

End User License Agreement for the Searchmetrics Shop

Last updated: 8 April 2019

Scope

The terms and conditions of this End User License Agreement (EULA) govern the usage of the Searchmetrics online shop ("Searchmetrics Shop") and the products sold by the shop. These terms apply exclusively. Any deviating, conflicting or additional terms do not apply unless Searchmetrics expressly consented in writing to their validity. These terms also apply to future business relationships, whether or not this is expressly restated by the parties.

These Terms and Conditions shall only apply to businesses within the meaning of § 14 German Civil Code (BGB) and professional end users and not for private or consumer end users.

§ 1 Description of Service

- (1) The subject of the service is the provision of any paid or unpaid access to the Searchmetrics Software as a Service (SaaS) which is described in more detail in the relevant product description and/or Searchmetrics data services.
- (2) The specific features are specified in the relevant current product description.
- (3) Customer intends to use the service for the purpose of market analysis on Customer's or third-party website(s).

§ 2 Fees, invoice and payment terms

- (1) The fees and payment terms are specified on the relevant ordering page in the Searchmetrics Shop. If not otherwise specified, invoicing and payment terms are according to the following provisions.
- (2) All fees are due in advance as specified at the time of purchase in accordance with the subscription type or individual product purchased.
- (3) All fees are exclusive of VAT unless otherwise specified.
- (4) In case of late payment Searchmetrics is entitled to:
 - (a) receive interest at the statutory rate (§ 288 BGB) for the period of the payment delay.
 - (b) suspend access to the SaaS, in particular access to the system and the database. Searchmetrics' claims to the contractually agreed fees remain

unaffected. Any fees not paid when due will bear interest at the statutory rate (§ 288 BGB) during the period of payment delay.

- (c) terminate the contract after notice has been given providing a period of at least two weeks to cure the non-payment. In the event of termination, Searchmetrics' claims to the contractually agreed fees and claims for compensation remain unaffected. Any fees not paid when due will bear an interest at statutory rate (§ 288 BGB) during the period of payment delay.

§ 3 Term and Termination

- (1) As applicable, these terms apply to a subscription contract for Searchmetrics SaaS or a one-off purchase of Searchmetrics data services.
- (2) For subscription services, Customer chooses the initial term during the ordering process. The subscription will automatically renew for a subsequent term which is equal to the initial term. The subscription can be terminated with notice sent via email or post and received at least one day before the end of the respective term or by logging into the Searchmetrics Shop account.
- (3) The right to terminate for good cause remains unaffected. For the avoidance of doubt, good cause includes Customer's failure to make due payments notwithstanding Searchmetrics' written notice of late payment.

§ 4 Grant of rights

- (1) Searchmetrics is the exclusive owner of all right, title and interest in connection with the Searchmetrics SaaS, the Searchmetrics data services and the associated database, including all copyrights, trademarks, patent rights, trade secrets and other intellectual property rights
- (2) Searchmetrics grants Customer a limited, non-exclusive, non-transferable license during the Term to display Searchmetrics data for internal business purposes exclusively through use of the SaaS functionality. Customer may export data by using the export and reporting functions provided by the SaaS, solely for Customer's internal purposes. Customer may not remove, modify, or obscure any copyright, trademark, or patent notice, or other proprietary or restrictive notice or legend, contained in the SaaS.
- (3) Customer may not, in whole or in part use Searchmetrics data for the following purposes:
 - (a) to build a new database of any kind and/or
 - (b) to provide any commercial service or data processing service to third parties.

- (4) With regards to providing and maintaining the services rendered to Customer, Customer grants Searchmetrics the non-exclusive right to use Customer's user data for the legally permissible length.
- (5) Customer authorises Searchmetrics to use Customer's name for customer reference and marketing, advertising and promotional purposes.

§ 5 Mutual rights and obligations

- (1) Searchmetrics will provide Customer within with the instructions to access the SaaS via electronic data transmission promptly after the order is completed through the Searchmetrics Shop. Customer may not disclose or transfer the access information to third parties.
- (2) Customer shall immediately inform Searchmetrics of any misuse of the SaaS services. In the case of any misuse, Searchmetrics may block access to the SaaS services until there is no longer any threat of any further misuse. If Searchmetrics becomes aware of any misuse of the SaaS other than by notification by Customer, Searchmetrics will inform Customer immediately.

