

DMARC Analyzer Terms and Conditions

These DMARC Analyzer Terms and Conditions (the “**DMARC Terms**”) govern Customer’s (defined below) use of Mimecast’s DMARC Analyzer module (**DMARC Analyzer**) and are an addendum to and form part of the services agreement which is in place between the parties or which will be executed concurrently with these DMARC 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.

BY CLICKING ‘I ACCEPT’ YOU (i) AGREE TO THE TERMS AND CONDITIONS OF THESE DMARC TERMS WHICH WILL FORM A BINDING CONTRACT BETWEEN MIMECAST AND THE CORPORATION, BUSINESS OR ENTITY YOU REPRESENT (THE “CUSTOMER”); (ii) AGREE THAT DMARC ANALYZER IS SUBJECT TO BOTH THESE DMARC TERMS AND THE AGREEMENT; AND (iii) YOU REPRESENT AND WARRANT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND THE CUSTOMER TO THESE DMARC TERMS.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THESE DMARC TERMS, OR YOU DO NOT HAVE THE POWER AND AUTHORITY TO ACT ON BEHALF OF AND BIND THE CUSTOMER, DO NOT PROCEED TO ACCEPT THESE DMARC TERMS OR CONTINUE WITH USE OF DMARC ANALYZER.

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

1. **Provision of Services.** Notwithstanding Section 1 of the Agreement 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*) or a written assumption of a guarantee.
- b) Except for aforementioned Mimecast shall only be liable for damages caused by a breach of a “material contractual obligation”. Which shall be defined, as an obligation, that is essential for the agreed performance of the contract in the first place, the fulfilment of which the Customer can regularly rely on and which if breached may jeopardize the purpose of the contract being achieved.

- c) In the event of Liability subject to section 3.1 (b) such liability shall be limited damages as one may typically expect to occur within the scope of the individual contract, but shall in no event exceed an amount equal to the greater of: (i) €85,000 or (ii) two times the fees paid by Customer to Mimecast (or Reseller) for the applicable Services during the twelve months immediately preceding the event giving rise to the claim.

3.2. Statute of Limitations

Employee Liability. With respect to Section 3.1 (a) the statutory provisions of limitation in accordance with German Law shall apply. In all other cases, claims for damages shall be subject to a limitation period twelve (12) months, commencing with the date, that the damage occurred and the Customer becomes aware or should have become aware of its occurrence, but in no event later than three (3) years after the occurrence of the damage.

To the extent that Mimecast's liability is excluded or limited under the foregoing provisions, this shall also apply for the benefit of Mimecast's employees in the event of direct claims by the customer against them.

- 4. **Future Deliverables.** Customer acknowledges that its agreement to these DMARC 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:
 - a) Schedule 1-Processing Details: <https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/processing-details/>
 - b) Schedule 2-Third Party Subcontractors: <https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/sub-processors/>
 - c) Schedule 3-Technical and Organizational Measures: <https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/technical-organizational-measures/>