

Terms of Use

Download a copy of the Momentive TOU here


(<https://prod.smassets.net/assets/content/sm/Terms-of-Use-2023-06-15.pdf>).

These terms apply to services purchased or signed-up for on Momentive’s websites. For terms applicable to services offered through our enterprise sales team, please see our Governing Services Agreement

(<https://www.surveymonkey.com/mp/legal/gsa/>)

LAST UPDATED: June 15, 2023

Introduction

 *These are terms that will apply to your use of our Services. You should read these terms thoroughly, but for your convenience, we provide annotations in boxes like this one throughout. Please note that these annotations have no legal effect and are not part of our official terms.*

These Terms of Use (“**TOU**”) apply to your access and use of Momentive's products, services, websites, and apps that you purchase or sign up for on Momentive's websites and which are branded as “Momentive”, “SurveyMonkey”, “Wufoo” or “GetFeedback” (collectively the “**Service(s)**”). These TOU do not apply to Services which are available solely through our enterprise sales

([https://www.surveymonkey.com/enterprise/?](https://www.surveymonkey.com/enterprise/?form_autoload=&ut_source=pricing_page&ut_source2=85620&ut_source3=inline)

[form_autoload=&ut_source=pricing_page&ut_source2=85620&ut_source3=inline](https://www.surveymonkey.com/enterprise/?form_autoload=&ut_source=pricing_page&ut_source2=85620&ut_source3=inline)) channel.

Additional service-specific terms (https://www.surveymonkey.com/mp/legal/which-terms-apply/?ut_source=legal&ut_source2=85620&ut_source3=inline) apply to some Services

(“**Service-Specific Terms**”). Certain country-specific terms

([https://www.surveymonkey.com/mp/legal/country-specific-terms?](https://www.surveymonkey.com/mp/legal/country-specific-terms?ut_source=legal&ut_source2=85620&ut_source3=inline)

[ut_source=legal&ut_source2=85620&ut_source3=inline](https://www.surveymonkey.com/mp/legal/country-specific-terms?ut_source=legal&ut_source2=85620&ut_source3=inline)) may also apply to you if you are

located outside the United States (“**Country-Specific Terms**”). We refer to the

Service-Specific Terms and Country-Specific Terms collectively as “**Additional**

Terms” and the combination of these TOU and any applicable Additional Terms

collectively as these “**Terms.**” To the extent any conflict exists, the Additional

Terms prevail over these TOU with respect to the Services for which the Additional

Terms apply.

You agree to these Terms by clicking to accept these Terms, executing a document that references them, or using the Services.

Our Customers

Our paid Services are built for, and intended for purchase and use by sole practitioners, entities and organizations for business and professional purposes, and are not intended for use by consumers for personal, family, or household use (with the exception of our SurveyMonkey Basic (free) plan). When using the Services on behalf of an organization, you agree to these Terms on behalf of that organization and you represent that you have the authority to do so. In such cases, “you” and “your” will refer to that organization. If you are a consumer purchasing one of our paid Services primarily for non-business purposes, such as those primarily outside of a trade, business, association, craft, or profession (i.e., for personal, family, or household use), please confirm your consumer status in your account management page.

1. Fees and Payments

1.1 Fees for Services.



You agree to pay us for our Services and these payments are non-refundable.

You agree to pay to Momentive any fees for each Service you purchase or use (including any overage fees), in accordance with the pricing and payment terms presented to you for that Service at the time of your purchase and such fees may be updated from time to time in accordance with Section 1.4 below. Where applicable, you will be billed using the billing method you select through your account management page. If you have elected to pay the fees by credit card, you represent and warrant that the credit card information you provide is correct and you will promptly notify Momentive of any changes to such information. Fees paid by you are non-refundable, except as provided in these Terms or when required by law (see Section 11 for more information).

1.2 Subscriptions.




For some of our paid Services, we bill automatically on a regular cadence such as monthly or annually. You may disable auto-renewal on your account or cancel your subscription at any time.

Some of our Services are billed on a subscription basis (we call these “**Subscriptions**”). This means that you will be billed in advance on a recurring, periodic basis (each period is called a “**billing cycle**”). Billing cycles are typically monthly or annual, depending on what subscription plan you select when purchasing a Subscription. **Your Subscription will automatically renew at the end of each billing cycle unless you cancel auto-renewal through your online account management page, or by contacting our customer support team**

(<https://help.surveymonkey.com/en/?l=en>). **YOU MAY CANCEL AUTO-RENEWAL ON YOUR SUBSCRIPTION AT ANY TIME, IN WHICH CASE YOUR SUBSCRIPTION WILL CONTINUE UNTIL THE END OF THAT BILLING CYCLE BEFORE TERMINATING.**

When you cancel your Subscription, you will be able to access the Service until the end of that billing cycle. Thereafter, you will no longer have access to the Service for that Subscription. Where you have no active Subscription, your account becomes a SurveyMonkey Basic (free) plan. To close your account and terminate your contract with us, please see Section 11.1 below.

