



Business Terms and Conditions for Providing the Mailkit Service

issued pursuant to Section 1751 of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter as the "Civil Code")
(hereinafter as the "Terms")

The trading company Mailkit s.r.o., with its registered office at Prague 8, Novákových 970/41, Postcode: 180 00, Czech Republic, Company ID: 26449901, registered in the Commercial Register administered by the Municipal Court in Prague, Section C, File 83047 (hereinafter as the "Provider"), is the provider of the Mailkit service, which consists in providing software and other tools for (i) so-called email marketing, through which natural persons or legal entities (hereinafter as "Users or User") can, as part of their marketing strategy, address their customers (hereinafter as "Customers") in electronic form on the Internet through e-mails (hereinafter as the "Email Service"), and for (ii) SMS marketing, through which Users can, as part of their marketing strategy, address Customers by sending SMS messages to the mobile phones of Customers (hereinafter as the "SMS Service"), (the Email Service and the SMS Service also hereinafter collectively referred to as the "Service").

Type of Service Offered by the Provider

- The Provider offers Users the following types of Service:
 - Mailkit Base. Users of the Mailkit Base service type may use the basic version of the Service – refer to the description of this service on the Provider's website at www.mailkit.eu (hereinafter as the "Provider's Website"), (hereinafter as the "Mailkit Base Service");
 - Mailkit Syndicate. Users of the Mailkit Syndicate service type may use the full version of the Service – refer to the description of this service on the Provider's Website (hereinafter as the "Mailkit Syndicate Service");
 - Mailkit Agency. Users of the Mailkit Agency service type may use the full version of the Service – refer to the description of this service on the Provider's Website (hereinafter as the "Mailkit Agency Service").

Registration of the User and Conclusion of the Service Agreement (hereinafter as the "Agreement")

- The condition for commencing provision of the Mailkit Base Service to the User is the online registration of the User through the Provider's Website. The Mailkit Base Service Agreement is concluded between the Provider and the User when the User, in the course of registration, clicks to electronically acknowledge acceptance of these Terms, which are an integral part of the Mailkit Base Service Agreement.
- The condition for commencing provision of the Mailkit Syndicate Service to the User is the conclusion of a written Agreement between the Provider and the User, and acceptance of these Terms by the User.
- The condition for commencing provision of the Mailkit Agency Service to the User is the conclusion of a written Agreement between the Provider and the User, and acceptance of these Terms by the User.
- Upon conclusion of the Agreement, the User chooses their username and password for the Service. The Provider assumes no responsibility for any misuse of the username or password by a third party.

Conditions for Providing the Service

- The User undertakes to ensure that the contents of emails and/or SMS Messages sent using the Service to Customers (hereinafter as "Emails" and "SMS Messages") is consistent with the applicable legal regulations (in particular as regards the protection of public order, public health, national security, security of consumers and social minorities and the right of privacy) of (i) the Czech Republic; (ii) the state of which the User is a national, or where the User is physically located; and/or (iii) the state of which the Customer is a national, or where the Customer is physically located; or with the principles of morality (boni mores) in the said states. If the Provider becomes aware that the contents of Emails and/or SMS Messages is, in its opinion, inconsistent with the rules stated in this paragraph, the Provider may, even without the prior consent of the User, (i) remove such content from the Emails and/or SMS Messages; or (ii) stop completely the provision of the Service to the User. If the User breaches their obligation under this paragraph of the Terms, the User shall assume all legal consequences that may occur as a result of such breach. In addition, the User shall pay the Provider all costs and expenses incurred as a result of third party claims against the Provider as a result of the breach by the User stated above. This shall not affect the Provider's and third party rights to damages (for material or non-material damage) arising as a result of the breach stated above, which the User undertakes to pay to the Provider and/or third parties.
- If the User uses images, text or other elements to which third party rights are attached, in particular copyrights or industrial property rights, in Emails and/or SMS Messages, the User shall obtain, where required by the applicable legal regulation of (i) the Czech Republic; (ii) the state of which the User is a national, or where the User is physically located; and/or (iii) the state of which the Customer is a national, or where the Customer is physically located, at the User's own expense and in accordance with the statutory conditions, the appropriate consent of authorized persons such as authors of works, trademark owners, publishers or other authorized persons not later than the date of starting the distribution of Emails and/or SMS Messages to Customers. The User shall submit such consent to the Provider for inspection at the request of the Provider. If the Provider becomes aware that the contents of Emails and/or SMS Messages is, in its opinion, inconsistent with the rules stated in this paragraph, the Provider may, even without the prior consent of the User, (i) remove such content from E-mails and/or SMS Messages; or (ii) stop completely the provision of the Service to the User. If the User breaches their obligation under this paragraph of the Terms, the User shall assume all legal consequences that may occur as a result of such breach. In addition, the User shall pay the Provider all costs and expenses incurred as a result of authorized persons' claims against the Provider as a result of the breach by the User stated above. This shall not affect the Provider's and authorized persons' rights to damages (for material or non-material damage) arising as a result of the breach stated above, which the User undertakes to pay to the Provider and/or authorized persons.
- The User undertakes to ensure that Emails and/or SMS Messages distributed

