



## FORMETCO DIGITAL BILLBOARD TERMS AND CONDITIONS OF SALE

**Interpretation, Definitions and Modifications.** The following terms and conditions (“Terms and Conditions”) govern the sale of products (each, a “Product”) and installation, maintenance and other ancillary services (each, a “Service”) by Formetco to the customer set forth in the Quote/Sales Agreement (“Buyer”). Capitalized terms used but not otherwise defined herein shall have the same meaning as provided elsewhere in the Agreement. As used herein, “Agreement” shall mean the following (including, without limitation, all documents or instruments referenced herein):

- The Quote/Sales Agreement to which these Terms and Conditions are attached;
- All Change Orders properly executed as set forth herein, in the form available at <https://www.formetco.com/change-orders/>.
- All specifications and drawings attached to the Quote/Sales Agreement or otherwise agreed to by the parties in writing;
- The following applicable Warranties (in accordance with Section 14 below):
  - o The Formetco Brightness Warranty (available at <https://www.formetco.com/brightness-warranty/>);
  - o The Formetco Digital Billboard 10-Year Limited Parts Warranty (available at <https://www.formetco.com/10-year-limited-dbb-parts-warranty/>);
  - o The Formetco Digital Billboard 5-Year Limited Parts Warranty (available at <https://www.formetco.com/5-year-limited-dbb-parts-warranty/>);
- The Formetco Wireless Service Terms and Conditions, if communication services are purchased by Buyer (as set forth on the Quote/Sales Agreement), available at <https://www.formetco.com/wireless-service-terms/>; and
- The Formetco Limited Warranty Service Agreement Terms, if purchased by Buyer (available at <https://www.formetco.com/service-agreement/>).

Once executed, each of these “Contract Documents” will be available on Buyer’s secure online Formetco client portal.

**1. Quote.** Formetco’s Quote shall be valid for no more than 15 days, unless otherwise stated therein. The Quote is subject to change by Formetco at any time upon notice to Buyer. Once accepted by Buyer by written acceptance or acknowledgment (which may be via email), the Quote shall become a valid and enforceable sales agreement between Formetco and Buyer.

**2. Change Orders.** The Agreement, including but not limited to the Products and Services, may only be altered, modified, superseded, or amended by a written document that specifically references the Agreement, sets forth the change and is signed by an authorized Formetco representative. Such document shall be referred to as a “Change Order” and must be in the form available at <https://www.formetco.com/change-orders/>. In the event a Change Order is signed before Formetco ships the Product to Buyer, Formetco will include the additional cost of the Change Order in the sales invoice. In the event a Change Order is signed after Formetco ships the Product to Buyer, Formetco will invoice Buyer for the additional cost of the Change Order separately.

**3. Price; Payment Terms.** Buyer shall purchase the Product and Services from Formetco at the Price and on the Payment Terms set forth in the Sales Agreement and, if applicable, the Wireless Service terms and Service Agreement. The Deposit is non-refundable. The Price does not include fees for government required inspections, special assessments, permits (including but not limited to installation permits), union costs, tariffs, taxes (including sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer), and Buyer shall be responsible for all such charges, costs

and taxes; if applicable, upon Formetco's request Buyer shall provide a tax exemption certificate in a form acceptable to Formetco in advance of the delivery of the Product. In addition to all other remedies available under the Agreement (which Formetco does not waive by the exercise of any rights hereunder), Formetco shall be entitled to suspend the delivery of any Product or Service if Buyer fails to pay any amounts when due hereunder and such failure continues for three (3) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Formetco, whether relating to Formetco's breach, bankruptcy or otherwise, or arising under any other sales or service order or transaction between Formetco and Buyer.

**4. Delivery, Title, and Risk of Loss.** (a) For all Orders in the Continental USA, the Product is sold FOB Formetco's facility (the "Shipping Point"). Title to the Product passes to Buyer upon Formetco's placement of the Product into the carrier's possession. Formetco will ensure the Product from risk of loss until it reaches the destination designated by Buyer (the "Destination"). Formetco will, at its expense, put the Product in possession of a carrier at the Shipping Point, contract with the carrier for the shipment of the Product to the Destination. Buyer bears all other expenses and risks of transportation including, without limitation, loading and unloading, storage and freight. Buyer may not direct the Product to any destination other than that specified in the Agreement without the written permission of Formetco. Delivery or shipping dates are approximate only and merely represent Formetco's best estimate of time required to make delivery or shipment. Shipment dates are contingent on prompt receipt by Formetco of all necessary manufacturing, shipping and delivery information. Formetco is not responsible for failure to meet estimated shipping dates and will not be liable for any loss, cost, damage or expense whatsoever incurred by Buyer or its customers that may result therefrom. (b) For all Orders Outside the Continental USA, the Product is sold FOB the Shipping Point; title to and risk of loss passes to Buyer upon Formetco's placement of the Product into the carrier's possession and Formetco will not ensure the Product from risk of loss after placing the Product into the carrier's possession; except as otherwise stated in this Section 4(b), the provisions of Section 4(a) apply.