1.3 Taxes.

 *Taxes are your responsibility. If you are exempt from paying taxes, please send us proof and we will adjust your account accordingly.*

Our prices listed do not include any taxes, levies, duties or similar governmental assessments of any nature such as value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, “**Taxes**”) unless otherwise indicated or required by applicable law. You are responsible for paying Taxes associated with your purchase and keeping your billing information up to date.

(a) United States Sales Tax. If we have a legal obligation to pay or collect sales tax for which you are responsible, we will calculate the sales tax based upon the billing information we have about you and charge you that amount (which, if your billing information is incomplete or inaccurate, may be the highest prevailing rate then in effect), unless you timely provide us with a valid tax exemption certificate acceptable to the appropriate taxing authority.

To be timely, you must provide us with a tax exemption certificate before your initial purchase or upgrade, or, if you miss that mark, within 90 days after such purchase or upgrade, unless your billing information is in Alabama, Louisiana, Maine, Massachusetts, Pennsylvania, or South Carolina in which case within 60 days; or if in Hawaii, Mississippi, or New Mexico within 45 days.

If you provide us with a tax exemption certificate, you represent and warrant that it accurately reflects your tax status and that you will keep such


document current and accurate.

If we have collected sales tax from you and subsequently determine in our sole discretion that your tax exemption certificate is valid, we will refund the sales tax collected based on applicable state tax laws.

(b) Non-United States Sales Tax. If applicable, we will charge you VAT, GST or any other sales, consumption or use taxes that arise in connection with your purchases of Momentive Services unless you provide us with a tax identification number that entitles you to an exemption, a valid tax exemption certificate or other documentary proof issued by an appropriate taxing authority that tax should not be charged. If you are located in a jurisdiction with multiple sales, consumption or use taxes, we may charge you the highest prevailing rate if your billing information is incomplete or inaccurate.

If you are required by law to withhold any Taxes from your payments to Momentive, you must provide Momentive with an official tax receipt or other appropriate documentation to support such payments.

1.4 Price Changes.

 *Changes in fees will only be effective at the end of a current billing cycle of your Subscription and we will provide you with notice. If you don't agree to the fee change, you may cancel your Subscription before the change takes effect.*

Momentive may change the fees charged to you for the Services at any time, provided that, for Subscriptions, the change will become effective only at the end of the then-current billing cycle of your Subscription. Momentive will provide you with advance notice to review any change in fees. If you do not agree to the change in fees, you may cancel your Subscription before the change takes effect. See Section 1.2 for cancelling your Subscription.

1.5 Response Overage Fees.

Each Subscription comes with a set limit of responses. If you exceed your paid Subscription response limit during a billing cycle, there is an additional charge per response (<https://help.surveymonkey.com/en/billing/response-limits/>) (“Overage Fees”). For terms governing response limits for our Basic (Free) accounts see Section 12.4.

You agree that unused responses do not rollover. Unless otherwise stated, any Overage Fees incurred by you will be billed in arrears, charged to your payment method on file at the start of your next billing cycle. Overage Fees which remain unpaid for 30 days after being billed are considered overdue. Failure to pay Overage Fees when due may result in the applicable Service being limited, suspended, or terminated (subject to applicable legal requirements), which may result in a loss of your data associated with that Service subject to applicable law.

2. Privacy



You can trust us with your Content, which includes your personal data. Check out our Privacy Notice and Data Processing Agreement to learn more about how we treat and protect your data.

2.1 Privacy.

We know that by giving us your Content (as defined below), you are trusting us to treat it appropriately. Momentive’s Privacy Notice

([https://www.surveymonkey.com/mp/legal/privacy/?](https://www.surveymonkey.com/mp/legal/privacy/?ut_source=legal&ut_source2=85620&ut_source3=inline)

[ut_source=legal&ut_source2=85620&ut_source3=inline](https://www.surveymonkey.com/mp/legal/privacy/?ut_source=legal&ut_source2=85620&ut_source3=inline)), together with any Service-specific privacy notices or statements (collectively, “**Momentive privacy notices**”), detail how we treat your Content (as defined below) that is considered Personal Data (as defined in our Data Processing Agreement (https://www.surveymonkey.com/mp/legal/data-processing-agreement/?ut_source=legal&ut_source2=85620&ut_source3=inline)) and we agree to adhere to those Momentive privacy notices. You in turn agree that Momentive may use and share your Content in accordance with the Momentive privacy notices and applicable data protection laws. You also agree that you are responsible for notifying these third parties about the Momentive privacy notices. Our Data


Processing Agreement (https://www.surveymonkey.com/mp/legal/data-processing-agreement/?ut_source=legal&ut_source2=85620&ut_source3=inline) also apply to and are supplemental to these Terms. Where there is a conflict between the Data Processing Agreement and these Terms, the Data Processing Agreement will prevail except with respect to Exclusion and Limitation of Liability where these Terms will prevail.

