

Formento Terms and Conditions

Welcome to Formento! We provide an all-in-one project management platform for the construction industry (**Services**), as set out in more detail on our website (**Site**).

In these Terms, when we say **you** or **your**, we mean you as an individual if you are accepting these Terms for yourself. If you are accepting these Terms on behalf of an entity (such as your employer) and you are authorised to do so, then **you** or **your** means that entity. When we say **we**, **us**, or **our**, we mean Formento Pty Ltd (ACN 700 664 106).

These terms and conditions (**Terms**) form our contract with you, and set out our obligations as a service provider and your obligations as a customer. You cannot use the Services unless you agree to these Terms.

Some capitalised words in these Terms have defined meanings, and each time that word is used in these Terms it has the same meaning. You can find a list of the defined words and their meaning at the end of these Terms.

OUR DISCLOSURES

Please read these Terms carefully before you accept. We draw your attention to:

- our privacy policy (on the Site) which sets out how we will handle your personal information;
- clause 1.7 (Variations) which sets out how we may amend these Terms;
- clause 3 (Fees) which sets out important information about payments and recurring services, including whether you can cancel the Services and whether any of the Services auto-renew; and
- clause 10 (Liability) which sets out exclusions and limitations to our liability under these Terms.

We may receive a benefit (which may include a referral fee or a commission) should you visit certain third party websites through a link in the Services, or for featuring certain goods or services on the Services.

These Terms do not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

1. Engagement and Term

- 1.1 These Terms apply from the time you agree to these Terms, until the date these Terms are terminated in accordance with their Terms (**Term**).
- 1.2 Subject to your compliance with these Terms, we will provide you with access to the Services.
- 1.3 Where we require access to your premises or computer systems in order to provide the Services, you agree to provide us with such access free from risk to the safety of our employees and contractors.
- 1.4 We will not be responsible for any other services unless expressly set out in these Terms or on our Site.
- 1.5 If we provide you with access to any new or beta services, you acknowledge that because of the developmental nature of such services, you use them at your own risk and we have no obligation to maintain or provide error corrections. Any new or beta services we provide you with access to are for evaluation purposes only and not for production use, and we may discontinue those services at any time at our sole discretion.
- 1.6 Where you engage third parties to operate alongside the Services (for example, any third-party software systems you wish to integrate with the Services), those third parties are independent of us and you are responsible for (meaning we will not be liable for) the goods or services they provide, unless we expressly agree otherwise.
- 1.7 We may amend these Terms at any time, by providing written notice to you. By clicking "I accept" or continuing to use the Services after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you should cease using the Services. If you have paid upfront for recurring access to any of the Services (excluding one-time purchases) and you would like to cancel them, please contact us in writing within 30 days of receiving notice to cancel that recurring access and we will issue you a pro-rata refund for such Services.

2. Account

- 2.1 You must sign up for an Account in order to access and use the Services.
- 2.2 You may invite Authorised Users to access and use the Services under your Account. You are responsible for ensuring that your Authorised Users comply with these Terms. You may change who your Authorised Users are at any time through your Account, and what access rights or permissions they have when using the Services. Any limitations on the number of Authorised Users you can have will be set out in your Account or on the Services.
- 2.3 While you have an Account with us, you agree to (and to ensure your Authorised Users agree to):
 - (a) keep your information up-to-date (and ensure it remains true, accurate and complete);
 - (b) keep usernames and passwords secure and confidential, and protect them from misuse or being stolen; and

- (c) notify us if you become aware of, or have reason to suspect, any unauthorised access to your Account or any logins linked to your Account.

