



End User License Agreement for „Searchmetrics Suite“ Version 01.09.2008

General

The terms and conditions of this End User License Agreement (EULA) govern the usage of the “Searchmetrics Suite” platform (Software) by individual end users (User). The terms of usage are established as of the software version valid at the time of purchase or contract date between Searchmetrics GmbH and User. These terms also will apply to future contracts or usage of Searchmetrics software in case no newer or other terms have been agreed expressly in writing. Searchmetrics will not accept deviating terms or conditions unless Searchmetrics GmbH has explicitly agreed to them in writing. In addition to this EULA Searchmetrics’ general business terms and conditions (AGBs) do apply.

All additional oral side agreements shall be documented at least in a persistent electronic form (e.g. email). Any changes of terms, including this confirmation clause, as well as binding or non-binding delivery dates have to be reconfirmed by Searchmetrics GmbH in writing.

If the offer from Searchmetrics to the User contains written terms or conditions which deviate from this EULA the individual terms and conditions in the offer will prevail.

§ 1 Description of Service

- (1) Searchmetrics will provide to User for a monthly license fee access to its web-based Software.
- (2) The functionality of the service is specified in the most recent release of the Software product description.
- (3) User intends to use the service to perform data analysis about the web sites operated by the User and/or web sites operated by third parties.

§ 2 License Grant



- (1) Searchmetrics has all necessary license rights, copyrights and other rights for its platform, the underlying database and Software. All rights for the Software, database, data and other elements of the platform exclusively belong to Searchmetrics.
- (2) Searchmetrics grants to User the non-exclusive, non-distributable, time-limited right to display data from the Software platform on his displays exclusively through using the functionality of the user interface to the service as provided by Searchmetrics. User may export data using the export and reporting functions provided. User may not use automated queries with the platform like scripts. User may not change or delete any copyright marks in the platform.
- (3) User may not (complete or in parts) use data from Searchmetrics Suite
 - to build a new data base of any kind and/or
 - to provide any commercial service or data processing service to third parties
- (4) With submission of User queries to perform analysis User grants Searchmetrics the right to process and store these data for the term of this EULA to the extent necessary to provide the service to the User.
- (5) User authorizes Searchmetrics to use User's name and/or company name for customer reference purposes on its Web site and in marketing collateral.

§ 3 Obligations and Audit Rights of Searchmetrics

- (1) Searchmetrics is obligated to provide User access data necessary to access the Searchmetrics Suite platform on electronic storage media or via electronic transmission (delivery item) within 5 business days after receipt of a binding order. User is not authorized to disclose access data to third parties or make copies for third parties outside of this agreement.
- (2) User is obligate upon request from Searchmetrics to provide all usage data (log file data) of his Internet access related to the access of the Software.

§ 4 Warranty and Liability

- (1) User is obligated to verify access data promptly after receipt and to test the functionality of the service provided by the Software. User should promptly inform Searchmetrics about any



substantial problems limiting User's ability to use the service for the purpose described in the product description.

- (2) Unless specified in the following clauses Searchmetrics will be liable according to German law (Produkthaftungsgesetz).
- (3) For other than damages of life, body and health Searchmetrics is only liable if these damages have been caused with intent (Vorsatz) or after gross negligence of care (grobe Fahrlässigkeit) or violation of substantial contractual obligations (wesentliche Vertragspflicht). This applies specially to damages resulting from problems or inaccessibility of the web sites of the User.
- (4) In case Searchmetrics violates a substantial contractual obligation Searchmetrics liability is limited to the typical damage that could have been expected/anticipated (vertragstypischer Schaden). This does not affect/limit and liability required by law. Searchmetrics will not be liable for damages from unrealized profits or other monetary damages of the User.
- (5) The limitation of liability for Searchmetrics according to this paragraph also applies to the personal liability of Searchmetrics employees, representatives and contractors.
- (6) Any warranty claims will expire after 24 (twenty-four) months, starting with the receipt of access data for the Software platform.
- (7) All claims for damages, with exception of claims from criminal acts and legal product liabilities, will expire 1 (one) year after the end of the year in which the claim was found and assuming the User could have gained knowledge of the damages without neglecting his reasonable duties.

§ 5 Term and Termination

- (1) This EULA becomes effective at the time Searchmetrics has provided access data for the Software platform to the User.
- (2) The EULA can be terminated at the end of each calendar quarter with a notice period of one month.
- (3) This does not affect the right to terminate the agreement for important reasons (Kündigung aus wichtigem Grund). One important reason is when the User has not paid due license fees



according to § 6 and is not fulfilling payment obligations despite proper notice in the notice period specified by Searchmetrics.

§ 6 Fee, Invoice and Payment

- (1) Fees and payment terms are determined in the offer provided by Searchmetrics to the User. The following terms only apply if the offer does not contain the specific payment terms.
- (2) All prices and fees mentioned do not include value add tax or sales tax, unless specified otherwise.
- (3) All fees are payable in advance and without any deductions.
- (4) In case of late payments Searchmetrics is entitled to refuse to provide any additional services, specially the access to the Software platform and data. The User has to pay interest for the late period (8% for companies, 5% for non-professional individuals according to §288 BGB). If the User has not paid within the notice period set by Searchmetrics, Searchmetrics is entitled to terminate the agreement. This does not effect the User's obligation to pay any license fees due and cumulated interest.

§ 7 Obligation to Return and/or Destroy Information

After termination of the agreement the User shall permanently delete all access data and copies of hereof. The User also shall return to Searchmetrics all information or content in physical form which is belonging to Searchmetrics.

§ 8 General Clauses and Jurisdiction

- (1) This EULA is subject to German jurisdiction.
- (2) There are no oral side or additional agreements to this EULA. All changes or additions to this agreement need to be agreed upon by the parties in writing to be binding. No oral agreements are binding.
- (3) If individual clauses of this agreement appear to be invalid or contradicting German law or become invalid or contradicting German law in future, this shall not touch the effectiveness of all other clauses. Such invalid or contradicting clauses shall be replaced by a clause which is closest



in representing the initial intend of the parties from an economic and fairness point of view. The same shall apply in case of gaps or missing clauses of the agreement.

- (4) Place of fulfilment for this agreement is Berlin, Germany. If both parties are commercial according to German commercial law (HGB) the parties agree that Berlin is the place of jurisdiction for all disputes from this agreement.