



Terms and Conditions

BREINZ APPLICATION

13 MAY 2019

Welcome to Breinz!

To make it easier for you to understand the terms on which we provide our services, we've tried to keep these terms of use (Terms) as simple as possible by using plain English.

When we talk about "Breinz", "we," "our," or "us" in these Terms, we are referring to BREINZ PTY LTD, an Australian business with ABN 29 630 324 006. When we talk about the "Services" in these Terms, we are referring to our software available on <https://app.breinz.com.au>, our website and any associated services we offer, including but not limited to the features you get to enjoy when you subscribe to our 'Estimators', 'Contract Admins' or 'Project Managers' packages.

We've also used a few other capitalised words and phrases as shorthand to refer to recurring concepts. Each of these are defined in bold and in brackets after the concepts are first mentioned.

1. Introduction

These Terms set out the terms and conditions that apply when you use the Services. By using the Services, you agree to be bound by these Terms which form a binding contractual agreement between you and us.

Please have a careful read through these Terms before using the Services. If you don't agree to these Terms, please don't use the Services.

2. Changes to Terms

We may modify our Terms from time to time, including any prices for our services. If we do, we will post a note on this page, email you or send you an SMS. If you continue to use the Services after we modify our Terms, you'll be taken to have agreed to the Terms and, if applicable, as modified.

3. Changes to Prices

The prices for our Services are listed on our website located at <https://www.breinz.com.au>. We may change our prices from time to time. If we do, and you are paying for our Services on a monthly basis, we will email you or send you an SMS and your continued use of the Services will be taken as an acceptance of the new prices, as modified.

If you're paying for our Services on a yearly basis, any increase in our prices will commence at the expiration of your yearly subscription.

4. Who May Use The Services

In order to use the Services, you must be at least 18 years old or have the express consent of your legal guardian and be a registered user on our website. You must also have the legal capacity (including being of sufficient age) to enter into contracts under the law of the jurisdiction in which you reside.

You may not access the Services if any of the above facts are not true.

5. Account Registration

In order to use the Services, you will be required to sign up for an account (Breinz Account).

When you register for a Breinz Account, you must provide true, accurate and complete information as requested and keep this information up to date after registration.

You agree that you're solely responsible for:

- maintaining the confidentiality and security of your Breinz Account information and your password; and
- any activities and those of any third party that occur through your Breinz Account, whether those activities have been authorised by you or not.

You also agree to let us know if you detect any unusual activity on your account as soon as you become aware of it.

We won't be responsible to you for, and expressly disclaim any liability for, any cost, loss, damages or expenses arising out of a failure by you to maintain the security of your Breinz Account information or your password.

6. Fees

6.1. FEES

We offer a no cost plan which will allow you to access all of the features of our Services for 30 days (Free Trial).

In order for you to access some or all of the features of your Breinz Account or our Services following the expiration of the Free Trial, you will need to pay us fees (Fees). You will need to pay the Fees in the amounts and at the times indicated on our website or as otherwise agreed in writing.

6.2 SUBSCRIPTION MODELS

Regardless of the package you select, you may pay fees on a monthly basis (Monthly Subscription), or a yearly basis (Yearly Subscription). Whether you select the Monthly Subscription, or the Yearly Subscription will affect how you may cancel this agreement in accordance with clause 15.1 and how changes in prices in accordance with clause 3 will affect you.

6.3 FAILURE TO PAY

If Fees for a Breinz Account are not paid when they are due:

- we may revoke your Breinz Account and require payment for you to continue accessing the Services; and
- delete your accounts, and all associated files and data after three months.

6.4 PAYMENT METHODS AND THIRD-PARTY TERMS

Fees can be paid using Stripe, our online payment partner, or as otherwise communicated to you by us, depending on our current prices and billing process.

We use third-party payment providers (Payment Providers) to collect Fees. The processing of payments by the Payment Provider will be, in addition to these Terms, subject to the terms, conditions and privacy policies of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.