**5. Services.** With respect to the Services, Buyer shall: (a) cooperate with Formetco in all matters relating to the Services, provide access to the Site and provide such other accommodations as Formetco may reasonably request for the purposes of performing the Services; (b) respond promptly to any request of Formetco for direction, information, approvals, authorizations, or decisions that are reasonably necessary for Formetco to perform the Services in accordance with the requirements of this Agreement; (c) provide such materials or information as Formetco may request to carry out the Services in a timely manner and ensure that such materials or information are complete and accurate in all material respects; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

**6. Site Access.** Buyer is responsible for providing Formetco with safe access to the location where the Product will be installed or has been installed (the "Site"), either through (X) providing an "Accessible Site", which means the Product is accessible through the use of: (a) a 20 foot or shorter ladder; (b) a secure catwalk or base; and (c) a guard rail or a safety lifeline which is securely attached to the support structure if the Product display is over 6 feet off the ground, or (Y) furnishing the use or bearing the cost of a bucket or boom truck and any other machinery or equipment capable of providing safe access to the Site reasonably requested by Formetco. In the event Formetco arrives to the Site and Buyer has failed to provide an Accessible Site or otherwise provide safe access to the Site as reasonably requested by Formetco, then Buyer will bear the cost of Formetco's demobilization, delay, and remobilization; Formetco will issue Buyer a Change Order including the invoice for such additional cost(s).

**7. Installation and Subsurface Access.** In the event Formetco provides installation Services for the Product on behalf of Buyer at the Site, Buyer must have a representative on the Site prior to Formetco's commencement of foundation work to direct the exact placement of the Product (the "Install"). The Price quote for the Install is based on average bearing soil and assumes the absence of subsurface obstructions or high-water levels; in the event Formetco encounters any subsurface obstruction, including but not limited to rock, abnormal soil, high water levels, or other unexpected subsurface conditions, Formetco will suspend all Services related to the Install and will issue a Change Order. Formetco will have no obligation to proceed with the Install until Buyer accepts or acknowledges such Change Order in writing (which may be by email).

**8. Existing Structure.** Except to the extent that Formetco explicitly assumes responsibility for any structural element in accordance with the Agreement, Buyer represents and warrants that the existing structure that will support the Product, including without limitation any existing steel, walls, columns, trusses, footings, hoists attachment points, wiring, or any other foundation or existing structural elements (collectively, the "Existing Structure") shall be adequate to support the weight, size, wind load, and all other technical specifications of the Product, and Buyer agrees to indemnify and hold Formetco harmless for any failure of any Existing Structure or any losses, damages, claims or liabilities arising from or relating to any such failure. Formetco recommends that Buyer has the Existing Structure reviewed and certified by a licensed structural engineer. In the event changes to the Existing Structure are required prior to the Install, a Change Order will be required.

**9. Software.** To the extent Buyer utilizes any Formetco control or management software applications that are available on the Product (the “Covered Software”), Formetco grants to Buyer, for so long as Buyer owns Product, a limited, nontransferable, nonexclusive, non-sublicensable license to (a) use the Software only as installed on and in connection with the Product and Formetco’s ownership thereof; and (b) use the user documentation provided by Formetco in connection with the Covered Software as reasonably necessary for Buyer’s authorized use of the Covered Software. In addition, Formetco will provide standard support for such Software for one (1) year from the date of shipment of the Product from Formetco’s facility, at no additional cost to Buyer. Buyer will not, directly or indirectly, (i) license, sell, redistribute, lease or otherwise transfer or assign the Covered Software; (ii) alter or permit a third party to alter any part of the Covered Software; (iii) use or permit the use of the Covered Software for any unlawful purpose; (iv) reverse engineer or otherwise attempt to derive source code or other trade secrets from the Covered Software; (v) use the Covered Software in a way that could harm Formetco’s network (including by transmitting or uploading any viruses, worms, Trojan horses or other malicious code); or (vi) use the Covered Software to try to gain unauthorized access to any service, data, account or network by any means. Buyer may elect to license and use third-party software in connection with the Product. Except as otherwise set forth in a separate agreement with respect to such third-party software (which may be electronic terms of use or service that must be accepted by Buyer prior to installation or use of such third-party software), Formetco shall have no obligations or liabilities with respect to such third-party software or Buyer’s use or operation thereof. Formetco may terminate the licenses granted under this Section 9 immediately upon written notice of any material breach of the terms of this Section 9.

