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## **General Terms and Conditions and Terms of Use for "Searchmetrics Suite™"**

**Last updated: 01.11.2016**

### **Scope**

The following General Terms and Conditions and Terms of Use for the "Searchmetrics Suite™" (hereinafter "Terms and Conditions") apply to the business relationship between Searchmetrics GmbH (hereinafter referred to as "Searchmetrics"), Greifswalder Straße 212, 10405 Berlin, (District Court of Berlin-Charlottenburg HRB 111340 B) and the Client, to the extent that no product- or service-specific conditions apply.

These Terms and Conditions apply exclusively to businesses within the meaning of § 14 German Civil Code (BGB). A business is a natural or legal entity or legal partnership.

These Terms and Conditions also apply to future business relationships, unless other terms and conditions have been expressly agreed.

These Terms and Conditions apply exclusively. Any deviating, conflicting or additional terms and conditions of the Client do not apply even if Searchmetrics provides services without expressly disputing such Client terms and conditions. Additional terms and conditions must be agreed in writing to become valid. By placing the order, the Client accepts the foregoing conditions as binding.

If any provision of the offer conflicts with the provisions of these Terms and Conditions, the provisions contained in the offer will govern to the extent of the conflict.

### **§ 1 Conclusion of the contract**

- (1) Searchmetrics will provide the Client with a written offer for Searchmetrics services.
- (2) This offer requires signature for acceptance by the Client.
- (3) The contract between the Client and Searchmetrics will be concluded once the signed offer has been received and accepted by Searchmetrics.

### **§ 2 Description of services**

#### **"Searchmetrics Suite™" Software Platform**

- (1) The subject of the service is the provision of and access to, subject to payment of the contractual fees, the "Searchmetrics Suite™" platform (hereinafter referred to as the "Platform") as Software as a Service provided by Searchmetrics and which is described in more detail in the relevant product description.

- (2) The functionality of the Platform is specified in the relevant current product description.
- (3) The Client intends to use the platform for market analysis in the area of Search Engine Marketing as well as for the optimization and analytical evaluation of third party or Client website(s).
- (4) The data processed as part of the use of the Platform originates from third party sources such as "Google". Searchmetrics disclaims all liability for accuracy, completeness or correctness of the data received from third parties.

### **§ 3 Fees and payment terms**

- (1) The fees and payment terms are specified in the offer.
- (2) The fees are exclusive of VAT unless otherwise specified in the relevant offer.
- (3) Unless otherwise agreed, all fees are payable in advance without deductions.
- (4) Any specific requirements regarding invoices must be provided to Searchmetrics at the time of signature of the offer or immediately thereafter.
- (5) In the event of a delay in payment, Searchmetrics is entitled to suspend access to the Platform, in particular access to the system and the database. In such a case the contractually agreed payment claims of Searchmetrics remain unaffected. Any fees not paid when due will bear interest from the original due date until paid at the statutory rate of interest in accordance with § 288 BGB.
- (6) If the Client is in arrears with payments, Searchmetrics is entitled to initiate extraordinary termination of the contract after notice has been given with a period of at least two weeks to cure the non-payment.
- (7) In the event of extraordinary termination in accordance with § 3 Para. (6), the contractually agreed payment claims of Searchmetrics and claims for compensation remain unaffected.

### **§ 4 Grant of rights**

- (1) Searchmetrics is the holder of all rights in connection with the Platform and the associated database and software, including all copyrights, trademarks, patent rights, trade secrets and other intellectual property rights.
- (2) Searchmetrics grants to the Client, subject to payment of the contractual fees, a limited, non-exclusive, non-transferable global license (excluding the United States and Canada) during the contract term, without the right to grant sub-licenses, to access and use the Platform through the interface and to display, download and export individual data sets exclusively using the online search masks provided by Searchmetrics for Client's internal business purposes, insofar as this is envisaged independently by the Searchmetrics software. Automated retrieval through scripts or similar is not permitted, apart from the API provided and documented by Searchmetrics. References to copyright or other notes on intellectual property rights in the Platform must not be removed or amended.
- (3) The data may not be transferred, sold, sub-licensed or distributed to any third party or used for any purpose not expressly permitted under these Terms and Conditions, including for aggregation or other commercial exploitation.
- (4) With regard to the transmission of the data by the Client to Searchmetrics for analysis by the Platform, the Client grants Searchmetrics the right to use this data for the duration of the contract term in order to provide the services in accordance with the contract.