7. Refunds

Except as otherwise set out on our website or in clause 15.1(c), we generally don't offer refunds for any of our subscriptions and any refunds we issue will be solely at our discretion. Please let us know if you have any issues with our Services that you think should entitle you to a refund and we'll consider your situation.

8. Acceptable Use

We'll need you to make a few promises about the way you'll use the Services.

You agree:

- not to copy, reproduce, translate, adapt, vary or modify the Services without our express consent;
- not to use the Services in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity;
- not to use the Service for the purpose of distributing unsolicited commercial content, junk mail, spam, bulk content or harassment;

- not to attempt to breach the security of the Services or Breinz’s system security, or otherwise interfere with the normal function of the Services, including by:
- gaining unauthorised access to Breinz Accounts or data about other users of the Services;
- scanning, probing or testing the Services for security vulnerabilities;
- overloading, flooding, mailbombing, crashing or submitting a virus to the Services or Breinz’s system; or
- instigating or participating in a denial-of-service attack against the Services or Breinz’s system; and
- to ensure that your employees, sub-contractors and other agents who you have authorised to use or access the Services comply with the Terms.

9. Your Content

9.1 TYPES OF CONTENT

As part of using the Services, you’ll be uploading images, content, information and materials you share with us or the public (including feedback, suggestions and enhancement requests), including by using the features of the application, sharing content via the app on social media, storing content on the app or by contacting us, or when you register a Breinz Account (Posted Materials).

9.2 POSTED MATERIALS

By providing or posting any Posted Materials, you represent and warrant that:

- you are authorised to provide the Posted Materials;
- the Posted Materials are free from any harmful, discriminatory, defamatory or maliciously false implications and do not contain any offensive or explicit material;
- the Posted Materials are not “passing off” of any product or service and does not constitute unfair competition;
- the Posted Materials do not infringe any intellectual property rights, including copyright, trademarks, business names, patents, confidential information or any other similar proprietary rights, whether registered or unregistered, anywhere in the world (Intellectual Property Rights);
- the Posted Materials are accurate and true at the time they are provided;
- any Posted Materials which are in the form of a review or feedback is honest, accurate and presents a fair view of the relevant person and/or your experience;
- the Posted Materials do not contain any viruses or other harmful code, or otherwise compromise the security or integrity of any network or system; and
- the Posted Materials do not breach or infringe any applicable laws, regulations or orders.

9.3 POSTED MATERIALS – IP LICENSE

By uploading any Posted Materials, you grant to Breinz (and its agents or service providers) a perpetual, irrevocable, transferable, worldwide and royalty-free licence (including the right to sublicense) to use, copy, modify, reproduce and adapt any Intellectual Property Rights in that Posted Material in order for Breinz to use, exploit or otherwise enjoy the benefit of such Posted Material.

9.4 REMOVAL OF POSTED MATERIALS

We don't have any obligations to screen Posted Materials in advance of them being posted and your compliance with these Terms is your responsibility. However, we may, if we choose, review and remove any Posted Materials at any time without giving any explanation or justification for removing the material and/or information.

10. Our Content

Unless we indicate otherwise, all materials used in the Services (including text, graphics, logos, icons, sound recordings and software) are subject to Intellectual Property Rights that are owned or licensed by us.

You can only access and use these materials for the sole purpose of enabling you to use the Services in accordance with the subscription you are on, except to the extent permitted by law or where you have received prior written approval from us.

11. Third Party Content & Links

The Services may contain text, images, data and other content provided by a third party (Third Party Content). We're not responsible for any of this Third Party Content and we make no representation or warranty about the quality, suitability, accuracy, reliability, currency or completeness of any Third Party Content.

The Services may also contain links to websites operated by third parties (Third Party Links). Third Party Links are provided for convenience and may not remain current or be maintained. We do not endorse and are not responsible for Third Party Links and have no control over or rights in linked websites.

12. Service Limitations

The Services are made available to you strictly on an 'as is' basis. We can't guarantee, and make no warranties, to the extent permitted by law, that:

- the Services will be free from errors or defects;
- the Services will be accessible or available at all times;
- messages sent through the Services will be delivered promptly, or delivered at all;
- information you receive or supply through the Services will be secure or confidential; or
- any information provided through the Services, including but not limited to any cost estimates, budgets, cashflow analysis or forecasts is accurate or true.