**10. Intellectual Property.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Buyer by Formetco, and all rights therein (collectively, “Intellectual Property”) will remain the property of Formetco and its licensors or suppliers and will be kept confidential by Buyer in accordance with these Terms and Conditions. Other than the limited licenses granted herein with respect to the Covered Software (if installed), Buyer has no claim to, nor ownership interest in, any Intellectual Property, and all such Intellectual Property, in whatever form and any copies thereof, shall be promptly returned to Formetco upon its request or, if it is subject to a limited license hereunder, upon termination of such license in accordance with these Terms and Conditions.

**11. Graphics.** Buyer must approve all elements of custom graphics to be affixed to the Product no later than three (3) weeks prior to the Product’s scheduled shipping date. If Buyer fails to meet this deadline, Formetco will issue a Change Order including an invoice for the cost of the delay.

**12. IBC Risk Designation.** Formetco’s structural engineering specifications for the Product comply with IBC Risk Category 1 requirements and the Price quote for the Product is based on this compliance level. Accordingly, if Buyer requires compliance with a higher risk category for any reason, then Buyer must notify Formetco to obtain a new Price quote prior to engineering the Product. Any change to the IBC Risk Designation after Formetco’s commencement of engineering the Product will require a Change Order.

**13. Security Interest.** As collateral security for Buyer’s full payment to Formetco of all amount(s) that may become due under this Agreement, Buyer hereby grants Formetco a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Product, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer hereby irrevocably authorizes Formetco at any time and from time to time while such security interest is in effect to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments necessary to perfect the foregoing security interest.

**14. Warranties.** Formetco warrants the following to Buyer, as applicable (collectively, the “Warranties”):

- (a) For FTX, the “Formetco Brightness Warranty”, available at <https://www.formetco.com/brightness-warranty/> (the “Brightness Warranty”);
- (b) For FTX, The Formetco Digital Billboard 10-Year Limited Parts Warranty (available at <https://www.formetco.com/10-year-limited-dbb-parts-warranty/>);
- (c) For FSI And FSO, The Formetco Digital Billboard 5-Year Limited Parts Warranty (available at <https://www.formetco.com/5-year-limited-dbb-parts-warranty/>);

THE WARRANTIES ARE MADE EXPRESSLY IN LIEU OF ANY AND ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, AND ALL OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

#### 15. Limitation of Liability

(a) IN NO EVENT SHALL FORMETCO BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WITH RESPECT TO THE PRODUCTS, SERVICES OR THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT FORMETCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT SHALL FORMETCO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO FORMETCO FOR THE GOODS AND SERVICES WITH RESPECT TO THE PRODUCTS OR SERVICES HEREUNDER, OR THE PURCHASE PRICE OF THE PRODUCT, WHICHEVER IS LESS.

(c) The limitation of liability set forth herein shall not apply to (i) liability resulting from Formetco's gross negligence or willful misconduct and (ii) amounts paid or payable to third parties arising from death or bodily injury resulting from Formetco's gross negligence or willful misconduct.

16. **Indemnity.** To the greatest extent permitted by law, Buyer shall indemnify, defend and hold harmless Formetco and its subsidiaries, officers, directors, shareholders, partners, representatives, employees, agents, insurers, successors and assigns of each of the foregoing from any and all losses arising out of or relating to (i) any negligent act or omission by Buyer or its personnel, agents, subcontractors, or others engaged by Buyer or under their control, or (ii) any claim against Formetco by reason of or alleging any unauthorized or infringing use by Formetco of any copyright, trademark, or other intellectual property right in any material, information, technology, process or data provided by Buyer and used by Formetco at Buyer's direction.

17. **Delay, Force Majeure.** Any period for delivery or service provided for in the Agreement is approximate and not a guarantee of a particular date or time frame. Under no circumstances will Formetco be liable or responsible to Buyer for any failure or delay in fulfilling or performing any term of this Agreement when and to such extent such failure is caused or results from acts or circumstances beyond the reasonable control of Formetco including, without limitation, fire, flood, earthquake, act of God, explosion, governmental action, war, invasion or hostilities (whether war is declared or not), or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, quarantine, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or telecommunication breakdown or power outage. In such circumstances Formetco has the right to extend the date of delivery for a reasonable period of time after the period of delay (but in no case for less than the period of delay) and the right to apportion its products among its customers in a manner it deems equitable. Buyer is not relieved from accepting delivery at the agreed price when the causes interfering with delivery are removed.