2.2 Confidentiality.

 *We keep your content confidential except in limited circumstances.*

Momentive will treat your Content as confidential information and only use and disclose it in accordance with these Terms (including the Momentive privacy notices). However, your Content is not regarded as confidential information if such Content: (a) is or becomes public (other than through breach of these Terms by Momentive); (b) was lawfully known to Momentive before receiving it from you; (c) is received by Momentive from a third party without knowledge of breach of any obligation owed to you; (d) is shared in the context of your account being identified by you as a business owned account or migrated to an organization's Enterprise account, if your account is registered using a work email address within that organization; or (e) was independently developed by Momentive without reference to your Content. Momentive may disclose your Content when required by law or legal process, but only after Momentive, if permitted by law, uses commercially reasonable efforts to notify you to give you the opportunity to challenge the requirement to disclose.

2.3 Security.

 *The security of the data processed by Momentive is a top priority. We follow industry security standards, and we will notify you if a Security Incident impacts your account.*

Momentive will store and process your Content in a manner consistent with industry security standards. Momentive has implemented appropriate technical, organizational, and administrative systems, policies, and procedures.

If Momentive becomes aware of any unauthorized or unlawful access to, or acquisition, alteration, use, disclosure, or destruction of, Personal Data, as that term is defined in our Data Processing Agreement

([https://www.surveymonkey.com/mp/legal/data-processing-agreement/?](https://www.surveymonkey.com/mp/legal/data-processing-agreement/?ut_source=legal&ut_source2=85620&ut_source3=inline)

[ut_source=legal&ut_source2=85620&ut_source3=inline](https://www.surveymonkey.com/mp/legal/data-processing-agreement/?ut_source=legal&ut_source2=85620&ut_source3=inline)), related to your account (“**Security Incident**”), Momentive will take reasonable steps to notify you without undue delay. Such notification shall not be interpreted or construed as an admission of fault or liability by Momentive. A Security Incident does not include unsuccessful attempts or activities that do not compromise the security of Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, or other network attacks on firewalls or networked systems. Momentive will also reasonably cooperate with you with respect to any investigations relating to a Security Incident, any required notices, and providing information reasonably requested by you and available to us in relation to any Security Incident, where such information is not already available to you in your account or online through updates provided by Momentive.

3. Your Content



When you use our Services, you keep what is yours and allow us to use it only as necessary to continue providing and improving our Services as stated in our privacy notices.

3.1 You Retain Ownership of Your Content.

In the course of using the Services, you may submit content to Momentive (including your Personal Data and the Personal Data of others) or third parties may submit content to you through the Services (all of the above will be referred to as your “**Content**”). You retain ownership of all of your intellectual property

rights in your Content. Momentive does not claim ownership over any of your Content. These Terms do not grant us any licenses or rights to your Content except for the limited license described in these Terms.

3.2 Limited License to Your Content.


You grant Momentive a worldwide, royalty free license to use, reproduce, distribute, modify, adapt, create derivative works, make publicly available, and otherwise exploit your Content, but only for the limited purposes of providing and improving the Services and as permitted by the Momentive privacy notices. Where permitted under applicable law, this license for such limited purposes continues even after you stop using our Services, with respect to aggregate and de-identified data derived from your Content and any residual backup copies of your Content made in the ordinary course of Momentive's business (subject to our retention policies). This license also extends to any trusted third parties we work with to the extent necessary to provide and improve the Services.

3.3 Representations and Warranties.

You represent and warrant that: (a) you own or control the appropriate rights in and to your Content, including any intellectual property owned by third parties; and (b) you will not submit, upload, or otherwise make available via the Services, any Content or materials that are in breach of our Acceptable Uses Policy

(https://www.surveymonkey.com/mp/legal/acceptable-uses-policy/?ut_source=legal&ut_source2=85620&ut_source3=inline).

3.4 Responsibility for Your Content.

 *You are responsible for your Content. We are not responsible for what you do with your Content and may refuse to display your Content if we think it is illegal or violates our Terms.*

The Services may display content not owned by Momentive but by others. The entity that makes such content available is responsible for it. Momentive does not

represent or warrant that it has reviewed such third party content and/or the accuracy of the information contained in such content. You are responsible for your Content, and you must ensure that you have all the rights and permissions needed to use that Content in connection with the Services. Momentive is not responsible for any actions you take with respect to your Content, including sharing it publicly. Subject to applicable law, Momentive is not liable for your Content, any other third-party content or materials, or any loss or damage resulting from your use of, or reliance on, such Content or other third-party content or materials.

