

**General Terms and Conditions and Terms of Use  
for "Searchmetrics Suite" and "Searchmetrics Content Experience"  
(Software as a Service)**

**Last updated: 8 April 2019**

**Scope**

These Software as a Service Terms and Conditions are between Searchmetrics GmbH (hereinafter referred to as "Searchmetrics"), Greifswalder Straße 212, 10405 Berlin, (District Court of Berlin-Charlottenburg HRB 111340 B) and the Customer. These Terms and Conditions set forth under which Searchmetrics will provide access to the Platform (as defined herein) and/ or the Searchmetrics API to the extent that no product- or service-specific conditions apply.

These Terms and Conditions shall only apply 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 apply exclusively. Any deviating, conflicting or additional terms and conditions of the Customer do not apply even if Searchmetrics provides services without expressly disputing such Customer terms and conditions. Additional terms and conditions of Customer shall only then become an integral part if Searchmetrics expressly consented in writing to their validity.

The Customer accepts these Terms and Conditions by placing the order. These Terms and Conditions also apply to future business relationships, whether or not this is expressly restated by the parties.

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 submits a written offer to Customer to conclude a contract.
- (2) This offer requires signature for acceptance by the Customer.
- (3) The contract between the Customer and Searchmetrics will be concluded once the signed offer has been received and accepted by Searchmetrics.

**§ 2 Description of services**

**Software Platform and/or Searchmetrics API**

- (1) The subject of the service is the provision of and paid access to the applicable web-based platform such as „Searchmetrics Suite“ and/or „Searchmetrics Content Experience“ (individually and collectively hereinafter referred to as the "Platform") as Software as a Service and/or access to Searchmetrics API which is described in more detail in the relevant product description.

- (2) The range of function is specified in the relevant current product description.
- (3) Customer intends to use the Platform for one or more of the following purposes:  
market analysis in the area of Search Engine Marketing, to optimize and evaluate Customer's or third party website(s), and/or to generate or optimize Online Content.
- (4) Data processed as part of the use of the Platform may originate from third party sources such as "Google". Searchmetrics does not have any influence on the 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 applicable offer.
- (2) All fees are exclusive of VAT unless otherwise specified in the 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 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 Platform and/or Searchmetrics API, 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.

### **§ 4 Grant of rights**

- (1) Searchmetrics is the exclusive owner of all right, title and interest in connection with the Platform, the Searchmetrics API and the associated database and software, including all copyrights, trademarks, patent rights, trade secrets and other intellectual property rights.
- (2) Searchmetrics grants Customer a limited, non-exclusive, non-transferable, global (excluding the United States and Canada) license during the Term, without the right to grant sublicenses, to access and perform the Software through the graphical user interface made available by Searchmetrics through the Platform and/or access to Searchmetrics API (as applicable), solely for Customer's internal business purposes and to display, download and export Searchmetrics data received from the Platform through the export and reporting functions provided by the Platform (including modules like API or plug-in's) and/or via the Searchmetrics API, solely for Customer's internal business 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 Platform.

- (3) Customer may not provide, transfer, sell, rent, lease, license, sublicense, distribute, disclose, display, or otherwise make available the data to any third party including resale, aggregation or other commercial exploitation.
- (4) Customer may not use automated queries with the Platform, such as scripts, except that the automated query of data using the Searchmetrics API as described in the documentation (<http://api.searchmetrics.com/documentation>) is allowed, as applicable.
- (5) With regards to providing and maintaining the services rendered to Customer, Customer grants Searchmetrics the non-exclusive right to use Customer's user data such as full name and business email address for the legally permissible length.
- (6) Customer authorises Searchmetrics to use Customer's name for customer reference and marketing, advertising and promotional purposes.