18. **Use of Image.** Formetco may use Buyer's name along with images of the Product and the Site for marketing and promotional purposes including but not limited to website and marketing materials, without compensation to Buyer.

19. **FCC CLASS A NOTICE.** The Product complies with Part 15 of the FCC Rules. Operation of Product is subject to the following conditions:

- (a) the Product may not cause harmful interference; and
- (b) the Product must accept any interference received, including interference that may cause undesired operation. Any modifications made to the Product that are not approved by Formetco may void the authority granted to the user by the FCC to operate this Product.

20. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms and Conditions prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer submits its purchase order or such terms, and fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions.

**21. Severability.** In the event one or more of the provisions of this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, those provisions will not invalidate or otherwise affect any other provisions, and the Agreement will be construed as if the invalid, illegal or unenforceable provision was never a part of the Agreement.

**22. Applicable Law, Limitations.** This Agreement is governed by the laws of the state of Georgia. In the event of any dispute arising out of or relating to this Agreement, Buyer hereby submits to the exclusive personal jurisdiction and venue of the Superior Court of Gwinnett County, Georgia or the United States District Court for the Northern District of Georgia with respect to such dispute and agrees to waive any defenses to venue and jurisdiction including forum non convenes. Notwithstanding the foregoing, Formetco will have the right, and in addition to all other remedies available to it at law, in equity or under this Agreement, to affirmative or negative injunctive relief from a court of competent jurisdiction in the event Buyer violates or threatens to violate the terms of Sections 9 or 10. Buyer acknowledges that a violation of Sections 9 or 10 would cause irreparable harm and that all other remedies are inadequate. Any legal action pertaining to this Agreement, other than Buyer's failure to pay any amount(s) owed to Formetco, must be commenced within one (1) year of the event giving rise to the cause of action.

**23. Assignment.** Buyer may not assign any of its obligations under the Agreement without the written consent of Formetco. Any attempted assignment not in conformity with this Section 23 is void.

**24. Fees.** Buyer shall be liable for all costs and expenses (including attorney's fees) incurred by Formetco in enforcing any provision of this Agreement, including, without limitation, any costs of collection of amounts due to Formetco hereunder.

**25. No Waiver.** All remedies of Formetco hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. Any failure by Formetco to enforce or exercise any provision of this Agreement or our related rights shall not constitute a waiver of that right or provision.

**26. Parts RMA Process.** FTX 10-Year Limited Parts Warranty, FSO and FSI 5-Year Limited Parts Warranty covers the LED video screen's LED Tiles, power supplies, data receiver cards, power and data cables, photocell, cabinetry, connecting cables, computer, router, modem, SmartLink® and web camera. The RMA process and details of warranties and disclaimers are set forth in the Warranties which are found in Section 14 above and the terms of which shall control over those referenced in these Terms and Conditions.

**27. Formetco Parts Return Policy.** Formetco will ship replacement parts out FedEx ground. The replaced and unused parts need to be shipped back to Formetco. If the parts are not received by Formetco within 60 days from the date the parts were shipped the recipient will be invoiced for the parts not returned. Formetco will provide an E-Mail parts return reminder at 14 days, 45 days and at 60 days if the parts have not been returned, the recipient will be invoiced for the parts not returned.

**28. Automated Wireless Agreement.** The Formetco Automated Wireless FAWA ("FAWA") contains the terms and conditions applicable to the provision of wireless communication and related support services by Formetco, Incorporated ("Formetco") to the existing customer subscribing to such Services (the "Buyer"). Such terms are in addition to, and not in lieu of, the Terms and Conditions governing Buyer's purchase of the billboard Product(s) set forth or otherwise incorporated into in the Quote/Sales Agreement (the "Terms and Conditions") and constitute an amendment to the FAWA referenced in the Terms and Conditions. Capitalized terms used but not otherwise defined herein will have the same meanings given for such terms in the Terms of Conditions.

**29. Services Provided.** During the Term, and subject to the terms and conditions hereof, Formetco agrees to provide to Buyer with wireless data transmission services and related support services in connection with the modem installed on the purchased Product (collectively, the "Services"). The scope of the Services (including support hours, procedures and exclusions) is further described at <https://formetco.com/wireless-support-terms/> (the "Wireless Support Terms and Conditions"), which are incorporated herein by this reference.

**30. Approvals.** Buyer assumes all responsibility to obtain all approval(s) that are required by any public and private entity and governmental agency for the delivery, installation, placement and location of Formetco's products sold to Buyer and shall indemnify and hold Formetco harmless therefrom.