You acknowledge and agree that, to ensure compliance with legal obligations and Momentive's Acceptable Uses Policy (<https://www.surveymonkey.com/mp/legal/acceptable-uses-policy/>), Momentive may review Content you submit to the Services to determine whether it is illegal or whether it violates these Terms (such as when unlawful content is reported to us). We may also, in accordance with applicable law, modify, prevent access to, delete, or refuse to display your Content that we believe violates the law or these Terms. In the event your Content includes third-party brands, logos or other source identifiers, we may require you to submit a statement of non-affiliation before you may use such Content in connection with the Services. However, Momentive otherwise has no obligation to monitor or review any content submitted to the Services.

4. IP Claims

4.1 DMCA Notices or Equivalents.

Momentive responds to notices of alleged copyright infringement in accordance with the U.S. Digital Millennium Copyright Act (DMCA) or equivalent applicable laws and regulations. If you believe that your work has been exploited in a way that constitutes copyright infringement, you may notify our agent for claims of copyright infringement (<https://help.surveymonkey.com/en/policy/dmca-agent/>).

4.2 Other IP Claims.

If you believe a Momentive user is infringing upon your intellectual property rights, you may report it through our online form

(<https://smforms.wufoo.com/forms/contact-surveymonkey-abuse/>). Claims of copyright infringement should follow the process outlined in these Terms, or any equivalent process available under local law.

5. Momentive IP



What's ours is ours, including any feedback you may submit to us.

Neither these Terms nor your use of the Services grants you ownership in the Services or the content you access through the Services (other than your Content). Except as permitted by our Brand and Trademark Use Policy (<https://www.surveymonkey.com/mp/brandassets/>), these Terms do not grant you any right to use Momentive's trademarks or other brand elements.

If you submit any feedback or suggestions to us regarding our Services, we may use and share them for any purpose without any compensation or obligation to you.

6. Third Party Resources

Momentive may publish links in its Services to internet websites maintained by third parties. Momentive does not represent that it has reviewed such third party websites and is not responsible for them or any content appearing on them. Trademarks displayed in conjunction with the Services are the property of their respective owners.

7. Account Management



We work hard to keep your account secure. You need to create a customer account with a secure password to use our Services. Don't share passwords.

7.1 Keep Your Password Secure.

If you have been issued an account by Momentive in connection with your use of the Services, you are responsible for safeguarding your password and any other credentials used to access that account. You, and not Momentive, are responsible for any activity occurring in your account (other than activity that Momentive is directly responsible for which is not performed in accordance with your instructions), whether or not you authorized that activity. If you become aware of any unauthorized access to your account, you should notify Momentive immediately. Accounts may not be shared and may only be used by one individual per account.

7.2 Keep Your Email and Account Details Accurate.

Momentive occasionally sends notices to the email address registered with your account. You must keep your email address and, where applicable, your contact details and payment details associated with your account current and accurate. You warrant the accuracy of your account details.

7.3 Remember to Backup.

You are responsible for maintaining, protecting, and making backups of your Content. To the maximum extent permitted by applicable law, Momentive will not be liable for any failure to store, or for loss or corruption of, your Content.

7.4 Account Inactivity.

Momentive may close your account and delete any Content contained in it if there is no account activity (such as a log in event or payment) for over 12 months. Where appropriate, we will attempt to warn you by email before closing your account due to inactivity to provide you with an opportunity to log in to your account so that it remains active.

8. User Requirements



You can use our Services as long as you meet certain requirements. For example, you cannot use our Services if you are considered a minor in your home country.

8.1 Legal Status.

If you are an individual, you may only use the Services if you have the power to form a contract with Momentive. If you do not have the power to form a contract, you may not use the Services. If you are not an individual, you warrant that you are validly formed and existing under the laws of your jurisdiction of formation, that you have full power and authority to enter into these Terms, and that you have duly authorized your agent to bind you to these Terms.

8.2 Minors.

“**Minors**” are individuals under the age of 16 (or under a higher age as provided in certain countries and territories). None of the Services are intended for use by Minors. If you are a Minor in your place of residence, you may not use the Services. By using the Services, you represent and warrant that you are not a Minor.

8.3 Embargoes.

You may only use the Services if you are not barred under any applicable laws from doing so. If you are located in a country embargoed by United States or other applicable law from receiving the Services or you are on the U.S. Department of Commerce’s Denied Persons List or Entity List or the U.S. Treasury Department’s list of Specially Designated Nationals, you are not permitted to use and/or purchase any paid Services from Momentive. You will ensure that: (a) your end users do not use the Services in violation of any export restriction or embargo by the United States; and (b) you do not provide access to the Services to persons or entities on any of the above lists.