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

- (1) After conclusion of the contract (§ 1 Para. 3), Searchmetrics will provide Customer with the instructions to access the Platform and/ or Searchmetrics API via electronic data transmission. Customer may not disclose or transfer the Access Information to third parties.
- (2) Customer shall immediately upon receipt of the access information check the Platform for operability and notify Searchmetrics immediately of any deficiencies.
- (3) Customer is responsible for maintaining the confidentiality of the access information. Customer undertakes to notify Searchmetrics immediately if it becomes aware that anyone has obtained the access information without authorization.
- (4) Customer is responsible for all activities conducted under the access information. Customer is not liable for misuse of access information if there has been no breach of duty of care. In this event, Customer shall provide evidence that it is not responsible for the misuse of access information.
- (5) Customer 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 Customer, Searchmetrics will inform Customer immediately.
- (6) Customer shall provide Searchmetrics with all data required to fulfil its contractual obligations.
- (7) Customer is responsible for ensuring adequate networks, Internet connections, telecommunication connections, hardware and software to use the Platform.
- (8) Upon termination of this contract, Customer must delete or otherwise destroy all access information provided to Customer (and any copies thereof).

## § 6 Data protection

- (1) In connection with collection, processing and utilisation of personal data Searchmetrics ensures to respect 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 is required for providing contractual services and 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 Platform may be analysed and processed statistically. Searchmetrics is permitted, on an industry-specific and cross-sector basis, to consolidate aggregated and anonymised data and provide third parties access to those data. Searchmetrics is permitted to use the aggregated and anonymised data to improve its services as per § 2. There will be no transmission of non-aggregated data in any event.

## § 7 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.

## **§ 8 Intellectual property rights**

- (1) Searchmetrics is 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, 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.
- (2) If Customer accepted the offer to use "Searchmetrics Content Experience" the following clauses (3) and (4) apply.
- (3) Copyright and other intellectual property rights that have not been developed according to this contract, but are made available nevertheless, remain exclusively with its relevant previous legal owner. Images, texts and other media in the Searchmetrics Content Experience are solely for the purposes of illustrating the function of the product and may be subject to rights of a third party.
- (4) In deviation from clause (3) above, subject to a written Agreement and an additional fee, the rights to content created specifically for Customer may be transferred from Searchmetrics to Customer.

## **§ 9 Guarantees and liability**

- (1) Unless otherwise stipulated below, Searchmetrics is liable in accordance with applicable law.
- (2) If Customer within the use of "Searchmetrics Content Experience" uploads content (texts, images, videos, audio files or other media content), Searchmetrics is not liable in regard to any third-party property rights. Clauses (3) and (4) apply.
- (3) Customer indemnifies Searchmetrics against any and all claims if the content uploaded by Customer infringes third-party intellectual property rights.
- (4) In addition, Customer will bear all the court and out-of-court costs and expenses resulting from a breach of intellectual property rights.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Searchmetrics is not liable for Customer's loss of profits or other financial damages.
- (9) If the contractual liability of Searchmetrics is excluded or limited, the same shall apply to the personal liability of Searchmetrics employees, representatives and agents.

- (10) 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.
- (11) Strict liability pursuant to § 536a (1) BGB (German Civil Code) is hereby expressly excluded.
- (12) Searchmetrics is not liable for the accuracy of data provided by a third party.
- (13) Searchmetrics is not liable for delays that arise through incomplete data transmission by the Customer.

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

- (1) Unless agreed otherwise in the offer, the contract term is 12 months starting on the date indicated in the offer. The contract term will extend automatically for subsequent 12-month terms unless terminated with 30 days' written notice prior to the end of the respective term.
- (2) 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.
- (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 may be passed to the Customer in a common format for a standard fee.

### **§ 11 Retention**

Customer is entitled to exercise a right of retention only to the extent that his counterclaim is based on the same contractual relationship.

### **§ 12 Amendments**

- (1) Searchmetrics is entitled to amend the Terms and Conditions at any time. Searchmetrics will notify Customer in writing of any changes. If Customer does not object to the changes within six 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.

### **§ 13 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.