

General Terms and Conditions

Hammerfest

Singel 262

1016 AC Amsterdam

The Netherlands

020 233 85 64

hello@hammerfest.co

hammerfest.co

Dutch Trade Register number: 61089001

HAMMERFEST B.V.

Last updated: March 2016

These general terms and conditions (Terms) are made by Hammerfest B.V., a private company with limited liability, having its office address at Singel 262, 1016 AC Amsterdam, the Netherlands, and registered with the Dutch Trade Register under number 61089001 (hereinafter: Hammerfest).

By using our Service(s), you agree to be bound by these Terms. Please read these Terms carefully.

1 DEFINITIONS

1.1 In these Terms the following capitalized terms when used herein shall have the definition assigned to them below (unless the context requires otherwise):

Agreement	the agreement between Hammerfest and a Customer setting out the scope of the Services;
Confidential Information	information that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which is designated as confidential or would normally under the circumstances be considered as confidential. It does not include information that the recipient already rightfully knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was lawfully given to the recipient by a third party. Customer Data is considered Customer's Confidential Information.
Customer	the customer to whom the Service is provided by Hammerfest;
Customer Data	the data transmitted by Customer or End Users through the Service which could include personal data (persoonsgegevens) of End Users;
End User	each individual or entity that (i) acts on behalf of Customer and is authorized to access and use (part of) the Services in accordance with the Agreement, or (ii) is a visitor, user, client or customer or other type of relationship of the Customer;
Force Majeure	circumstances beyond the reasonable control of Hammerfest as described in Clause 15;
Hammerfest	Hammerfest B.V., with registered seat at Singel 262, 1016 AC Amsterdam, the Netherlands, registered with the Dutch Trade Register under number 61089001;
Services	all services of Hammerfest specified in the Agreement which can include, amongst others:

1. Creative concept development;
 2. Artwork, copywriting, design;
 3. Web/App design and production;
 4. Project management;
 5. Campaign management; and
 6. Creative production including, video, digital, television, print and event productions;
- Website Terms**
- the website of Hammerfest (www.hammerfest.co); and these general terms and conditions.

- 1.2** In case of conflict between or inconsistency of the provisions of the Agreement and the contents of the Terms, any Schedules and/or Annexes, the provisions of the Agreement shall prevail.
- 1.3** The English language used in these Terms intends to describe Dutch legal concepts only and the consequences of the use of this language in English law or any other law shall be disregarded. In case of conflict between Dutch legal concepts mentioned in these Terms and the English translation thereof as used in these Terms, the Dutch text, and its meaning thereof under Dutch law, will prevail.

2 OFFER, ACCEPTANCE AND AGREEMENT

- 2.1** Offers provided by Hammerfest are non-binding to either Hammerfest or a Customer until such offer is accepted by the Customer and confirmed in the Agreement.

3 PROVISIONS OF SERVICES

- 3.1** Hammerfest shall provide to the Customer the Services described in the Agreement.
- 3.2** Hammerfest uses its best efforts into realising tangible results for the Customer's campaign. However, Hammerfest is not responsible in any way for the success or results of any given campaign. No guarantees are given for any response, whether positive, neutral or negative from a campaign. The Customer will indemnify and hold harmless Hammerfest and parties related to Hammerfest from any claims from the Customer or third parties that may arise as a result of a campaign's (lack of) results.
- 3.3** If the Services include the development of software, websites, apps or other digital services, the Customer is responsible for:
- 3.3.1** the security of its passwords (and of its End Users) and

- 3.3.2** for any use of the personal accounts and its passwords. If Customer becomes aware of any unauthorized use of the password or personal accounts, Customer will notify Hammerfest as promptly as possible;
- 3.4** the technical integration of the Services into the systems, website, databases or other (digital) platforms the Customer may use.
- Hammerfest may, at its sole discretion, use the services of third parties to provide the Services.

4 DATA COLLECTION

- 4.1** If Customer Data is collected as part of the Services, Hammerfest shall manage and store the Customer Data in a secure environment during the term of these Terms. If Customer so wishes, the Customer Data can also be managed and stored by Customer itself. In that case, Hammerfest will not be responsible for the storage, security and accessibility of the Customer Data, and the relevant provisions of these Terms will not apply.

5 AMENDMENT OF SERVICES OR ADDITIONAL SERVICES

- 5.1** The Agreement determines the scope of the Services. Should the Customer require an amendment of the Services provides, such amendment will only take effect if agreed in writing between the Parties.
- 5.2** Hammerfest can provide additional services to Customer at Customer's request. For these additional services separate fees and conditions (to be further agreed upon between Parties) will apply.