9. Acceptable Uses Policy

You agree to comply with the Acceptable Uses Policy

(<https://www.surveymonkey.com/mp/legal/acceptable-uses-policy/?>

[ut_source=legal&ut_source2=85620&ut_source3=inline](#)).

10. PCI Compliance



We are responsible for keeping your Cardholder Data secure. If you use our Services to accept credit card payments, then you must comply with the Payment Card Industry Data Security Standards.

10.1 PCI Standards.


If you use the Services to accept payment card transactions, you must comply with the Payment Card Industry Data Security Standards (PCI-DSS) to the extent they are applicable to your business (the “**PCI Standards**”). Momentive provides tools to simplify your compliance with the PCI Standards, but you must ensure that your business is compliant and the specific steps you will need to take to comply with the PCI Standards will depend on your implementation of the Services.

10.2 Cardholder Data.


Momentive is responsible for the security of Cardholder Data that is collected, transmitted, stored, or processed by us on your behalf. “**Cardholder Data**” is defined as a cardholder’s primary account number, and where a full unmasked card number is present, any of the cardholder name, expiration date, and/or service code. Momentive has developed strict security features to protect Cardholder Data, and as such this data may only be used in anticipated ways and stored in appropriate places. YOU ACKNOWLEDGE AND AGREE THAT YOU ARE PROHIBITED FROM COLLECTING OR ENTERING CARDHOLDER DATA INTO ANY FORM OR DATA ENTRY FIELDS IN THE SERVICES, EXCEPT INTO THOSE FIELDS INTENDED SOLELY FOR THAT PURPOSE (i.e. where Momentive explicitly enables such data to be entered into such fields). Appropriate fields are clearly marked

with labels such as ‘Card number’ or by having a credit card icon precede them. Similarly, excluding payment forms, you must never collect or enter any “**Sensitive Authentication Data**”, as defined by the PCI Standards (including CVC or CVV2) into any fields in the Services. You assume all responsibility for any Cardholder Data entered into the Services in violation of these terms.

11. Suspension, Account Closure, and Termination of Services

 *Here is how you can close your account with us and how we may suspend or disable your account and/or terminate the Services.*

11.1 By You.

 *You can cancel your Subscription immediately through your account management page. We do not offer refunds except under very limited circumstances.*

You can cancel your Subscription and/or close your account at any time through your account management page. When you close your account, your Subscription will automatically be cancelled, your Services will be terminated, and you will no longer be able to access your account to use the Services and your Content will be deleted in accordance with our data retention policy and these TOU. You can obtain a copy of your Content from the relevant Service(s) before closing your account, subject to applicable law and policies. Alternatively, you can delete your Content yourself proactively prior to cancelling a Subscription and closing your account. If you would like to cancel your Subscription without closing your account, see Section 1.2 for further information.

When you close your account, we will provide you with confirmation of account closure and Subscription cancellation, and you will not be charged again for that Subscription unless you open a new account and purchase a new Subscription. If

you cancel a Subscription in the middle of a billing cycle, you will not receive a refund unless you are canceling for any of the following reasons: (a) we have materially breached these Terms and failed to cure that breach within 30 days after you have so notified us in writing; (b) a refund is required by law; or (c) we, in our sole discretion, determine a refund is appropriate. For clarity, we will not grant a refund where you have used our Services, collected responses, and/or downloaded your responses unless the termination is due to our material, uncured breach or a refund is required by law.

Nothing in this Section 11.1 shall exclude or limit any rights which you may have if you are considered a consumer in your country of residence. For example, if you qualify as a consumer in the European Union you may have certain refund and withdrawal rights as described in our European Union Subscription Cancellation Policy (<https://help.surveymonkey.com/en/billing/eu-subscription-cancellation-policy/>). You may also have a right of refund or a right to terminate in respect of the EU Legal Warranty. See our Country-Specific Terms

(<https://www.surveymonkey.com/mp/legal/country-specific-terms/>) for Europe for more information.

11.2 By Momentive.

(a) For Convenience. Momentive may cancel your Subscription and terminate the Services effective at the end of a billing cycle by providing at least 30 days' prior written notice to you without refund for any prior period. Additionally, Momentive may cancel your Subscription and terminate the Services at any time during the billing cycle by providing at least 90 days' written notice to you and will provide a pro rata refund for any period of time you did not use the relevant Service(s) in that billing cycle.