2.4 If you close your Account, you and your Authorised Users will lose access to the Services.

3. Fees

- 3.1 You may choose to purchase Services from us, as set out on our Site (**Paid Services**). Paid Services may include one-time purchases or recurring Services. You must pay all amounts due under these Terms in accordance with these Terms or as set out on our Site (as applicable).
- 3.2 We may offer free trials for certain Paid Services. At the end of the free trial, you will either begin to be charged for the Paid Service or lose access to it (unless you sign up to it as a Paid Service), as specified in the trial offer you sign up to.
- 3.3 Details of our Paid Services, including features, limitations, fees and billing cycles (for recurring services) are set out on our Site. For recurring services, you will be billed on a regular basis, as set out on our Site, at the beginning of each billing cycle. All other Paid Services must be paid for at the time you order the Service.
- 3.4 You may upgrade or downgrade any recurring Services at any time through your Account. Changes to your recurring Services will take effect as follows:
 - (a) Upgrades: Immediately, with pro-rata charges applied for the current billing cycle.
 - (b) Downgrades: Immediately, with pro-rata charges applied for the current billing cycle.
- 3.5 All recurring Services continue for the agreed Service term (that you selected when purchasing the Service) (**Service Term**). At the end of each Service Term, provided you have paid all fees owing, your recurring Services will be automatically renewed for the same term. If you wish to cancel your recurring Services, you may do so through your Account. Your cancellation will take effect at the end of your current Service Term, and the recurring Services will not be renewed (meaning you will need to continue paying all fees due up until your current Service Term ends). If you are on an annual Service Term, we will provide you with a renewal reminder at least 30 days prior to the Services renewing.
- 3.6 Our payments methods will be set out at the time you purchase the Services. If you choose to pay your fees using one of our third-party payment processors, you may need to accept their terms and conditions (if this is the case, these will be set out at the time you make payment).
- 3.7 You must not pay, or attempt to pay, any fees due under these Terms or as a result of your use of the Services by fraudulent or unlawful means. If you make payment by debit or credit card, you must be the authorised card holder. If payment is made by direct debit, by providing your bank account details and accepting these Terms, you authorise our nominated third-party payment processor to debit your bank account, and you confirm that you are either the holder or an authorised signatory of that bank account.
- 3.8 If any fees due under these Terms or as a result of your use of the Services are not paid on time, we may:
 - (a) suspend your access to the Services; and
 - (b) charge interest on any overdue payments at a rate equal to the Reserve Bank of Australia's cash rate, from time-to-time, plus 2% per annum, calculated daily and compounding monthly.
- 3.9 You are responsible for paying any levies or taxes associated with your use of the Services, for example sales taxes, value-added taxes or withholding taxes (unless we are required by law to collect these on your behalf).

4. Licence

- 4.1 During the Term, we grant you and your Authorised Users a right to use our basic Services in accordance with these Terms. This right cannot be passed on or transferred to any other person.
- 4.2 When you purchase our Paid Services, your access rights will vary based on the type of service. For one-time purchases, we grant you and your Authorised Users the right to access the purchased Service until the earlier of the specified duration of access, the termination of these Terms or your cancellation of the specific Service. For recurring services, we grant you and your Authorised Users a right to access the relevant Services only for the duration that you continue to pay for the Service, subject to these Terms. These rights cannot be passed on or transferred to any other person.
- 4.3 You must not (and you must ensure that your Authorised Users do not):
 - (a) access or use the Services in any way that is improper or breaches any laws, infringes any person's rights (for example, intellectual property rights and privacy rights), or gives rise to any civil or criminal liability;
 - (b) interfere with or interrupt the supply of the Services, or any other person's access to or use of the Services;
 - (c) introduce any viruses or other malicious software code into the Services;
 - (d) use any unauthorised or modified version of the Services, including but not limited to for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the Services;
 - (e) attempt to access any data or log into any server or account that you are not expressly authorised to access;

- (f) use the Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing;
- (g) circumvent user authentication or security of any of our networks, accounts or hosts or those of any third party; or
- (h) access or use the Services to transmit, publish or communicate material that is, defamatory, offensive, abusive, indecent, menacing, harassing or unwanted.