6 FEE

- 6.1** Customer shall pay to Hammerfest for the Service the fee specified in the Agreement hereunder (Fee). The Fee can be:
- 6.2** Except as otherwise specified in the Agreement, Fees are quoted and payable in Euro's and exclusive applicable VAT or other taxes. Fees paid are non-refundable. Hammerfest remains the right to change the Fees upon notice to Customer if circumstances so demand. In such case the Customer is entitled to cancel the Service Agreement, however, paid Fees are also in such case non-refundable.
- 6.3** Unless otherwise agreed in the Agreement, Hammerfest requires a down payment of 50% of the total Fee before any works will be undertaken. The final 50% of the Fee will be

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6.4 invoiced at the end of the Services. Customer will pay the such invoice within 14 (fourteen) days from the invoice date. If a payment has not occurred in time, Hammerfest will charge statutory interest plus an extra interest of 3% over the outstanding amount per day, from the date the payment was due until full payment is made.

6.5 Customer is liable for any reasonable direct and indirect costs including but not limited to all costs involved with the collection of the outstanding claims of Hammerfest.

7 OBLIGATIONS OF CUSTOMER

7.1 The Customer should provide such information that is required for the proper fulfilment of the Services. Such information could include, but is not limited to, briefings, instructions, descriptions of goals, copywriting, artwork, images, brand-guides, but also access to essential staff of the Customer if so required.

7.2 The Customer represents and warrants that it has obtained all rights, permissions and consents necessary to use and transfer any Customer Data if required for providing the Services (including providing adequate disclosures and obtaining legally sufficient consents from the relevant persons). The Customer is solely responsible for the Customer Data it stores. Customer understands and agrees that Hammerfest has no control over Customer Data stored with the Customer. Hammerfest will not be responsible and is not liable for any disclosures, modifications or deletions of Customer Data resulting from any such transmission.

8 RULES OF CONDUCT

8.1 The Customer agrees not to:
8.1.1 permit any third-party to use the Services, unless such third-party is an authorized End User using the Services solely as necessary for Customer to enjoy the benefits of the Services, this End User is bound by terms no less restrictive than those set forth in these Terms, and under the condition that Customer is responsible for any breaches by such End User,

8.1.2 sell, sublicense, rent, lease, grant a security interest in or otherwise transfer rights to the Services;

8.1.3 copy, modify, translate, alter, adapt, publish, transmit, remove, reverse engineer, decompile, disassemble,

8.1.4 reproduce, distribute, display, create derivative works, compilations or collective works based on or otherwise exploit any of the Services;
8.1.5 interfere with the use of the Services, or the equipment used to provide access to the Services,
8.1.6 by other customers or other authorized users;
8.1.7 disable, interfere with or circumvent any aspect of the Services; use the Services to engage in, promote or encourage illegal activity; and use the Services for any unlawful, invasive, infringing, defamatory or fraudulent purpose.

9 CONFIDENTIALITY

9.1 In connection with these Terms, each party may have access to or be exposed to Confidential Information of the other party. Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents, and subcontractors, on a "need-to-know" basis in connection with these Terms, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein.

9.2 Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (2) is rightfully received by the recipient from a third party without a duty of confidentiality.
9.3 If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall, subject to any applicable lawful restrictions, provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall survive termination of the Agreement.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 Hammerfest is the holder of all intellectual property rights in relation to the Services.

10.2 Hammerfest grants the Customer a non-exclusive, non-transferable right to use the Services described in the Agreement for the duration of the project or campaign, as described in the Agreement (the License).

10.3 The Parties may agree that deliverables under the Services may be used by the Customer for its own use after termination of the Agreement and as such the licence granted under article 10.2 is extended for the duration of such use.

10.4 The Customer may not transfer or sublicense any rights under the License.

10.5 These Terms does not grant or transfer to Customer or its End Users any intellectual property right, implied or otherwise, other than the Licence, to the Services or any other service or product of Hammerfest, unless otherwise agreed in writing.

11 DURATION AND TERMINATION

11.1 The Agreement shall commence on the day specified in the Agreement and for the duration as specified in the Agreement.
11.2 Hammerfest may terminate the Agreement with immediate effect, without any notice being required and without being liable for any damages as a result of the termination, if Customer:

- a)** is in default or negligent in the performance of its duties and obligations pursuant to the Agreement or these Terms, and has not remedied such non-performance within 14 (fourteen) days after having been notified in writing;
- b)** has been dissolved or liquidated, or is in dissolution or liquidation;
- c)** has been granted suspension of payments;
- d)** has been declared bankrupt; or
- e)** any other insolvency procedure under any jurisdiction has been opened against the Customer.

