TIMEONE – PERFORMANCE brand and the distinctive signs and marks associated therewith.

TIMEONE – PERFORMANCE shall have the right to exploit and divulge the commercial results of its technological performance marketing Platform in general terms, without mentioning the specific performance of the Client's marketing Campaign.

Article 10 - Miscellaneous

Should one of the Parties fail to demand the application of any of the clauses of these General Terms of Business, on either a

temporary or permanent basis, this cannot be considered as a waiver of this party's rights arising from the said clause.

If any of the provisions of these General terms of Business is found to be null and void, the contract itself shall not be cancelled unless it concerns an essential provision that influences the parties' consent and unless its cancellation is liable to cast doubt upon the general balance of the contract.

These General Terms of Business, in addition to all of the contractual relationships that they are intended to govern, are subject to French law.

The law courts with jurisdiction for the district in which the registered office of TIMEONE – PERFORMANCE is based shall have exclusive jurisdiction for any disputes relating to the application of these General Terms of Business.