5. Availability, Disruption and Downtime

- 5.1 While we strive to always make the Services available to you, we do not make any promises that these will be available 100% of the time. The Services may be disrupted during certain periods, including, for example, as a result of scheduled or emergency maintenance.
- 5.2 The Services may interact with, or be reliant on, products or services provided by third parties, such as cloud hosting service providers. To the maximum extent permitted by law, we are not liable for disruptions or downtime caused or contributed to by these third parties.
- 5.3 We will try to provide you with reasonable notice, where possible, of any disruptions to your access to the Services.

6. Intellectual Property and Data

- 6.1 We own all intellectual property rights in the Services. This includes how the Services look and function, as well as our copyrighted works, trademarks, inventions, designs and other intellectual property. You agree not to copy or otherwise misuse our intellectual property without our written permission (for example, to reverse engineer or discover the source code of our intellectual property), and you must not alter or remove any confidentiality, copyright or other ownership notice placed on the Services.
- 6.2 We may use any feedback or suggestions that you give us in any manner which we see fit (for example, to develop new features), and no benefit will be owed to you as a result of any use by us of your feedback or suggestions.

Your Data

- 6.3 We do not own any of Your Data, but when you enter or upload any of Your Data into the Services, you grant us the right to access, analyse, backup, copy, store, transmit, and otherwise use Your Data for the duration of your use of the Services (and for a reasonable period of time afterwards). We may use Your Data (or disclose it to third party service providers) to:
 - (a) supply the Services to you and your Authorised Users (for example, to enable you and your Authorised Users to access and use the Services), and otherwise perform our obligations under these Terms;
 - (b) diagnose problems with the Services;
 - (c) improve, develop and protect the Services;
 - (d) send you information we think may be of interest to you based on your marketing preferences;
 - (e) perform analytics for the purpose of remedying bugs or issues with the Services; or
 - (f) perform our obligations under these Terms (as reasonably required).
- 6.4 You acknowledge and agree that because of the nature of the internet, the processing and transmission of Your Data by us may occur over various networks.
- 6.5 You are responsible for (meaning we are not liable for):
 - (a) the integrity of Your Data on your systems, networks or any device controlled by you or your Authorised Users; and
 - (b) backing up Your Data.
- 6.6 When you use the Services, we may create anonymised statistical data from Your Data and usage of the Services (for example, through aggregation). Once anonymised, we own that data and may use it for our own purposes, such as to provide and improve the Services, to develop new services or product offerings, to identify business trends, and for other uses we communicate to you. This may include making such anonymised data publicly available, provided it is not compiled using a sample size small enough to make underlying portions of Your Data identifiable.
- 6.7 If you do not provide Your Data to us, it may impact your ability to receive the Services.
- 6.8 This clause 6 will survive the termination or expiry of these Terms.

7. Confidential Information

- 7.1 While using the Services, you may share confidential information with us, and you may become aware of confidential information about us. Each party agrees to keep the other party's Confidential Information confidential and to take reasonable steps to protect it from unauthorised access or disclosure. Each party may only disclose the other party's Confidential Information to its employees, contractors, professional advisors, agents and Authorised Users on a need-to-know basis, and to its third party service providers for the purposes of assisting it to perform its obligations under these Terms, provided in each case that those parties keep the Confidential Information confidential in accordance with this clause 7.

- 7.2 The obligations in this clause 7 do not apply to Confidential Information that:
- (a) is or becomes publicly available other than through a breach of confidence;
 - (b) is independently created by the receiving party without reference to the disclosing party's Confidential Information; or
 - (c) is rightfully known by the receiving party prior to receipt from the disclosing party.
- 7.3 Either party may disclose Confidential Information to legal or regulatory authorities if required by law to do so, provided that the disclosing party uses reasonable efforts to give the other party prior written notice where permitted by law.
- 7.4 Each party acknowledges that a breach of this clause may cause irreparable harm for which damages may not be an adequate remedy, and that either party may seek injunctive or other equitable relief to protect its confidential information in addition to any other remedies available at law.
- 7.5 This clause 7 will survive the termination or expiry of these Terms.