§ 6 Data protection

- (1) In connection with collection, processing and utilisation of personal data Searchmetrics adheres to the provisions of the General Data Protection Regulation (GDPR) and other corresponding data protection regulations. Registration data of Customer are subject to the data protection regulations and will only be used as required for providing contractual services and for invoicing processes. Transmission of data to a third party will only take place in the event of sub-processing and after prior notification of Customer.
- (2) The data obtained through the SaaS may be analyzed and processed statistically. Searchmetrics is permitted, on an industry-specific and cross-sector basis, to consolidate aggregated and anonymized data and provide third parties access to those data. Searchmetrics is permitted to use the aggregated and anonymized data to improve its services as per § 1. There will be no transmission of non-aggregated data in any event.

§ 7 Obligation to Return and/or Destroy Information

Upon termination of this contract, Customer must delete or otherwise destroy all access information provided to Customer (and any copies thereof).

§ 8 Confidentiality

- (1) The parties acknowledge that, in the course of performing their obligations under this Agreement, each may receive Confidential Information. Each party covenants and agrees that it will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except to exercise rights under this Agreement, or as such disclosure may be required by law or governmental regulation, subject to the Receiving Party providing to the Disclosing Party written notice to allow the Disclosing Party to seek a protective order or otherwise prevent the disclosure. If requested by the Disclosing Party, Receiving Party shall return or destroy the Disclosing Party's Confidential Information upon termination of contract.
- (2) "Confidential Information" means information or data that one party (the "Disclosing Party") provides to the other party ("Receiving Party") during the term of this Agreement that is identified in writing at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, but is not limited to any information, technical data or know-how which relates to research, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing, finances or trade secrets. Confidential Information also includes Confidential Information of a third party, which is in the possession of one of the parties hereto and is disclosed to the other party hereto in confidence hereunder. Confidential Information does not include information, technical data or know-how which was already in the possession of the receiving party prior to disclosure, is or becomes part of the public knowledge through no act or omission by receiving party, is disclosed to receiving party by a third party who is not subject to confidentiality restrictions, is approved for release by the disclosing party or is independently developed by the receiving party without the use of any Confidential Information of the other party.

§ 9 Warranty and Liability

- (1) Customer shall immediately upon receipt of the access information check the product for operability and notify Searchmetrics immediately of any deficiencies.
- (2) Unless otherwise stipulated below, Searchmetrics is liable in accordance with applicable law.
- (3) Searchmetrics' liability is limited to damages arising out of an intentional breach of a material contractual obligation or due to gross negligence. Nothing in this section is intended to limit or exclude Searchmetrics' liability for death or bodily injury of Customer caused by Searchmetrics' negligence.

- (4) If Searchmetrics breaches a major contractual obligation due to ordinary negligence, compensation is further limited to foreseeable damages which are typical for this type of contract.
- (5) Searchmetrics will not be liable for temporary unavailability of the service, for longer response times, or display of incomplete or erroneous search engine data.
- (6) The above limitations to liability do not relate to the Customer's claims under product liability. The provisions of the German Product Liability Act remain unaffected.
- (7) Searchmetrics is not liable for Customer's loss of profits or other financial damages.
- (8) If the contractual liability of Searchmetrics is excluded or limited, the same shall apply to the personal liability of Searchmetrics employees, representatives and agents.
- (9) Claims for damages expire one (1) year after the Customer has become aware, or should have become aware without gross negligence, of the circumstances on which the claim is based. This does not apply to claims under the German Product Liability Act.
- (10) Data provided as part of the services may originate from third party sources such as "Google". Searchmetrics does not have any influence on the accuracy, completeness or correctness of these data and is not liable for data received from third parties.

§ 10 Amendments to Terms and Conditions

- (1) Searchmetrics is entitled to amend these terms and conditions at any time. Searchmetrics will notify Customer in writing of any changes. If Customer does not object to the changes within two weeks after receipt of the notification, the amendments are deemed accepted. The amendments will become effective if Searchmetrics has expressly notified Customer of this effect in the notification of changes.
- (2) If Customer objects to the amendments, the contract will continue to operate under the previous conditions.
- (3) Amendments according to Clause (1) can only be made if the amendment does not change any material contractual obligation and the balance between performance and counter-performance will not shift to a substantial disadvantage of Customer.

§ 11 Final provisions

- (1) The contract is governed by and will be interpreted in accordance with the law of the Federal Republic of Germany. The parties to this Agreement expressly exclude German private international law and the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) The place of jurisdiction for any disputes arising from the contract, including tortious claims, is Berlin.
- (3) The place of performance is Berlin.
- (4) Should any provision of this agreement be or become wholly or partially illegal, invalid or unenforceable, this shall not affect the validity of the remainder of the Terms and Conditions. The parties undertake to agree to replace the invalid provision with an appropriate provision which, as far as is legally possible, comes closest to what the parties intended to agree.