(b) For Cause. Momentive may limit, disable, suspend and/or cancel your Subscription and terminate the Services and/or close your account for any of the following reasons: (a) you have materially breached these Terms and failed to cure that breach within 30 days after Momentive has so notified you in writing; (b) you cease your business operations or become subject to insolvency proceedings and the proceedings are not dismissed within 90 days; (c) you fail to pay fees for 30 days past the due date; (d) you use the Services in a way that causes legal liability

to us or disrupts others' use of the Services; (e) if we are investigating suspected misconduct by you, including illegal activity; or (f) we are required to do so to comply with applicable law. If we limit, disable, suspend and/or cancel your Subscription and/or terminate the Services, depending upon the reason, we will, where possible, endeavor to give you advance notice and an opportunity to obtain a copy of your Content from that Service. However, there may be time sensitive situations where Momentive may decide that we need to take immediate action without notice. Momentive will use commercially reasonable efforts to narrow the scope and duration of any limitation or suspension under this Section as is needed to resolve the issue that prompted such action. Except as set out in our Privacy Notice (<https://www.surveymonkey.com/mp/legal/privacy/>), and as may be required under applicable law, Momentive has no obligation to retain your Content upon closure of your account.

12. Changes and Updates




We may update these Terms. If the updates are significant, we will notify you that changes are coming. If you continue to use our Services after we give you a heads up, then you are agreeing to the updated Terms.

12.1 Changes to Terms.

Momentive may change these Terms at any time for a variety of reasons, such as to reflect changes in applicable law or updates to Services, and to account for new Services or functionality, for security or to prevent abuse or harm. The most current version will always be posted on the Momentive website. If an amendment is material, Momentive will notify you in advance by email to provide you the opportunity to review the changes. Notice of amendments may also be posted upon your login to your account. Except as otherwise specified by us, changes will be effective no sooner than the day they are publicly posted. Once our new terms are effective, if you continue to use the Services, you indicate your agreement to be bound by the updated terms. If you do not agree to any changes made to the

terms for a Service, you should stop using that Service and you may close your account with us in accordance with Section 11.1 above.

12.2 Changes to Services.

 *We are always looking to innovate and make our Services better, so they may change. If that happens, we will send written notice to you to let you know before making the change.*

Momentive constantly changes and improves the Services. Momentive may add, alter, or remove functionality from a Service it provides to you at any time without prior notice, except as may be required by applicable law. Momentive may also limit, suspend, or discontinue a Service provided to you at its discretion. If Momentive discontinues a Service, we will give you reasonable advance notice to provide you with an opportunity to obtain a copy of your Content from that Service. Momentive may remove content from the Services it provides you at any time in our sole discretion, although we will endeavor to notify you before we do that if it materially impacts you and if practicable under the circumstances. If you are considered a consumer in the European Union, this Section 12.2 may not apply to your use of the Services. Please see our Country-Specific Terms (<https://www.surveymonkey.com/mp/legal/country-specific-terms/>) for Europe for further information.

12.3 Downgrades.

Downgrading your account plan (changing your Subscription type, or cancelling a Subscription and downgrading to our SurveyMonkey Basic (free) plan) may cause the loss of Content, features, functionality, or capacity of your account.

12.4 SurveyMonkey Basic (Free) Plan Response Limits.

Any responses over your SurveyMonkey Basic (free) plan's response limits will not be viewable, and each response over the limit will be deleted 60 days after it is received, unless you upgrade to a SurveyMonkey paid plan to view and keep

access to all responses before they are deleted. We encourage you to go to My Surveys (https://www.surveymonkey.com/home/?ut_source=legal&ut_source2=85620&ut_source3=inline) to see which surveys have extra responses over your plan's response limit, in case you want to upgrade to a paid plan to view and keep them.

13. Disclaimers, Limitations of Liability, and Indemnification



Our Services will perform and function as described in these Terms.

13.1 Disclaimers.


While it is in Momentive's interest to provide you with a great experience when using the Services, there are certain things we do not promise about them. We try to keep our online Services up, but they may be unavailable from time to time for various reasons. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND ANY GUIDANCE OR RECOMMENDATIONS THEREIN ARE PROVIDED "AS IS" AND MOMENTIVE DOES NOT MAKE WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OR ANY REPRESENTATIONS REGARDING AVAILABILITY, RELIABILITY, OR ACCURACY OF THE SERVICES.

13.2 Exclusion of Certain Liability.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, MOMENTIVE (INCLUDING ITS AFFILIATES AND ITS AND THEIR OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS) WILL NOT BE LIABLE FOR (A) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER, OR (B) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND THESE TERMS, AND WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF MOMENTIVE HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13.3 Limitation of Liability.


 *In the event of a dispute, we won't owe more than the amount you've paid or should have paid in the previous 12 months for the Services or \$200, whichever is less.*

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF MOMENTIVE (INCLUDING ITS AFFILIATES AND ITS AND THEIR OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS) ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND THESE TERMS WILL NOT EXCEED THE LESSER OF: (A) THE AMOUNTS PAID BY YOU TO MOMENTIVE FOR USE OF THE SERVICES AT ISSUE DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY; AND (B) US\$200.00.