13. Security

We do not accept responsibility for any unauthorised use, destruction, loss, damage or alteration to your data or information (including Posted Materials), your computer systems, mobile phones or other electronic devices arising in connection with use of the Services. You should take your own precautions to ensure that the process which you employ for accessing the Services does not expose you to the risk of hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.

14. Disclaimer

To the maximum extent permitted by applicable law, Breinz limits all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to the Services to \$100 (AUD) in aggregate. This includes the transmission of any computer virus.

You agree to indemnify Breinz and its employees and agents in respect of all liability for loss, damage or injury which may be suffered by any person arising from, or in connection with, you or your representatives use of the Services and/or breach of these Terms.

All express or implied representations and warranties given by us are, to the maximum extent permitted by applicable law, excluded. Where any law (including the Competition and Consumer Act 2010 (Cth)) implies a condition, warranty or guarantee into these Terms which may not lawfully be excluded, then to the maximum extent permitted by applicable law, Breinz's liability for breach of that non-excludable condition, warranty or guarantee will, at our option, be limited to:

- in the case of goods, their replacement or the supply of equivalent goods or their repair; and
- in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.

To the maximum extent permitted by law, under no circumstances will Breinz be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with the Services, these Terms or their subject matter (except to the extent this liability cannot be excluded under the Competition and Consumer Act 2010 (Cth)).

15. Cancellation

15.1 CANCELLATION BY YOU

- You are responsible for the cancellation of your Breinz Account.
- You can cancel your Breinz Account at any time by using the functionality provided in the app.
- If you are on a Yearly Subscription, we will refund the Fees you paid minus a 10% cancellation fee within a reasonable time following cancellation.
- If you are on a Monthly Subscription, no refund will be payable if you cancel your subscription.

15.2 CANCELLATION BY US

To the extent permitted by law, we reserve the right to terminate your access to any or all of the Services or any part of the Services at any time by two month notice, for any reason, provided that we refund to you any Fees for Services which you have paid for and not received.

We may also terminate your access to any or all of the Services at any time without notice without issuing a refund if you breach any provision of these Terms.

15.3 EFFECT OF CANCELLATION

Upon cancellation, termination or expiry of your Breinz Account, we will delete any Posted Materials associated with your Breinz Account. You won't be able to recover any of this after cancellation, termination or expiry of your Breinz Account so we recommend you back up anything important to you. We won't be responsible to you for, and expressly disclaim any liability for, any cost, loss, damages or expenses arising out the cancellation, termination or expiry of your Breinz Account.

15.4 SURVIVAL

The sections titled "Your Content", "Disclaimer", "Survival" and "General" will survive any termination or expiration of these Terms, as well as any other

provision which by its nature would reasonably be expected to be complied with after termination.

16. GENERAL

16.1 PRIVACY

You agree to be bound by the clauses outlined in Breinz's Privacy Policy, which can be found at <https://www.breinz.com.au/Privacy/>

16.2 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

16.3 ASSIGNMENT

You can't assign, novate or otherwise transfer your rights or obligations under this agreement without the prior consent of Breinz.

16.4 GOVERNING LAW

This agreement is governed by the law applying in Queensland, Australia.

16.5 JURISDICTION

The courts located in Queensland, Australia will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to these Terms. Each party hereby consents and submits to the exclusive jurisdiction of those courts.

16.6 LOCATION OF SERVICES

Breinz controls the operation of the Services from headquarters located in Australia. Some Services or parts thereof may be operated from, or hosted on mirrors or servers, at various locations outside of Australia.

We make no representation or warranty that all of the features of the Services will be available to you outside of Australia or that they are permitted to be accessed outside Australia.

You're solely responsible for your decision to use the Services from other locations and you acknowledge that such use may be subject to, and you are responsible for, compliance with applicable local laws in relation to your use of the Services.

These Terms were last updated on 13 May 2019.