8. Personal Information

- 8.1 We collect, hold and disclose and use any Personal Information you provide to us in accordance with our privacy policy, available on the Site, and applicable privacy laws.
- 8.2 You must only disclose Personal Information to us if you have the right to do so (such as having the individual's express consent).
- 8.3 We may need to disclose Personal Information to third parties, such as our related companies or our service providers (for example, IT and administrative service providers and our professional advisors).
- 8.4 Where we are required by law to report on our activities, you acknowledge that from time to time we may request certain information from you in order to meet our requirements, and you agree to provide us with such information within the timeframes reasonably requested by us.
- 8.5 This clause 8 will survive the termination or expiry of these Terms

9. Consumer Law Rights

- 9.1 In some jurisdictions, you may have guarantees, rights or other remedies provided by law (**Consumer Law Rights**), and these Terms do not restrict your Consumer Law Rights. We will only be bound by your Consumer Law Rights and the express wording of these Terms.
- 9.2 Subject to your Consumer Law Rights, we do not provide a refund for a change of mind or change in circumstance.
- 9.3 If you accept these Terms in Australia, nothing in these Terms should be interpreted to exclude, restrict or modify the application of, or any rights or remedies you may have under, any part of the Australian Consumer Law (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)).
- 9.4 This clause 8 will survive the termination or expiry of these Terms.

10. Liability

- 10.1 To the maximum extent permitted by law, we will not be liable for, and you release us from liability for, any Liability caused or contributed to by, arising from or in connection with:
- (a) your computing environment (for example, your hardware, software, information technology and telecommunications services and systems);
 - (b) any loss arising from the deletion of Your Data following termination or expiry of these Terms in accordance with clause 11.8; or
 - (c) any use of the Services by a person or entity other than you or your Authorised Users.
- 10.2 Regardless of whatever else is stated in these Terms, to the maximum extent permitted by law:
- (a) neither we or you are liable for any Consequential Loss;
 - (b) a party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the actions (or inactions) of the other party, including any failure by the other party to mitigate its loss;
 - (c) (where the Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
 - (d) our aggregate liability to you for any Liability arising from or in connection with these Terms will be limited to the amount of any fees paid by you to us during the 12 months immediately preceding the event giving rise to the Liability, or if you have not paid for the Service, to AU\$1,000.
- 10.3 This clause 10 will survive the termination or expiry of these Terms.

11. Suspension and Termination

Suspension

- 11.1 We may suspend your access to the Services where we reasonably believe there has been any unauthorised access to or use of the Services (such as the unauthorised sharing of login details for the Services). If we suspend your access to the Services, we will let you know within a reasonable time of doing so, and we will work with you to resolve the matter, or if it cannot be resolved, then we may terminate these Terms and your access to the Services will end.