to their Customers are not in the form of spam. For the purpose of these Terms, spam shall mean any unsolicited message sent by email and/or SMS message to a recipient without their prior consent (hereinafter as "Spam"). Spam shall also mean any communication intended for the direct or indirect promotion of goods, including services or a natural person's or legal entity's business image (hereinafter as the "Commercial Communication"), which:

- is not clearly and obviously marked as a commercial communication;
- hides or conceals the identity of the sender on behalf of whom the communication is taking place;
- is sent without a valid address (email address for the Email Service, or telephone number for the SMS Service) to which the recipient could directly and effectively send information that they do not wish to receive further commercial information from the sender.

Spam shall also mean an Email and/or an SMS Message sent to the Customer after the Customer has notified the User that they do not wish to receive further Emails and/or SMS Messages from this User. Spam shall also mean an Email and/or an SMS Message the contents of which relate to the sale or promotion of prescription drugs, the sale of alcohol and tobacco products, illegal drugs, firearms, online gambling (online hazard games), or which promote paedophilia and similarly medically recognized deviations and disorders.

- If the Provider becomes aware that the Emails and/or SMS Messages could be, in its opinion, considered Spam, the Provider may, even without the prior consent of the User, (i) remove such E-mails and/or SMS Messages; or (ii) stop completely the provision of the Service to the User. The User shall assume all legal consequences that may occur as a result of their breach of obligation not to send Emails and/or SMS Messages that may be considered Spam. In addition, the User shall pay the Provider all costs and expenses incurred as a result of third party claims against the Provider as a result of the breach by the User stated above. This shall not affect the Provider's and third party rights to damages (for material or non-material damage) arising as a result of the breach stated above, which the User undertakes to pay to the Provider and/or third parties.
- The Provider may review the contents of Emails and/or SMS Messages to check compliance with the applicable legal regulations and principles of morality, and to check whether or not such Emails and/or SMS Messages constitute Spam.
- The User undertakes that, for sending Emails, they shall only use the email addresses of those Customers who have demonstrably given their prior consent to receiving Emails, or with whom the User has demonstrably established a relationship and obtained email addresses from such Customers as part of this relationship. The User undertakes that, for sending SMS Messages, they shall only use the telephone numbers of those Customers who have demonstrably given their prior consent to receiving SMS Messages, or with whom the User has demonstrably established a relationship and obtained telephone numbers from such Customers as part of this relationship.
- For the Mailkit Base Service, the Provider may set limits for the data volume per Email and/or SMS Message.
- The User acknowledges that, by concluding the Agreement, the User does not acquire any right (such as a licence) to the software used by the Provider when operating the Service (hereinafter as the "Software"). The User undertakes to use the Software only for their own purposes in connection with the proper use of the Service and for the purpose for which the Service was created, not to make it accessible in any manner to third parties, and not to reverse engineer the Software or make any such attempts.
- The Provider shall use the Service to distribute Emails and/or SMS Messages. However, the Provider assumes no responsibility for the delivery of the same to Customers.

Mandatory Elements of the Contents of Emails and SMS Messages

- The User undertakes to ensure that all Emails sent using the Service to their Customers contain the following elements:
 - specification of the User distributing the Emails;
 - functional Email address from which the Email was sent;
 - valid email address to which the Customer may directly and effectively send a message to and contact the User;
 - visibly placed unsubscribe link in the form defined or preauthorized by the Provider for automated unsubscription by the Customer, which the Customer may use to express their opposition to being sent any further E-mails. This link must be usable by the Customer for at least 30 days from sending the Email. The User is not obliged to include an unsubscribe link in the Email provided they have the prior consent of the Provider (this exception applies to Emails not containing a Commercial Communication).

