DMARC Analyzer Terms and Conditions

HOW THESE TERMS APPLY:

These DMARC Analyzer Terms and Conditions (the “Terms”) govern Customer’s use of Mimecast’s DMARC Analyzer module and are an addendum to and form part of the Agreement (defined below). By ordering a subscription for DMARC Analyzer via a Services Order, Customer expressly agrees that its use of DMARC Analyzer is subject both to these Terms and the services agreement which is in place between the parties or which will be executed concurrently with these Terms (the “Agreement”). Any capitalized terms not otherwise defined herein have the same meanings as those noted in the Agreement. If there is any conflict between these Terms and the Agreement, then these Terms shall take precedence.

Customer terms that are contrary to or deviate from these Terms shall not apply. Mimecast’s silence regarding such deviating or conflicting terms shall not be considered as approval or acceptance. These Terms shall apply even if Mimecast delivers the Services to Customer, even where Mimecast was aware of conditions that are contrary to or deviate from these Terms. These Terms shall exclusively apply to entrepreneurs within the meaning of §310 Para. 1 German Civil Code.

For clarity, these Terms do not apply to orders placed via Mimecast’s website.

1. Provision of Services.

   Notwithstanding Section 1 of the Agreement DMARC Analyzer is (i) hosted on a platform that is located in Ireland and/or (ii) processes Customer Data, including personal data, through a data center that is located in Ireland. Customer acknowledges that the certifications, attestations and assessments listed on Mimecast’s Trust Centre may differ by platform. Further, DMARC Analyzer is priced according to the number of Customer domains subjected to the service. The number of relevant domains will be identified on the applicable Services Order.

2. Responsibilities of the Parties. Customer is responsible for adding all owned domains to DMARC Analyzer and for publishing a DMARC record into the DNS for each such domain. Further, Customer must issue DNS updates as reasonably required by Mimecast. If Mimecast is prevented from or delayed in the performance of its obligations by any act or omission of Customer that is outside of Mimecast’s reasonable control, Mimecast shall not be deemed in breach of its obligations, but only to the extent that the basis for Mimecast’s breach arises directly or indirectly from such prevention or delay.

3. Liabilities

   3.1 General.

      (a) Mimecast’s liability is unlimited to the extent such liability arises from Mimecast’s: (i) wilful misconduct; (ii) gross negligence; (iii) personal injury liability; or (iv) liability under the German Product Liability Act (Produkthaftungsgesetz).

      (b) In cases of gross negligence, Mimecast’s liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care, or, as appropriate, to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.

      (c) Subject to Section 3.1(a) and (b), Mimecast is not liable under these Terms except for a breach of a Major Obligation (Kardinalpflicht) up to an amount equal to the fees paid or payable by Customer to Mimecast (or Reseller) for the applicable Services during the twelve months preceding the event giving rise to the claim. The parties acknowledge and agree that a “Major Obligation” is a duty which is a necessary prerequisite for Mimecast’s contractual performance hereunder, or where the breach of the relevant duty jeopardizes the purpose of the contract and where Customer could legitimately rely upon its fulfilment.

   3.2 Contributory Negligence. Notwithstanding Section 3.1, Customer acknowledges that Mimecast may claim contributory negligence (for example, where Customer has breached its obligations under Section 2 herein).

   3.3 Expiration. All claims against Mimecast in contract, tort, or otherwise for loss or wasted anticipatory expenditure are barred after a period of one year. That period begins at the point in time specified in the German Civil Code, Section 199(1). Except for cases of wilful misconduct and damage to life, bodily injury or damage to health, any liability claims against Mimecast may only be raised by Customer via written notice to Mimecast within four weeks of
the damaging event or the proven date when the Customer became aware of the damage, whichever occurs later. Failing this, Customer’s liability claims shall expire.

4. **Future Deliverables.** Customer acknowledges that its agreement to these Terms is not conditioned on any promise made by Mimecast to deliver any future deliverable such as a feature or functionality.

5. **Data Processing Agreement.** If Customer already has a Data Processing Agreement (“DPA”) with Mimecast, then Customer acknowledges and agrees that the schedules to the DPA are supplemented by inserting the following links applicable to DMARC Analyzer:

