

General Terms and Conditions for Consulting Services

Last updated May 01, 2014

Scope

The provisions of consultancy services ("Services") through Searchmetrics Inc. (hereinafter referred to as "Searchmetrics") are exclusively subject to the following general terms and conditions ("General Conditions"), to which the client will be bound by issuing the order or receiving the Services. They shall also apply for all corresponding future consultancy Services from Searchmetrics.

Unless adopted in a writing signed by Searchmetrics, the application of any deviating or supplementary business terms and conditions of the client shall be excluded, even if Searchmetrics do not expressly contradict these. Insofar as consultancy contracts or quotes from Searchmetrics containing written requirements that differ from the following General Conditions agreed upon, the individually quoted or contractual regulations expressly agreed upon by Searchmetrics shall take precedence.

§ 1 Description of services

(1) Agreed deadlines and periods are only binding if they have been confirmed in writing by Searchmetrics, and if the client has notified and provided Searchmetrics with all the necessary information and documents required to perform Services in a timely manner. The periods agreed upon commence upon receiving confirmation of the order by Searchmetrics in writing. In the event of additional or supplementary orders, the agreed terms shall be extended accordingly. Unforeseeable and unavoidable incidents as well as incidents that are beyond Searchmetrics' reasonable control and are not its fault, such as force majeure, war, natural disasters, official decrees or industrial disputes, shall release Searchmetrics of its obligation to provide punctual Service.

(2) If Searchmetrics' performance is delayed, the client is only authorized to withdraw from the contract if Searchmetrics is responsible for the delay, and an appropriate deadline set by the client for a Service has passed without success.

(3) If there are delays for which the client is responsible, such as subsequent requests for changes or delay in providing information, the delivery may be postponed for the period of delay.

§ 2 Length of contract and termination

(1) The contract begins at the date stated in the offer and will continue until terminated in accordance with the terms and conditions of the offer.

(2) The minimum term of the contract is 12 months.

(3) The termination rights are set forth in the respective offer.

(4) The right to termination for material reason shall remain unaffected.

§ 3 Remuneration

(1) All remuneration and agreed lump-sum fees, as well as all the expenses incurred (travel expenses, out-of-pocket expenses, work materials, third-party services, etc.) are net prices and are to be remunerated.

(2) As long as sales tax is owed, this will be charged, in addition to the statutory amount, on the invoice. If the contracting parties have not agreed on a certain remuneration amount, Searchmetrics will calculate its rendered Services according to an hourly rate on the basis of Searchmetrics price list valid at the date of the conclusion of the contract. In this case, third-party services will be charged based on actual expenditure.

(3) Searchmetrics is allowed to demand reasonable advances for remuneration, lump-sum fees and for reimbursements of expenses at any time. Searchmetrics is entitled to issue an invoice for the partial Services performed thus far. Searchmetrics will issue a final invoice at the end of the contract.

(4) Payment of the remuneration/lump-sum fees covers all claims by Searchmetrics for contractual provisions of its consultancy Services.

§ 4 Cooperation of the client

(1) The client is obliged to cooperate as reasonably required for Searchmetrics to perform its contractual obligations.

(2) All Searchmetrics questions on matters in connection with consultancy Services to be provided will be answered by client fully, accurately and promptly.

(3) Searchmetrics shall also be informed promptly, without having to ask, of any circumstances, which may be of importance for the consultancy Services to be provided.

(4) Searchmetrics' supplied results and reports will be accepted by the client within 10 working days following receipt.

(5) Searchmetrics must be notified promptly, in writing, regarding any necessary corrective actions. If the client does not respond within the prescribed 10-working-day period, the work will be deemed accepted.

(6) After both parties have signed the contract, Searchmetrics is entitled to make the contractual relationship and the general nature of the Services public.

§ 5 Disclaimer of warranty and liability

(1) SEARCHMETRICS WILL NOT BE HELD LIABLE IF AND TO THE EXTENT ANY CONSULTING MISTAKES WERE ERRONEOUS BASED UPON THE FACT THAT THE CLIENT HAS NOT, NOT COMPLETELY OR NOT TIMELY, FULLFILLED ITS OBLIGATION TO COOPERATE AS PER § 4. IF THERE IS A DISPUTE, THE CLIENT WILL PROVIDE EVIDENCE OF COMPLETE AND TIMELY FULFILLMENT OF ALL OBLIGATIONS TO SUPPORT SEARCHMETRICS.

(2) A CONSULTING SUCCESS IS SPECIFICALLY NOT GUARANTEED BY SEARCHMETRICS WITH REGARDS TO THE TASK AT HAND.

(3) NEITHER PARTY TO THIS AGREEMENT NOR ITS AFFILIATES, NOR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES,

PARTNERS, SHAREHOLDERS, AGENTS, LICENSORS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS, WILL HAVE ANY LIABILITY OR RESPONSIBILITY TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT.

(4) SEARCHMETRICS' LIABILITY IS LIMITED TO INTENTIONAL MISCONDUCT AND GROSS NEGLIGENCE. IN RESPECT TO ANY CLAIM OR SUIT BY CLIENT OR ANY THIRD PARTY, SEARCHMETRICS' LIABILITY IS LIMITED TO THE AMOUNT RECEIVED BY SEARCHMETRICS FOR THE RESPECTIVE SERVICES UNDER THIS AGREEMENT.

§ 6 Final provisions

(1) Oral agreements have not been made. Statements made prior by one of the contracting parties within the framework of the contractual negotiation are invalid, if they are not included in the contract.

(2) All contract changes and amendments must be in written form.

(3) Likewise, any amendments to this provision must be in written form.

(4) If any provisions of this contract should be or become invalid or inapplicable, the remaining contents of this contract shall not be affected. The contracting parties are committed to replacing the invalid or inapplicable provisions with an operative clause with an equivalent economic and legal provision, which comes as close as possible to fulfilling the commercial purpose for which the invalid provision was intended. This shall apply in the event of an unintended contractual lacuna.

(5) This Agreement is governed by and will be interpreted in accordance with the laws of the State of California. The parties to this Agreement expressly exclude the application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods. The parties to this Agreement unconditionally and irrevocably consent to the exclusive jurisdiction of the federal and state courts located in San Francisco, San Mateo or Santa Clara County, California and waive any objection with respect to those courts for the purpose of any action or proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement, and further agree not to commence any such action or proceeding except in those courts.