- (5) Client authorises Searchmetrics to mention the Client as part of its web presence and in marketing material.

## **§ 5 Mutual rights and obligations**

- (1) After receipt and acceptance of the Client's signed offer acceptance (§ 1 Para. 3), Searchmetrics shall provide the Client with the access data for the Platform on electronic storage media or via electronic data transmission, e.g. by email. Disclosure or transmission of the access data to a third party in violation of the terms of this contract is not permitted.
- (2) The Client is responsible for maintaining the confidentiality regarding the access data and any passwords to use the Searchmetrics services and to inform Searchmetrics immediately if the access data or password has been obtained by a third party without authorization.
- (3) The Client is responsible for all activities carried out using Client's password, except that the Client is not liable if there is misuse of the password without breach of the existing duty of care. In such case, the Client shall provide evidence that he is not responsible for the misuse of his password.
- (4) The Client shall immediately inform Searchmetrics of any misuse of the Platform. In the case of any misuse, Searchmetrics may block access to the Platform until there is no longer any threat of any further misuse. If Searchmetrics becomes aware of any misuse of the Platform other than by notification by the Client, Searchmetrics will inform the Client immediately.
- (5) The Client undertakes to provide Searchmetrics with all data required for Searchmetrics to satisfy its service obligations in accordance with this contract and grants Searchmetrics the non-exclusive right and license during the term of the contract to use and store such data solely to provide the services rendered to Client.
- (6) The Client is responsible for ensuring adequate networks, Internet connections, telecommunication connections, hardware and software, as well as sufficient competent staff, for the use of the Searchmetrics services.
- (7) The Client shall check the Searchmetrics Suite™ software platform immediately upon receipt of the access data for completeness and operation, and notify Searchmetrics immediately of any deficiencies.
- (8) The Client undertakes to delete all electronic copies of the access data at the end of the contractual relationship. Information and content, which is available in material form, must be returned to Searchmetrics.

## **§ 6 Data protection**

- (1) Searchmetrics complies with the provisions of the German Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG) and other relevant legal provisions during the collection, processing and use of personal data of the Client. The registration data of the Client are subject to the data protection regulations and will be used insofar as they are required for the conclusion of the contract and for invoicing purposes. Transmission of the registration data to a third party will take place only to the extent that it is required to preserve the justified interests of a third party and after prior notification to the Client.
- (2) The data acquired through the software may be analysed and processed statistically. In particular Searchmetrics is permitted to summarise this data specifically for a sector and across sectors and provide this to a third party in this aggregated and

anonymous form. Searchmetrics is permitted to use the data that has been collected internally to improve its services as per § 2. The transmission of non-aggregated data will not take place.

## **§ 7 Confidentiality**

- (1) Neither party may use or disclose the confidential information of the other party without the prior written consent of the other party, unless required to satisfy the obligations arising from the contract or required by law, regulation or court order. The party obliged to disclose confidential information in this manner will provide written notice to the other party as early as possible in advance. At the end of the contract, the parties will immediately return or destroy all the confidential information and confirm this in writing if requested to do so.
- (2) "Confidential Information" as part of the contract includes all the data protected by copyright or as database records as well as all other information, which is disclosed by one of the contracting parties to the other and which is either marked as "confidential" or is to be regarded as confidential given the nature of the information and the circumstances of disclosure. In particular this includes information of a business nature and information on product developments. However, information which is known to the general public, which was already known to the other party to whom it was disclosed or which was developed by the recipient contracting party independently and without using the Confidential Information is not regarded as Confidential Information.