The User undertakes to ensure that all SMS Messages sent using the Service to their Customers contain the following elements:

- specification of the User distributing the SMS Messages;
 - valid telephone number to which the Customer may directly and effectively send an SMS Message with information that they do not wish to receive further SMS Messages (for example, by sending an SMS Message reading "UNSUBSCRIBE"), and notification to the Customer that they have this right. The telephone number must be clearly visible to the Customer, and the User is not allowed to alter, remove or make this number invisible in any manner. The User is not obliged to include in the SMS Message a telephone number for sending the unsubscribe message provided they have the prior consent of the Provider (this exception applies to SMS Messages not containing a Commercial Communication).
- The User undertakes to ensure that all Commercial Communications in Emails and/or SMS Messages distributed using the Service to their Customers contain, in addition to containing the elements listed in the previous paragraph, are clearly and visibly designated as a Commercial Communication.
 - If the Provider becomes aware that the Emails and/or SMS Messages of the User do not contain the mandatory elements listed above, the Provider may, even without the prior consent of the User, (i) discontinue the sending of further Emails and/or SMS Messages; or (ii) stop completely the provision of the Service to the User. If the User breaches the obligation above, the User shall assume all legal consequences that may occur as a result of such breach. In addition, the User shall pay the Provider all costs and expenses incurred as a result of third party claims against the Provider as a result of the breach by the User stated above. This shall not affect the Provider's and third party rights to damages (for material or non-material damage) arising as a result of the breach stated above, which the User undertakes to pay to the Provider and/or third parties.
 - The User undertakes to communicate to the Provider their address and telephone number where the User can be contacted in person/by phone. The User grants the Provider their consent to communicate the information stated above to the Customer at the Customer's request.

Technical Requirements for Use of the Service

- The User understands that for proper use of the Email Service the following technical requirements must be met on the part of the User: Internet Explorer 8 or higher, Mozilla Firefox 10 or higher or other Gecko-based browsers, Chrome, Konqueror or Safari or other WebKit-based browsers, on Windows, MacOS or UNIX platform. If another browser is used, the system's functionality may be reduced and some functions may not be fully available.
- The User further understands that for the purposes of greater compatibility of Email content, it is advisable to use an internal HTML editor or third party editors which generate an HTML code according to the W3C standard.
- The User acknowledges that conditions for the delivery of SMS Messages differ for individual mobile operators and may change within the duration of the Agreement, and that the Provider cannot affect such changes in any way. The Provider shall not be liable for any loss, non-material damage or any other damage incurred by the User in relation to the different conditions of delivery of individual operators or in relation to changes in such conditions.
- The User also acknowledges that by definition, the SMS Service does not have the same delivery statistics available as the Email Service, i.e. it simply has information about the delivery of SMS Messages, and only in those cases where the respective mobile operator provides such information.
- The User may ask the Provider to assign them the so-called text description of the sender in SMS Messages (in SMS Messages, the User shall therefore be designated not by phone number but by description – the name of which they choose). The User acknowledges that there is no legal title to the assignment of a text description.

Payment for the Service and Payment Terms

- The amount of payment for Services shall be fixed on the basis of the price-list located on the Provider's Website (hereinafter as the "Price-List"). The Provider reserves the right, during the term of the contractual relationship with the User, to unilaterally change the amount of fees and payments in the Price-List. The Provider shall inform the User of such change at least 30 days before the effective date of such change.
- In calculating the payment for use of the Service, the Provider shall base it on the number of Emails and/or SMS Messages sent using the Service. The number of Emails and/or SMS Messages delivered does not affect calculation of the payment.
- The User acknowledges that each test SMS Message sent is subject to payment according to the Price-List, in the same way as a standard SMS Message.
- The User acknowledges that each communication distributed through an



Business Terms and Conditions for Providing the Mailkit Service

issued pursuant to Section 1751 of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter as the "Civil Code")

SMS Message which contains more than 160 characters shall be divided into multiple SMS Messages, and that neither of the SMS Messages may contain more than 140 characters. This means that, for example, a communication containing more than 280 and less than 420 characters shall be divided into three SMS Messages. Each SMS Message containing even a part of the communication is subject to payment according to the Price-List.

- The User shall pay for the Service either using prepaid credit, on which the User shall gradually draw, or on the basis of an invoice – a tax document issued by the Provider and sent to the User, and shall make their payment by bank transfer or through a payment system.
- Credit can be bought by money transfer from a bank account or through a payment system using an electronic payment instrument (credit card, etc.). The Service shall be activated for the User after the money has been credited in the agreed amount on a special account of the User created by the Provider. On the basis of the money sent, the Provider shall issue invoices – tax documents to the User in electronic form in PDF format, which shall be accessible to the User on the Provider's Website.
- In addition to payment for the Service, the User of the Mailkit Syndicate Service and the Mailkit Agency Service shall also pay for setting up the Mailkit Syndicate Service or the Mailkit Agency Service, which shall be activated after such fee has been paid.
- The User of the Mailkit Base Service may prepay the option to preview emails they intend to send as part of the Email Service before they are sent to Customers. The subscriber fee is always paid for one year, in the amount according to the Price-List on the basis of an advance-payment invoice issued by the Provider and sent to the User, by bank transfer or through a payment system. Users of the Mailkit Syndicate Service and the Mailkit Agency Service have the preview option free of charge.
- The Provider may stop providing the Service to the User in cases where the User delays in payment of any amount which they are obliged to pay the Provider in connection with using the Service. The Provider may charge a start-up fee (or a fee for starting up the Service) for re-activation of the Service according to the Price-List.
- In the case of a delay in payment of any amount which the User is obliged to pay the Provider in connection with using the Service, the User undertakes to pay the Provider default interest of 0.1 % of the outstanding amount for each day of the delay. This shall not affect the Provider's right to damages (for material and non-material damage).
- The User may lodge any objections with the Provider regarding invoices issued by the Provider to the User only in writing and within 15 business days from the date of delivery of the respective invoice to the User. If the User does not lodge any objection within this time-limit, the User shall be deemed to have no objections to the issued invoice or its amount. If the objections of the User lodged with the Provider in accordance with the provisions of this paragraph are justified, the Provider undertakes to issue a corrective invoice to the User without undue delay.

Termination of Agreement

- As agreed between the Provider and the User, the Agreement is entered into for an indefinite period of time.
- The validity of the Agreement may be terminated at any time by agreement between the Provider and the User.
- The Provider and the User may terminate an Agreement entered into for an indefinite period at any time by notice, even without giving a reason. Notice shall be in writing and shall be delivered to the other party by registered letter. The notice period is 3 months and starts on the first day of the month following the month in which notice was delivered to the other party.
- If the Agreement is terminated by notice by the User, such User shall not be entitled to claim back any already paid but unused credit for payment of the Service, neither shall they be entitled to use such credit to pay their other payables to the Provider.
- If the Agreement is terminated by notice by a User who pays for the Email Service and/or the SMS Service on the basis of an invoice, such User shall be obliged to pay invoices issued by the Provider for the period from the date of the last invoicing until termination of the notice period. If the Agreement

is terminated by notice by a User who prepaid the option to preview emails which they intended to send as part of the Email Service before sending them to Customers, such User shall not be entitled to claim back the already paid subscription fee, neither are they entitled to use such subscription to pay other payables to the Provider.

- If the User is a consumer within the meaning of the provision of Section 419 of the Civil Code, which means the User has entered into the Agreement outside their business activity or outside the independent exercise of their profession (hereinafter as the "Consumer"), such User may withdraw from the Agreement without giving a reason within 14 days of entering into the Agreement. For the purposes of exercising the right to withdraw from the Agreement, the Consumer shall inform the Provider of their withdrawal from the Agreement by unilateral legal act (e.g. by letter sent through a postal service operator). To observe the time-limit for withdrawal, it is sufficient to send the notice of withdrawal from the Agreement before the expiry of the respective time-limit.

Personal Data and Confidentiality of Information

- The User grants the Provider, in compliance with Act No. 101/2000 Coll., on Personal Data Protection, as amended (hereinafter as the "Personal Data Protection Act"), approval to process their personal data, acquired by the Provider for its internal use and for the marketing purposes of the Provider in connection with the operation of the Service
- The User declares that, as the administrator of Customers' personal data, the User has fulfilled, as of the date of the Agreement, all their duties according to the Personal Data Protection Act, including obtaining the consent of the subjects of the data to the processing of their personal data, and undertakes to fulfil such duties for the entire term of the Agreement. If the Provider incurs a loss as a result of the failure of the User to fulfil their duty under the Personal Data Protection Act (material or non-material damage), the User undertakes to compensate the Provider for such loss in full. For the purposes of this provision, a loss incurred by the Provider shall in particular mean (i) damages (for material or non-material damage) for the subjects of data under the Personal Data Protection Act; and (ii) penalties imposed by the Office for Personal Data Protection or by another administrative office.
- Under Section 6 of the Personal Data Protection Act, the Provider and the User agree that the Provider, as the processing party, shall process the following personal data of Customers: name, surname, birth certificate number, date of birth, address of residence, phone number, email address, bank account number and the account balance, and if necessary, additional data as needed by the User. The Provider shall process the personal data stated above in order to operate the Service on the basis of the Agreement. This provision shall apply for the term of the Agreement. Personal data shall be technically and organizationally protected against misuse in the following way: only authorized persons of the Provider have access to personal data, and servers are locked in a server room. Data backups are made to a different location by encrypted transfer and only authorized persons of the Provider have access to such data.