Termination

- 11.2 We may terminate these Terms (meaning you will lose access to the Services, and any recurring Services will be cancelled) if:
- (a) you fail to pay your fees when they are due;
 - (a) you or your Authorised Users breach these Terms and do not remedy that breach within 14 days of us notifying you of that breach;
 - (b) you or your Authorised Users breach these Terms and that breach cannot be remedied; or
 - (c) we decide to discontinue the Services, in which case we will provide you with at least 90 days' written notice and if you have paid upfront for ongoing access to any of the Services (excluding one-time purchases) we will issue you a pro-rata refund for such Services; or
 - (d) you experience an insolvency event (including but not limited to bankruptcy, receivership, voluntary administration, liquidation, or entering into creditors' schemes of arrangement).
- 11.3 You may terminate these Terms if:
- (a) we breach these Terms and do not remedy that breach within 14 days of you notifying us of that breach; or
 - (b) we breach these Terms and that breach cannot be remedied, and if you have paid fees for recurring Services upfront, you will be issued a pro-rata refund of any unused part of those fees based on the portion of the then-current Services period remaining.
- 11.4 You may also terminate these Terms at any time by notifying us through your Account or to our email for notices (as set out in clause 12.7), and if you have purchased any recurring services, termination will take effect at the end of your current Services period.
- 11.5 Prior to termination or expiry of these Terms, you should export Your Data through your Account. We encourage you to do this before the termination date, as we cannot guarantee access to Your Data after that date.
- 11.6 Following termination or expiry of these Terms, we may delete Your Data (including copies) in our possession or control. If you request a copy of Your Data following termination, we may, to the extent we still hold Your Data, assist you with that request at our discretion. We reserve the right to charge a reasonable fee to cover our costs of doing so, which we will notify you of prior to fulfilling your request.
- 11.7 We will retain Your Data where required to do so by law or regulatory requirements, and will otherwise handle any retained data in accordance with our privacy policy, and these Terms.
- 11.8 Termination of these Terms will not affect any other rights or liabilities that we or you may have.
- 11.9 This clause 11 will survive the termination or expiry of these Terms.

12. General

- 12.1 **Assignment:** You may not transfer or assign these Terms (including any benefits or obligations you have under these Terms) to any third party without our prior written consent. We may assign or transfer these Terms to a third party, or transfer any debt owed by you to us to a debt collector or other third party.
- 12.2 **Disputes:** Neither we or you may commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) unless we and you first meet (in good faith) to resolve the Dispute. Nothing in this clause will operate to prevent us or you from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- If the Dispute is not resolved at that initial meeting:
- (a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre in accordance with Australian Disputes Centre Guidelines for Commercial Mediation; or
 - (b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Sydney, New South Wales, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.
- 12.3 **Events Outside Our Control:** We will not be liable for any delay or failure to perform our obligations (including the Services), if such delay or failure is caused or contributed to by an event or circumstance beyond our reasonable control.

- 12.4 **Governing law:** These Terms are governed by the laws of New South Wales, and any matter relating to these Terms is to be determined exclusively by the courts in New South Wales and any courts entitled to hear appeals from those courts.
- 12.5 **Illegal Requests:** We reserve the right to refuse any request for or in relation to the Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with these Terms.
- 12.6 **Nature of Legal Relationship:** These Terms do not create, and should not be interpreted so as to create, a partnership, joint venture, employment or agency relationship between us and you.
- 12.7 **Notices:** Any notice you send to us must be sent to the email set out at the beginning of these Terms. Any notice we send to you will be sent to the email address registered against your Account.
- 12.8 **Professional Services Disclaimer:** The Services do not constitute, and are not a substitute for, financial, legal or risk management advice.
- 12.9 **Publicity:** You agree that we may, with your written consent, advertise or publicise the fact you are a customer of ours, for example on the Site or in our promotional material, and you grant us a right to display and use your logo and branding solely for that purpose.

13. Definitions

- 13.1 In these Terms:

Account means an account accessible to the individual or entity who signed up to the Services, under which Authorised Users may be granted with access.

Authorised User means a user that you have invited to use the Services through your Account.

Confidential Information means information which:

- (a) is disclosed by one party to the other in connection with these Terms at any time;
- (b) relates to a party's business, assets or affairs; or
- (c) relates to the subject matter of, or any transactions contemplated by, these Terms,

whether or not such information is reduced to a tangible form or marked as "confidential", and however it is received.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us any amounts for access to or use of the Services (including the Services) will not constitute "Consequential Loss".

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or us or you or otherwise.

Personal Information means any information or opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a tangible form or not.

Services means the services we provide to you, as detailed at the beginning of these Terms.

Your Data means the information, materials, logos, documents, qualifications and other intellectual property or data supplied by you and your Authorised Users when receiving the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with the Services. Your Data does not include any data or information that is generated as a result of your usage of the Services that is a back-end or internal output or an output otherwise generally not available to users of the Services.