## **§ 8 Intellectual property rights**

Searchmetrics and its licensors are the sole and exclusive owner of all Intellectual Property Rights including but not limited to copyrights, patent rights, trade secrets, trademarks and other intellectual property rights on works and services, which are developed and provided for according to this contract including Source Codes, Database, Hardware or other material like analyses, developments, documentations and reports, as well as material for preparation.

## **§ 9 Guarantees and liability**

- (1) Insofar as nothing to the contrary is stipulated below, Searchmetrics is liable in accordance with applicable law.
- (2) In the event of a threat of legal proceedings owing to a breach of intellectual property rights, the Client must provide security for the full amount of the proven threatened loss within three weeks of sufficient presentation of the legal and factual circumstances by Searchmetrics.
- (3) In addition, the Client will bear all the court and out-of-court costs and expenses incurred in connection with court proceedings owing to a breach of intellectual property rights.
- (4) Searchmetrics will be liable for losses other than those arising through a danger to life, body and health only insofar as they are based on an intentional or grossly negligent action or culpable breach of a major contractual obligation, whose compliance is of particular importance for achieving the purpose of the contract and on which the Client can rely.

- (5) Insofar as Searchmetrics intentionally breaches a major contractual obligation, the obligation to provide compensation for material damage is limited to the foreseeable damages which are typical for this type of contract.
- (6) The provisions of the Product Liability Act remain unaffected.
- (7) Searchmetrics is not liable for the Client's lost profits or other losses regarding the Client's assets. Insofar as the contractual liability of Searchmetrics is ruled out or limited, this also applies to the personal liability of employees, representatives and vicarious agents.
- (8) Except for claims due to unlawful acts or claims under the Product Liability Act, any compensation claim by the Client is subject to the statute of limitations and must be made no later than one (1) year after the end of the year in which the claim has arisen and the contracting partner has become aware, or should have become aware without gross negligence, of the circumstances on which the claim is based.
- (9) Strict liability pursuant to § 536a Para. 1 BGB is hereby expressly excluded.
- (10) Liability is not assumed for the accuracy of data and content provided or sent by a third party. In particular Searchmetrics is not liable for delays that arise through incomplete data transmission by the Client.

## **§ 10 Contract term and termination**

- (1) Unless otherwise stated in the offer, the term of the contract is 12 months and starts on the date indicated in the offer. The contract term will automatically extend for further 12 month periods unless either party provides written notice of termination at least 30 days before the end of the respective term.
- (2) The right to terminate for cause remains unaffected. For the avoidance of doubt, Searchmetrics has a right to terminate if the Client does not make payments which are due in accordance with § 3 despite a payment reminder and a cure period.
- (3) Notice of termination must be in writing (email is acceptable).
- (4) At the end of the contract term, Searchmetrics is entitled to permanently delete all the data stored during the term of the contract. The data can be passed to the Client in a common format for a standard fee.

## **§ 11 Retention**

The Client is authorised to exercise a right of retention only to the extent that his counterclaim is based on the same contractual relationship.

## **§ 12 Amendments**

- (1) Amendments to the Terms and Conditions can be agreed through an offer from Searchmetrics and acceptance of the Client. The offer from Searchmetrics will take place by means of a notification of the changes via email. If the Client does not object to the changes within six weeks after receipt of the notification, the offer is deemed accepted and the changes will take effect, but only to the extent that Searchmetrics has expressly notified the Client of this effect in the notification of changes.
- (2) If the Client objects to the offer by the deadline, the contract will continue to operate under the previous conditions.

- (3) Amendments to the Terms and Conditions can be agreed in accordance with Section 1 above only insofar as the amendment does not affect any main performance obligations and the relationship between what is provided and what is received in consideration thereof is not postponed substantially to the detriment of the Client.

### **§ 13 Final provisions**

- (1) With regard to all legal relationships arising from the contract, the Parties agree to the application of the law of the Federal Republic of Germany excluding German private international law and 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) If any provision of this contract is invalid, unlawful or unenforceable, and if such provision is based on a measurement of performance or time (deadline or date), then the provision will be replaced with a legally permissible measurement.