**31. Term; Termination.** The initial term of the Services begins on Buyer's acceptance and acknowledgement of these terms electronically or in writing and will continue for a period of one (1) year; thereafter, the term will automatically renew for successive periods of one (1) year each (collectively with the initial term, all such renewal periods, the "Term"). Either party may terminate this FAWA (i) for its convenience upon at least thirty (30) days prior notice, which may be given via Formetco's customer portal or via email; or (ii) upon written notice to the other party (or Formetco may, in its sole discretion, suspend the provision of the Services) if the other party commits a material breach of this FAWA and fails to cure such breach within fifteen (15) days of written notice of the same (other than

Buyer's failure to pay any amounts when due, which must be cured within ten (10) days after notice of the same, which notice may be provided by phone or email).

**32. Fees; Invoicing.** Buyer will be charged Formetco's then-current standard fees for the Services as communicated to Buyer from time to time in writing (which may be electronically). Formetco's current fee is \$195 per quarter. Formetco may change such fees from time to time on at least sixty (60) days' notice to Buyer (which may be electronic), and Buyer will be deemed to have accepted such changes unless Buyer cancels its subscription to the Services as set forth in Section 2, above, prior to the effective date of such change. All fees will be invoiced as follows: (i) all recurring fees for wireless service and remote support (collectively, the "Recurring Fees") will be billed in advance on the first day of each calendar quarter during the Services Term (or, if a modem is added during the middle of any quarter, on the first day of service, with the fees prorated); and (ii) for any other billable Services under the Wireless Support Terms and Conditions ("Additional Service Fees"), such fees will be invoiced upon completion of such Services.

Buyer will be charged Formetco's then-current standard fees for the Services as communicated to Buyer from time to time in writing (which may be electronically). Formetco's current fee is \$195 per quarter. Formetco may change such fees from time to time on at least sixty (60) days' notice to Buyer (which may be electronic), and Buyer will be deemed to have accepted such changes unless Buyer cancels its subscription to the Services as set forth in Section 2, above, prior to the effective date of such change. All fees will be invoiced as follows: (i) all recurring fees for wireless service and remote support (collectively, the "Recurring Fees") will be billed in advance on the first day of each calendar quarter during the Services Term (or, if a modem is added during the middle of any quarter, on the first day of service, with the fees prorated); and (ii) for any other billable Services under the Wireless Support Terms and Conditions ("Additional Service Fees"), such fees will be invoiced upon completion of such Services.

**33.** Buyer must maintain valid and current credit card or bank account information on file with Formetco and authorize Formetco to deduct the Recurring Charges with respect to the Services against that credit card or bank account (via ACH). By providing Formetco with payment information, Buyer (i) represents and warrants that Buyer is authorized to use that payment method and that any and all charges may be billed to that payment method and will not be rejected; and (ii) authorizes the financial institution specified in such payment method to charge or debit Buyer's account and remit payment to Formetco as described herein. Such authority will remain in effect until Buyer provides Formetco with notice (either via Formetco's customer portal or by calling Formetco's Service Department at 800-204-4386. If Formetco cannot process Buyer's payment method, Formetco will attempt to contact Buyer by phone or email. If payment is not made as set forth in Section 2, Formetco may suspend Buyer's subscription and will not provide Buyer with the Services until payment can be processed. All Additional Service Fees will be due and payable within 30 days after the invoice date. Formetco may combine in one charge all fees due to Formetco from Buyer with respect to Buyer's Products. Any fees or charges not paid when due will accrue interest at a rate equal to the lesser of: (i) one and one-half percent (1.5%) per month; or (ii) the highest rate allowed by law. All fees charged by Formetco with respect to the Services are exclusive of taxes, VAT and similar fees now in force or enacted in the future imposed on the transaction, all of which Buyer will be responsible for, except for taxes based on Formetco's net income.

**34. Disclaimer.** BUYER'S SOLE AND EXCLUSIVE REMEDY, AND FORMETCO'S ENTIRE LIABILITY, FOR ANY FAILURE TO PROPERLY PROVIDE THE SERVICES DESCRIBED HEREUNDER WILL BE THE CORRECTION OR REPERFORMANCE OF THE NON-CONFORMING SERVICES. THE SERVICES ARE PROVIDED EXCLUSIVELY ON AN "AS IS" BASIS, AND FORMETCO AND ITS THIRD PARTY SUPPLIERS AND LICENSORS DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES WITH RESPECT TO THE COVERED HARDWARE, COVERED SOFTWARE OR SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. ALL LIMITATIONS OF LIABILITY SET FORTH IN THE TERMS AND CONDITIONS AND LIMITED WARRANTY APPLY EQUALLY TO THE SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS.