

Licensing agreement for neosmart STREAM

(10/2012)

Note to user:

Please read this contract carefully. Should you install or use the software, you automatically explain that you have read all terms of this contract and that you agree to them. These terms are solely applicable for this contract. Any other terms are not accepted, even if they are not explicitly objected to.

All intellectual property rights on the software belong to neosmart. The software will be licensed and not sold. neosmart permits the download, the installation and the use of the software only in the lines of the terms of this contract. Should you not agree to the terms of this contract, please do not use the software. The following terms are applicable for neosmart STREAM (lite version, pro version), including the corresponding documentation and all updates.

§ 1 Subject matter of the contract

(1) Subject matter of the contract is the supply with the neosmart STREAM software (lite version or pro version) in the actual version at the time of download by making the download link available as well as the license key and the granting of user rights according to § 3 of these terms.

(2) Before the conclusion of the contract, the customer has to review if the software is in accordance with his wishes and needs. The licensee receives the software by download and can install it on his webserver. The main functional elements and system requirements will be shown on the product detail page <https://neosmart-stream.de> with the respective releasing stand.

The software will be provided in the actual version at the time of the conclusion of the contract and only by download. After registration, acceptance of the terms of use as well as the licensing terms and receipt of payment of the incurring license fee, you have the opportunity to view the license key at <https://neosmart-stream.de> and to download the software.

To view the software a modern browser is required.

The file folder nss-includes contains third-party software (open source software), which is used by neosmart STREAM in accordance with the respective licensing terms of the third-party software.

(3) Further activities by the licensor like consultation, installation, configuration, modification are not part of this agreement.

(4) Lite Version

The lite version is provided free of charge and contains a branding (picture and link). It is explicitly forbidden to remove this branding. Any hiding or disguising of the branding, or using any other method to avoid the showing of the branding is a breach of the terms of this license agreement.

Every "lite version" can only be used for one site. In line with this license the word "site" is defined as follows: a "site is a fully qualified domain name (FQDN). Each sub-domain of a domain counts as a separate "site".

(5) Pro Version

With the payment of a one-time license fee, you have the possibility to obtain a pro version according to the terms of use. In this case you can use the software without the showing of the branding, but only on the "sites" the license key is valid for. You will have to enter your valid license key in the admin-area of the software. The branding will automatically be removed. You agree to pay all charges incurred by the purchase of the neosmart STREAM pro license. The granting of the rights of use of the pro license is only valid after the full payment of the license fee.

During the ordering process you can choose the number of sites the pro version of neosmart STREAM shall be valid for. You will only be able to use your pro license in connection with these sites.

§ 2 Conclusion of the license agreement

(1) The presentation of products on <https://neosmart-stream.de> does not constitute a legally binding offer by neosmart to the customer and only serves to submit a purchase offer by the customer.

(2) The customer gives a binding contract offer towards neosmart in line of these terms of use for the products in his shopping cart by clicking the buttons "Order" or "Purchase". neosmart is entitled to accept such a purchase offer within 14 calendar days. neosmart is not obliged to accept the offer. The confirmation of receiving the order is made by an automated e-mail immediately after placing the order and does not constitute the acceptance of the contract.

(3) neosmart can explain the acceptance of the contract either in written or by sending the license key necessary for using the software.

(4) Should the user not agree to any term of this license agreement neosmart STREAM should not be downloaded and used.

Right of revocation

With receiving the license key the right of revocation expires, as with our software the license key is, due to its nature, not suitable for returning. Until the license key is entered you have the following right of revocation:

Instruction of revocation**Right of revocation**

You have the right to revoke your contractual statement within 14 days in written (e.g. letter, fax, e-mail) without stating any reasons. This period starts after receiving this instruction in written, but not before we have fulfilled our obligation according to § 312g paragraph 1 sentence 1 of the German Civil Code (BGB) in connection with Article 246 § 3 Introductory Act of the German Civil Code (EGBGB). In order to adhere to the specified revocation deadline, the timely dispatch is sufficient. The revocation is to be addressed to:

neosmart GmbH
Soderstraße 48
64287 Darmstadt
Deutschland

info@neosmart-stream.de

Effects of revocation

In the event of a valid revocation the mutually received benefits and possible emoluments taken (e.g. interest) have to be returned. Should you not be able to reimburse or return the received benefits and emoluments (e.g. the amenity and advantage of using) in total or partially or only in an impaired condition, you will have to provide compensation accordingly.

Special note:

Your right of revocation expires preterm if the contract was fulfilled by both parties on your explicit demand before the execution of the right to revoke. This is usually the case when entering the license key after installing the software on your system.

End of Instruction of revocation

§ 3 License

- (1) Subject to the payment of the appropriate license fee and subject to complying with the present terms of the agreement the licensee receives a basic, limited, non-exclusive, non-transferable, non-exclusive, perpetual right to use the software neosmart STREAM and its documentation. The right to use is limited to the licensee himself. The licensee is entitled to permit the exertion of the right only to employees in the company of the licensee. Any further permission is – without explicit approval of the licensor – not allowed.
- (2) Furthermore no rights will be granted, neither explicitly nor by implication and neosmart GmbH is and remains the sole and exclusive owner and holder of all rights to the software and its constituent parts.
- (3) The licensee is not entitled to pass on, to transfer, to sub-license, to distribute, to sell, to rent or lend to translate or reproduce the software (as well as the included source code).
- (4) The licensee is not entitled to change or edit the software and the included source code. Excluded from this, are all files in the file folder nss-content. The files contained in this file folder can be edited to configure the software and to adjust them to the requirements of the licensee. Also excluded is the file folder nss-includes, which contains third-party software.
- (5) It is not allowed to reconvert (reverse engineering), decompile or disassemble the software or try to explore the structure or the data flow of the software.
- (6) No secondary product or improvements of the software or of a part of the software are to be programmed. No derivative works shall be created from the licensed application (unless it is allowed by future licensing regulations or the use of an open-source component as part of the licensed software).
- (7) Copyright notices, serial numbers, company names, trademarks, copyright notices and other notices about legal reservations or other program-identification features may not be removed or altered.
- (8) The contained texts, graphics, sounds and other media and contents may not be extracted from the application package and/or be used for other purposes.
- (9) Any attempt of the acts mentioned under No. 4 to 8 is already a breach of the rights of the licensor neosmart. If the licensee does not abide to these restrictions, he can be prosecuted criminally and civilly and will have to pay damage compensation.
- (10) The software includes software components of third parties that are subject to various open-source software licenses ("Open Source Software Components"). The regulations of the specific Open-Source-software-license is exclusively applicable for the open-source-software-components.
- (11) The transfer of the rights of use takes place at the date of full payment by the licensee.
- (12) The license does explicitly not include any right for support, upgrades, patches, extensions or updates for the software neosmart STREAM or for newer versions.

§ 4 Fees / terms of payment

(1) The using of the lite version is free of charge.

(2) For making the software neosmart Pro available, the licensee has to pay a license fee (named "license price" in the following) to the licensor.

(3) Regarding the price of the software, the price list of neosmart in the latest version, available at <https://neosmart-stream.de/get-a-license/> is applicable. All prices include statutory VAT.

(4) The license fee is due with the conclusion of the contract and to be paid by bank transfer or transfer via PayPal within 14 days to neosmart. The licensee is obliged to fulfill in advance.

§ 5 Assignment of a claim, transfer

The right of the licensee to use the software in accordance with these provisions may, without prior written consent of neosmart, not be transferred, sub-licensed or otherwise transferred to any third party. The right to re-sell while abandoning the own right of use remains unaffected.

§ 6 General rights and duties of neosmart / updates / new version of the software

(1) The software is provided in the current version at the time of the conclusion of the contract and only available by download. After registration, acceptance of the terms of use as well as the licensing terms and receipt of payment of the incurring license fee, you have the opportunity to view the license key at <https://neosmart-stream.de> and to download the software.

(2) neosmart can develop updates at its own evaluation of the necessity in line with the perfective maintenance of the subject of this contract in the current version of the software. An obligation to develop updates and to offer these does not exist for neosmart. Any updates provided by neosmart to the licensee are voluntary updates to which the licensee is not entitled to. The licensee can use such updates by choice in the same scope as he uses the subject of the contract. It is advisable for the licensee to regularly visit the website <https://neosmart-stream.de>.

(3) As far as neosmart develops a new version of the subject of the contract due to further development and enhancement of the subject of the contract and as far as this new version with the naming of the new version is offered in the market, it is not considered an update but a new subject of the contract. The licensee has no claim for the new version to be made available to him. neosmart reserves the right to offer such a new version for a separate fee.

(4) As far as the licensee gives ideas and makes suggestions to neosmart on our website <https://neosmart-stream.de> or on Facebook, neosmart is entitled to use them free of charge for further development, improvement and for the distribution of the products.

(5) The usage of any part of the software is – except the usage permitted by these provisions – strictly forbidden and violates intangible property rights of neosmart and can lead to civil and criminal consequences, including possible obligations to pay damage compensations due to a breach of copyright.

(6) neosmart can withdraw the right of use due to an important reason. An important reason is especially, if the licensee uses the software against these provisions or breaches these licensing terms in any other substantial way.

§ 7 Support

(1) neosmart is not obliged to offer support (this also includes the supply with updates, upgrades, patches, add-ons) for the software. Warranty regulations remain unaffected by this.

(2) neosmart as licensor can develop updates at its own evaluation of the necessity in line with the perfective maintenance of the subject of this contract in the current version of the software. An obligation to develop updates and to offer these does not exist for neosmart. Any updates provided by neosmart to the licensee are voluntary updates to which the licensee is not entitled to. The licensee can use such updates by choice in the same scope as he uses the subject of the contract. It is advisable for the licensee to regularly visit the website of the licensor.

(3) As far as neosmart develops a new version of the subject of the contract due to further development and enhancement of the subject of the contract and as far as this new version with the naming of the new version is offered in the market, it is not considered an update but a new subject of the contract. The licensee has no claim for the new version to be made available to him. neosmart reserves the right to offer such a new version for a separate fee.

(4) As far as the licensee gives ideas and makes suggestions on our website

<https://neosmart-stream.de> or on Facebook, neosmart is entitled to use them free of charge for further development, improvement and for the distribution of the products, without the arising of copyrights for the user.

§ 8 General rights and duties of the licensee

(1) Before downloading the software, the licensee is obliged to register by providing a user name, an e-mail address and a password and to give neosmart his full name and a billing address (postal address), no P. O. Box or any other anonymous address. The licensee affirms that all information and data given to neosmart are correct and complete. In case of changes, the customer has to edit all personal information over his “user account” and has to make sure that he receives e-mails at the specified e-mail-address.

(2) The licensee is obliged to keep the registration information strictly confidential and to inform neosmart immediately as soon as he is aware of an unauthorized third party knowing of the registration information.

(3) The licensee is entitled to download “neosmart STREAM” and to embed it onto a web-server.

(4) The software is only to be used in a complete and unaltered form.

(5) The licensee is not allowed to use the software if by this legal regulations are breached, or rather if the terms of licensing are violated. In the event of a gross violation of these regulations or although a warning was given the offense is not ended or repeated, neosmart can deactivate or rather block the associated software instances.

(6) The licensee agrees to inform neosmart immediately and fully if a claim, judicial or out of court, is filed against him for using the software.

(7) The license key is to be kept safe. In case of a loss of the license key neosmart cannot be made liable. For creating a new personal license key neosmart is entitled to charge a service fee in the amount of 10 Euro.

§ 9 Termination / expiration of user rights

(1) neosmart is entitled to terminate the contract due to an important reason, if the licensee does not fulfill, or does not fully or timely fulfill his obligations towards the licensor.

(2) Furthermore the right to use expires, if the licensee uses the software in breach of contract, especially if he hands it to a third party without permission.

(3) After the termination or the expiration of the license the licensee has to refrain from using the software.

(4) A termination by the licensor based on the licensing terms and the consequent deactivation of the software of the licensee does not exempt the licensee from his obligations resulting from this agreement.

§ 10 Right to information

The licensee grants neosmart the right to review in regular intervals if the software is used according to the contract and if the terms of this agreement are observed. As part of this review the site and/or IP-address of the web-server on which neosmart Stream is used will be transmitted to neosmart and saved.

§ 11 Warranty

(1) We ensure that the program is serviceable in the sense of the published description of the program valid at the time of delivery to the customer and that it features the described characteristics. An insignificant reduction in the serviceability remains out of consideration.

(2) The warranty obligations of neosmart are limited to defects on the contractual version of the software STREAM and furthermore to defects, which are reproducible and can be detected by machine generated outputs. The user reprimands all defects on the works of neosmart if possible in written and with the description of the apparent malfunction as well as a brief statement to the circumstances of the occurrence and the impact of it. The user supports neosmart in a reasonable scope with the detection of the malfunction and its removal and hereby gives access to documents which reveal further information to the defect and its occurrence,

(3) Warranty claims are excluded if the user or any third party carried out changes to the works of neosmart without the prior written consent of neosmart, unless that the defects are not attributable to these changes or that the warranty works are not made or only insignificantly made more difficult by the changes. The rights of the user due to defects remains unaffected as far as the customer was authorized to make changes, especially in the line of using the right to remove faults by himself and the changes were professionally executed and reproducible documented.

(4) In case of material defects and defects of title neosmart is entitled to supplementary performance at first. In case of material defects the supplementary performance will be carried out by choice of neosmart either by the removal of the mistake or the delivery of an error-free version of the program. Should the contractual use be restricted due to defects of title (e.g. a third party claims rights on the software), neosmart will at its discretion in line with the supplementary performance ensure the contractual use of the software by either defending or settling these rights or by amending the software accordingly. neosmart may also at its discretion lead the dispute, judicial or out of court, against a third party by itself.