IN COUNTRIES WHERE THE ABOVE TYPES OF EXCLUSIONS (SECTION 13.2) AND/OR LIMITATIONS (SECTION 13.3) ARE NOT PERMITTED BY LAW, WE ARE RESPONSIBLE TO YOU ONLY FOR YOUR LOSSES AND DAMAGES THAT ARE A REASONABLY FORESEEABLE RESULT OF OUR FAILURE TO USE ALL REASONABLE SKILL AND CARE OR THAT DIRECTLY RESULT FROM A MATERIAL BREACH OF THESE TERMS.


While our Services are meant for business purposes, we acknowledge that the laws of certain jurisdictions provide legal rights to consumers that may not be overridden by contract or waived by those consumers. If you are such a consumer using our Services primarily for non-business purposes (such as personal use of our SurveyMonkey Basic (free) plan), nothing in these Terms limits those consumer rights.

13.4 Indemnification.

 *If we get sued because of something you do using our Services or because you violate these Terms, we expect that you will step into our shoes to defend that lawsuit and pay any damages awarded by the Court.*

If you are a business, you will indemnify and hold harmless Momentive (including its affiliates and its and their officers, agents, and employees) from all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding or in connection with your or your end users' use of the Services or breach of these Terms, to the extent that such liabilities, damages and costs were caused by you or your end users.

14. Contracting Entity

 *If you are in the USA, you are contracting with Momentive Inc. If you are located in Brazil, you are contracting with Momentive Brasil Internet Eireli. If you are located anywhere else, you are contracting with Momentive Europe UC.*

14.1 Who you are contracting with.

Unless otherwise noted, the Services are provided by, and you are contracting with, Momentive Inc. inside of the United States, by Momentive Brasil Internet Eireli inside of Brazil, and by Momentive Europe UC everywhere else.

14.2 Momentive Inc.

For any Service provided by Momentive Inc., the following provisions will apply to any terms governing that Service:

- Contracting Entity. References to “Momentive”, “we”, “us”, and “our” are references to Momentive Inc., located at One Curiosity Way, San Mateo, CA 94403, USA.

- **Governing Law.** Those terms are governed by the laws of the State of California (without regard to its conflict of laws provisions).
- **Jurisdiction.** Except if prohibited by applicable law, each party submits to the exclusive jurisdiction of the state courts and federal courts located in San Francisco County, California with respect to the subject matter of those terms.

14.3 Momentive Europe UC.

For any Service provided by Momentive Europe UC, the following provisions will apply to any terms governing that Service:


- **Contracting Entity.** References to “Momentive”, “we”, “us”, and “our” are references to Momentive Europe UC, located at 2 Shelbourne Buildings, Second Floor, Shelbourne Road, Dublin 4, Ireland.
- **Governing Law.** Those terms are governed by the laws of Ireland (without regard to its conflicts of laws provisions).
- **Jurisdiction.** Except if prohibited by applicable law, in relation to any legal action or proceedings to enforce those terms or arising out of or in connection with those terms, each party irrevocably submits to the exclusive jurisdiction of the courts of Ireland.

14.4 Momentive Brasil Internet Eireli.

For any Service provided by Momentive Brasil Internet Eireli, the following provisions will apply to any terms governing that Service:

- **Contracting Entity.** References to “Momentive”, “we”, “us”, and “our” are references to Momentive Brasil Internet Eireli, located at Rua Joaquim Floriano, No. 243, suite 113, Itaim Bibi, São Paulo-SP, 04534-010 Brazil.
- **Governing Law.** Those terms are governed by the laws of Brazil (without regard to its conflicts of laws provisions).
- **Jurisdiction.** Except if prohibited by applicable law, in relation to any legal action or proceedings to enforce those terms or arising out of or in connection with those terms, each party irrevocably submits to the exclusive jurisdiction of the courts of the city of São Paulo, Brazil.


15. Other Terms

 *You may not transfer these obligations to someone else without our permission. However, we can transfer these terms or our obligations without your permission.*

15.1 Assignment.


You may not assign these Terms without Momentive's prior written consent, which may be withheld in Momentive's sole discretion. Momentive may assign these Terms at any time without notice to you.

15.2 Customer Lists.

 *We can use your name, logo, and description of how you use our Services on our website, in earnings calls, and in marketing and promotional materials.*

Momentive may identify you by name and logo as a customer of the Services on our websites and on other promotional materials. Any goodwill arising from the use of your name and logo will inure to your benefit.

