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General Terms and Conditions for Consulting Services

Last updated: 01.11.2016

Scope

The following General Terms and Conditions for Consulting Services (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 also apply to future business relationships, unless other terms and conditions have been expressly agreed.

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 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 Consulting Services

- (1) Searchmetrics provides consulting services, the details of which, in particular the scope of coverage, are detailed in these Terms and Conditions, the offer, and the related product description.
- (2) Searchmetrics performs the services in a professional manner and consistent with applicable industry standards.

§ 3 Fees and Payment Conditions

- (1) All variable and flat fees and expenses incurred (travel expenses, costs, working materials, and services purchased, etc.) are net prices. Any VAT due will be calculated based on the statutory rate and itemized separately on the invoice).
- (2) Unless otherwise agreed, all fees are payable in advance without deductions.
- (3) If the parties have not agreed to a specific remuneration, the fees for the Searchmetrics services provided will be calculated at an hourly or daily rate in accordance with the Searchmetrics price list in force at the time of the contract. Third-party services will be charged according to actual expenses.
- (4) Searchmetrics may claim appropriate advances for remuneration, flat-rate fees and reimbursement of expenses. Searchmetrics may invoice for work performed or partially-completed under the relevant offer.
- (5) Any specific requirements regarding invoices must be provided to Searchmetrics at the time of signature of the offer or immediately thereafter.
- (6) Full payment of the contractual fees (fixed or calculated based on quantity) satisfies the Client's obligations for payment of the consulting services.
- (7) In the event of a delay in payment, Searchmetrics is entitled to suspend the further provision of services. 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.
- (8) 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.
- (9) In the event of extraordinary termination in accordance with § 3 Para. (8), the contractually agreed payment claims of Searchmetrics, including but not limited to overdue amounts and claims for compensation, remain unaffected.

§ 4 Mutual rights and obligations

- (1) The Client agrees to cooperate as reasonably required for Searchmetrics to provide the services under this contract. This includes in particular the provision of network, Internet and telecommunications connections, hardware and software and adequately-trained personnel.
- (2) The Client agrees to provide to Searchmetrics information related to the services in a complete, accurate and timely manner.
- (3) The Client shall also timely inform Searchmetrics, even without specific request, regarding circumstances which may be relevant to the consulting services.
- (4) Any objections or requests for changes shall be communicated in writing.
- (5) After signature of the contract, Searchmetrics is entitled to make the contractual relationship and general nature of the services public and to use the Client's name and logo for customer reference and marketing, advertising and promotional purposes.

§ 5 Warranties and Indemnities

- (1) 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.
- (2) 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.

- (3) The provisions of the Product Liability Act remain unaffected.
- (4) Searchmetrics is not liable for lost profit or other losses regarding assets of the contracting partner. 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.
- (5) Searchmetrics is not liable for consulting errors that result from the Client's breach of its obligation to provide complete and timely information under § 4.
- (6) In the event of a dispute, the burden of proof rests with the Client to prove that the Client has fulfilled its obligations under this contract.

§ 6 Intellectual Property Rights

- (1) Searchmetrics is the owner of all rights, title and interest in connection with the services provided by Searchmetrics under the contract, including the Searchmetrics platform "Searchmetrics Suite" and the associated database and software. All copyright, trademark, patent and other intellectual property rights to the services, the platform, the database work, the database and the content, data and other elements belong exclusively to Searchmetrics.
- (2) All copyrights and patents and other intellectual property rights to the services arising under the contract or made available, in particular to software, including source code, databases, hardware or other material, such as analysis, development, documentation and reports, as well as on preparation material remain exclusively with Searchmetrics or its licensors.
- (3) Searchmetrics grants to the Client a limited, perpetual, global (except in the United States and Canada), non-transferable, non-sublicensable right to use the consulting results provided by Searchmetrics under the contract for Client's internal business purposes. The access to the Searchmetrics software ("Searchmetrics Suite") is expressly excluded from this license grant.

§ 7 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.

§ 8 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.

§ 9 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.
- (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).

§ 10 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.

§ 11 Final provisions

- (1) All changes, amendments and addenda to the contract must be in writing.
- (2) 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.
- (3) The place of performance is Berlin.
- (4) The place of jurisdiction for any disputes arising from this contract, including tortious claims, is Berlin.
- (5) If any provision of the 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.