(5) Furthermore the user has the right, after the effectless end of the deadline given in written form, which may allow several supplementary performances, to withdraw from the contract. The regulation on the liability of neosmart is applicable for compensation of damages and reimbursement of expenses. Any further rights for material defects and defects of title are excluded.

(6) We do not provide any warranty for transmission errors in the Internet. In particular, neosmart does not assume responsibility for the functioning of interfaces of social media network providers, which are a prerequisite for the functionality of the software. Should provided interfaces of these providers be modified or abandoned, a damage or a malfunction of neosmart STREAM can occur, for which neosmart is not accountable.

(7) It is not guaranteed that newer versions of the software make the same demands to the runtime environment, show the same functionality or are directly compatible with previous versions.

(8) Entrepreneurs obligate themselves to examine the software on apparent defects which are apparent for the average customer. The software counts as approved if a defect is not reported within five working days

after discovery of the defect or in case of an obvious defect immediately after the download of the software.

(9) For entrepreneurs, the period of limitation for any warranty claims is one year and starts with the deployment of the software for download and the delivery of the license key; the same deadline applies to any other claims against neosmart, regardless of what kind.

(10) The warranty for free software available on this website and other services shall be in accordance with § 524 German Civil Code (BGB).

§ 12 Liability

(1) For damages on objects of legal protection of the user as well as for consequential harm caused by a defect, except those damages that occur due to a missing attribute, which should have covered the risk of damages for the user and for which presence a guarantee was given, neosmart is liable – regardless of the legal ground – only for intentional or grossly negligent behavior.

This does not apply for damages arising from injury to life, body or health or to the liability under product liability law. A slight degree of negligence by neosmart only assumes liability for breaches of essential contractual obligations for damages foreseeable at the conclusion of the contract or the breach of duty. Essential contractual obligations are obligations, whose observance is indispensable to accomplish the purpose of the contract and to whose fulfillment the other party of the contract could rely on.

(2) In case of data loss, the contractor shall only be liable in the amount of the costs arising for the restoring of data from a data backup according to the state of the art.

(3) neosmart is not responsible for the content, accuracy, legality and functionality of third party content, and for the legality of the use of the software by the licensee, unless such content was made his own by neosmart.

§ 13 Right to the end of service

neosmart reserves the right to discontinue any service offered in addition to the use of the software. This can include all means of communication, including, but not limited to: e-mail, Twitter, Facebook, chat, telephone or Forum: as a member of the neosmart STREAM community, we ask you to be professional and courteous. If you threaten, insult or slander neosmart or a member of the community, if you abusively use the Forum, publish illegal content, or post unauthorized advertisements at any time, you understand and accept that all access and accounts to the neosmart STREAM community will be irrevocably blocked or deleted.

§ 14 Privacy

(1) neosmart and the customer mutually commit to treat unlimited in time all confidential information and trade secrets of the disclosing party, made accessible to the receiving party due to the commencement of negotiations and the fulfillment of the contract, strictly confidential and to use them only in line of the agreed purpose. However, this does not apply to information that became public without the breach of this regulation or other contractual or legal obligations of confidentiality.

(2) Confidential information and trade secrets of the licensor include the source code, system design, system descriptions, the program structure, program sequences, algorithms, workflow diagrams, and all other technical information, concepts and functions of the software (including installation instructions), which are not generally accessible.

(3) All persons who have access to confidential information and trade secrets are to be instructed by the receiving party of the obligation to maintain privacy and to commit in writing.

(4) This obligation of confidentiality continues to apply even after the termination of the contract.

§ 15 final clause, applicable law, severability clause

(1) There are no subsidiary agreements to this agreement. Changes and additions to this contract require the written form. This form requirement can be waived only by a written agreement.

(2) For all legal relationships between us and the licensee German law is solely applicable excluding conflict of laws, in particular the United Nations Convention on Contracts for the International Sale of Goods.

(3) neosmart does not assume responsibility, that information, software and/or documentation can be obtained or downloaded from locations outside of Germany. If licensees outside of Germany access the website, they are solely responsible for the compliance with relevant regulations of the respective national law.

(4) If any regulation of these licensing terms in whole or in part is invalid or contestable or becomes invalid or contestable, the validity of the remaining regulations or agreements shall remain unaffected. Instead of an invalid regulation a valid regulation comes into effect, that comes closest to the intention and purpose of the invalid regulation in a legally permissible manner and takes into account what the parties would have agreed to in respect to the economic objectives of the agreement and the purpose of this license agreement, if they would have had knowledge of the gap. This also applies to gaps that are in need of amendment.

(5) If the licensee is a merchant, a legal person under public law or a public Special Fund, the place of jurisdiction for all disputes arising from or relating to these terms of use is the place of business of the licensor. neosmart furthermore can sue the licensee also on his place of business.