Complaints

- If, for reasons on the part of the Provider, there are (i) defects in the provided Service; or (ii) the Service is not provided, the User may complain of such defects to the Provider. The User may make complaints about defects of the Service to the Provider within 5 calendar days from the date when the User discovered or could discover the defects. The Provider undertakes to deal with a complaint made by the User under this paragraph of the Terms within ten business days from delivery of the written complaint of the User to the Provider, and to ensure as far as it is able that the defective state is remedied without undue delay. For this purpose, the User shall provide the Provider with all assistance needed. If the complaint is justified, the User shall be entitled to a refund of the credit on which they have drawn. If the User pays for the Email Service and/or the SMS Service on the basis of an invoice, the defective part of the provided fulfilment shall not be charged to them. The provisions of the Civil Code regulating rights arising from liability for defects shall not apply to relations between the User and the Provider because such rights are replaced by the provision in this paragraph of the Terms.
- The Provider is not liable for the unavailability or limitation of the Service to the User if caused by failure of the Internet or by other circumstances of a technical nature which the Provider is unable to influence or if their remedy

requires the cooperation of third parties.

- The Provider is not liable for any loss of data of individual Users. The Provider is only responsible for the loss of data which the Provider has acquired by their own activity under the Agreement, i.e. particularly for information on the delivery of Emails and/or SMS Messages (if available); nonetheless, the Provider is not liable for the loss of data of Users, i.e. the contents of Emails and/or SMS Messages, lists of Customers, etc. The Provider reserves the right, in justified cases of failure of a technical nature on the part of the User or of the Internet, to limit or temporarily stop providing the Service. The Provider undertakes to inform the User of such circumstance without undue delay.
- If a Customer informs the Provider that Emails and/or SMS Messages received from the User that they do not wish to receive further Emails and/or SMS Messages, then the Provider may, even without the prior consent of the User, remove such Customer from the list of Emails and/or SMS Messages. The Provider shall have the same right also in cases when a Customer informs the Provider that Emails and/or SMS Messages received by them do not include elements specified in these Terms or if they are, in the Customer's opinion, Spam. The Provider shall inform the User of the circumstances stated in this provision.
- If the Provider incurs any costs in relation to the complaints of Customers against the User, the User undertakes to compensate the Provider for such costs and all damage (material or non-material damage) incurred by the Provider.

Final Provisions

- The User declares that they agree with the contents of these Terms. These business terms and conditions shall be placed on the Provider's Website. The Provider may unilaterally modify these Terms at any time as needed. The Provider shall inform the User of any change in the Terms in writing or by email at least 30 days before the effective date of the change. The User may reject such change and terminate the Agreement in writing on these grounds within 10 days from the receipt of the Provider's notification about the change in the Terms, and the notice period is 1 month, starting on the first day of the month following the month, in which the notice was delivered to the Provider.
- These Terms, and all legal relations between the User and the Provider established on the basis of or in relation to the provision of the Service to the User, shall be governed by the law of the Czech Republic. In the event of any dispute between the User and the Provider, the competent court of the Czech Republic shall settle the dispute. Local competence in the Czech Republic shall be determined according to the registered office of the Provider.
- Complaints and comments of the Consumer concerning the contractual relationship entered into between the Provider and the Consumer shall be handled by the Provider in accordance with the applicable legal regulations. The Consumer may make complaints or comments by phone at +420 778 535 877 or email at helpdesk@mailkit.eu. If a claim is, based on its contents, a complaint, such claim shall be handled as a complaint. Consumers may also refer their complaints to supervisory and state control authorities, in particular the Czech Trade Inspection Authority or the Office for Personal Data Protection.
- If the Agreement is concluded with the Consumer over the Internet, such concluded Agreement shall not be filed with the Provider, and the Provider shall not allow the Consumer access to it. Immediately after concluding the Agreement over the Internet, the Consumer shall be given electronic information about the concluded Agreement and the text of the Terms.
- The Agreement between the Provider and the Consumer may be concluded in Czech or English.
- This current wording of the Terms comes into force and effect on 1st of February 2016.