15.3 Entire Agreement.

 *These TOU are the only set of terms that govern our relationship. Any additional terms (like those in tiny font attached to the bottom of a purchase order) that you provide will not be binding.*

These Terms (including the Additional Terms) constitute the entire agreement between you and Momentive, and they supersede any other prior or

contemporaneous agreements, terms and conditions, written or oral concerning its subject matter. Any terms and conditions appearing on a purchase order or similar document issued by you, or in your procurement, invoicing, or vendor onboarding portal do not apply to the Services, do not override or form a part of these Terms, and are void.

15.4 Independent Contractors.

The relationship between you and Momentive is that of independent contractors, and not legal partners, employees, or agents of each other.

15.5 Interpretation.

The use of the terms “includes”, “including”, “such as”, and similar terms, will be deemed not to limit what else might be included.

15.6 Language.

These Terms are prepared and written in English. To the extent that any translated version conflicts with the English version, the English version controls, except where prohibited by applicable law.

15.7 No Waiver.

A party’s failure or delay to enforce a provision under these Terms is not a waiver of its right to do so later.

15.8 Severability.



If any part of these Terms is not enforceable, the rest of the Terms will still be enforceable.

If any provision of these Terms is determined to be unenforceable by a court of competent jurisdiction, that provision will be severed and the remainder of terms will remain in full effect.

15.9 Third Party Beneficiaries.


There are no third party beneficiaries to these Terms.

15.10 Survival.

 *Some terms live on even after this TOU ends.*

The following sections will survive the termination of this TOU: Introduction, 1, 2, 3.2, 11, 13, 14, 15, 16, 17 and 18.

16. Terms for Certain Customers

 *Some of these additional terms may apply depending on which Services you use.*

16.1 Customer-Specific Terms.

The following amendments automatically apply to you upon acceptance of these Terms if you are one of the types of entities identified below:

- If you are a United States Federal Government Agency, this Amendment (<https://www.surveymonkey.com/mp/legal/terms-of-use-federal-government/>) applies to you.
- If you are a different type of government entity in the United States, this Amendment (<https://www.surveymonkey.com/mp/legal/terms-of-use-state-government/>) applies to you.

16.2 Wufoo-Specific Terms.

If you are using Wufoo Services, the following additional terms apply:

- One free account per person. You may only have one active, free Wufoo account at any time. Multiple Wufoo accounts for any person may be closed by Momentive.
- Form Gallery. In the course of using the Wufoo website, you may create certain templates, graphics or form documents (collectively, the “**Form Content**”) and load or post such documents into the Wufoo form gallery (“**Form Gallery**”) for other users. By making such Form Content available on the Form Gallery, you grant to Momentive a worldwide, irrevocable, perpetual, royalty-free, transferable and sub-licensable, non-exclusive right to use, copy, modify, distribute, display, perform, create derivative works and exploit that Form Content in connection with Momentive’s operation of Wufoo.
- Termination. Momentive may close any free Wufoo accounts that do not receive a form submission for 6 months or where the accounts are not accessed for 6 months.
- Use of API. You may access your Wufoo account data via Wufoo’s application programming interface (“**API**”) and Momentive hereby grants you a non-exclusive, non-transferable license (without the right to sublicense) to use the API solely as necessary to develop, test, operate and support your software application or website using certain data and content from the Wufoo website (“**Application**”), and to distribute or allow access to your integration of the API within your Application to end users of your Application. Any use of the API, including use of the API through a third party product or service that accesses Wufoo, is bound by these Terms, plus the following specific items:
 - (a) Abuse of the API or excessively frequent requests to Wufoo via the API may result in the temporary or permanent suspension of your access to the API. Momentive, in its sole discretion, will determine if your usage constitutes abuse or excessive usage of the API. Momentive will endeavor to warn the account owner via email prior to suspension. While Momentive strives to have the API available without interruption, Momentive cannot guarantee any uptime for the API.

(b) You agree not to use the API in any way that is unlawful or harms Momentive, its service providers, your end users, or any other person.

(c) Momentive may modify, restrict or discontinue, at any time, temporarily or permanently, your access to the API (or any part thereof) with or without notice.

(d) You agree to assist Momentive, at its request, to verify compliance with these Wufoo Terms by providing us with information about your Application, including providing us with access to it and/or other materials related to your use of the API.

(e) The API is currently provided for free, but Momentive reserves the right to charge for use of the API in the future. If Momentive charges a fee for use of the API, you do not have any obligation to continue using it.

17. Terms for Momentive's API

See here (https://developer.surveymonkey.com/tou/?ut_source=legal&ut_source2=85620&ut_source3=inline) for the terms for Momentive's API for products branded as SurveyMonkey.

18. Terms for SurveyMonkey Contribute

See here (https://www.surveymonkey.com/mp/legal/surveymonkey-contribute-terms-of-service/?ut_source=legal&ut_source2=85620&ut_source3=inline) for the terms for using SurveyMonkey Contribute.