12 EFFECTS OF TERMINATION

12.1 If the Agreement expires or is terminated, then: (i) the rights granted by Hammerfest to Customer, including the Licence, will immediately cease; (ii) the Customer will remove any deliverables from the Services from its systems, websites, devices or other data carriers and return all copies of the materials provided under the Services to Hammerfest, (iii) all Fees (including taxes)

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owed by Customer to Hammerfest are immediately due; (iv) Hammerfest may delete the Customer Data within 60 (sixty) days after the date of termination of these Terms; and (v) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party.

12.2 The terms and conditions relating to Hammerfest's liability, intellectual property rights and confidentiality shall survive termination of the Agreement for any reason.

13 LIMITATIONS OF LIABILITY

13.1 Hammerfest disclaims all liability for direct or indirect consequential loss, damage or injury including loss of business opportunity, loss of use of profits or of contracts or business revenue, interest, goodwill or anticipated savings, damage or injury of any kind whatsoever, and all other pure economic loss, arising out of or in connection with the performance of the Services, regardless of the form of action, whether in an agreement, tort, strict product liability or otherwise, even if advised of the possibility of such damages and even if the damages were foreseeable.

13.2 Hammerfest disclaims all liability for violation, misappropriation or infringement of intellectual property rights, and further disclaims any liability for incidental or consequential damages arising out of any infringement of intellectual property rights in connection with the performance of the Services, outside the Netherlands.

13.3 Customer acknowledges and agrees that it is solely responsible for the proper back-up of all Customer Data and that it shall take appropriate measures to protect its Customer Data. Hammerfest (and its third-party licensors, suppliers or contributors of certain parts of the Services including software) does not assume any liability or responsibility whatsoever for the loss and/or corruption of Customer Data

13.4 Hammerfest relies on the existence of third party services for part of its Services, including, but without limitation, Google Adwords, Facebook, Instagram and Google+, if for whatever reason, such parties cease or materially change their services, Hammerfest cannot be held responsible for any negative effects this may have on its Services.

13.5 Hammerfest is only liable in case of wilful misconduct or gross negligence and its liability will in no event exceed

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the total amount of the total Fees of one year. Hammerfest shall be deemed to have been discharged from all liability in respect of the performance of the Services, whether under the law of contract, tort or otherwise, on the expiration of one year from the completion of the Services or one year after the termination of the Agreement (whichever period is shorter), and Customer (and persons claiming through or under Customer) shall not be entitled to commence any action or claim whatsoever against Hammerfest in respect of the performance of the Services after that date.

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INDEMNIFICATION

Customer will indemnify, defend, and hold harmless Hammerfest from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim: (i) regarding any Customer Data; (ii) regarding the use of the Services by Customer or End Users in violation of the Rules of Conduct or any of the other obligations under these Terms; (iii) regarding any other unauthorized use of the Services by the Customer, End Users or other persons acting on its behalf; and (iv) the Customer's breach of these Terms or violation of any applicable law, regulation or order.

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FORCE MAJEURE

Hammerfest will not be liable to Customer for any failure to perform any of its obligations under these Terms during any period in which performance is delayed by circumstances beyond its reasonable control (Force Majeure), which includes (among others) an interruption in the access to the Internet, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), hacks, fire, explosion, power blackout, earthquake, flood, severe storms, strike, riot, embargo, acts or omissions of Internet traffic carriers or actions or omissions of regulatory or governmental authorities (including the passage of laws or regulations or other acts of government or law enforcement that impact the delivery of the Services). Hammerfest will inform Customer of the Force Majeure as soon as reasonably possible. Hammerfest's performance will be excused for the duration of the Force Majeure. In the case of a Force

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16.1

Majeure, Customer acknowledges and agrees that its Customer Data may not be recoverable and Customer accepts responsibility for re-entry of such Customer Data. Hammerfest is not liable for any damages of Customer nor is Hammerfest obliged to repay Customer (a part of) the Fee in the event of a Force Majeure.

MISCELLANEOUS

The Agreement and these Terms (including its schedules and annexes) represents the entire understanding and agreement between parties with respect to the subject matter thereof and supersedes all previous agreements, both in writing and oral, including correspondence in this respect. The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of any other provision of these Terms. Any such invalid or unenforceable provision shall be replaced or be deemed to be replaced by a provision that is considered to be valid and enforceable and which interpretation shall be as close as possible to the intent of the invalid provision.

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ASSIGNMENT

The Customer is not allowed to assign or transfer any of its rights or obligations under the Agreement to a third party.

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NOTICES

Any notice or other communication under or in connection with the Agreement or these Terms shall be in writing (including email).

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19.1

LAW AND JURISDICTION

The Agreement and these Terms shall only be governed by and construed in accordance with the laws of the Netherlands.

19.2

All disputes arising out of or in connection with the Agreement and these Terms, including disputes concerning the existence and validity thereof, shall be exclusively submitted to the competent court of Amsterdam in the Netherlands.