

DiviD Terms of Use



PLEASE READ THE FOLLOWING TERMS OF SERVICE CAREFULLY. BY CLICKING "I ACCEPT," REGISTERING FOR AN ACCOUNT, DOWNLOADING AND INSTALLING A MOBILE APP, OR BY OTHERWISE ACCESSING OR USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE DiviD PRIVACY POLICY (COLLECTIVELY, THESE "TERMS"). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THESE TERMS, THEN PLEASE DO NOT USE THE SERVICE.

We, Construction Synergy BV Marconistraat 16, 3029 AK Rotterdam, The Netherlands, (hereinafter referred to as 'Construction Synergy' and 'we') operate the platform DiviD (hereinafter referred to as 'DiviD') under the website accessible through www.dividapp.com and other associated domain names. DiviD is a closed platform where registered users can collaborate on construction projects and included associated activities. DiviD is a collaborative communication platform that allows complete digital organization of construction projects, including document management, task management, notes, messages, hand-overs and much more. DiviD can be operated and used worldwide from compatible devices and the most common contemporary operating systems in a quick, complete and user-friendly manner.

1. Scope: For Whom and to What Do These Terms Apply?

1.1. The purpose of these Terms of Use is to define the terms and conditions under which you will be provided with access to and have the right to use DiviD (which term shall include all associated contents, features, services, and software). They constitute a legally binding contract between Construction Synergy and you. These Terms of Use are the complete and exclusive statement of the terms of the agreement between you and Construction Synergy relating to the subject matter of these Terms of Use. They supersede and replace all prior agreements and understandings between the parties relating thereto, whatever their form. No other terms and conditions will become part of this agreement unless expressly referred to in these Terms of Use or agreed in writing between us.

1.2. We reserve the right to offer additional services and applications through DiviD. In the latter case, we will inform you separately and transmit additional terms and conditions to you, if necessary.

1.3. Third party partners may offer applications through DiviD. User contracts for these applications are made only with each individual vendor.

1.4. These Terms of Use apply to both Consumers and Businesses. "Consumers" are individuals who enter into a transaction for a purpose of which is attributable neither to their commercial nor to their independent professional activity. "Businesses" are individuals, legal entities or partnerships having legal capacity to act in their commercial or independent professional capacity when entering into a legal transaction.

1.5. These Terms of Use may not be accepted if you are not of legal age to form a binding agreement with Construction Synergy.

1.6. Within these Terms of Use, the word "including" or "includes" means "including, but not

limited to” or “includes, without limitation” and words importing the singular include the plural and vice versa.

2. Registration and Contract Formation

2.1. You must register to use DiviD. With your registration, you agree that you do not yet have an existing account with DiviD with the same email address or that you have deleted your old account. Each user may register only once and have only one active account with an unique email address.

2.2. You can register by using “Sign up” on www.dividapp.com.

2.3. To register with DiviD you must enter the required information truthfully and completely. A registration under false or incorrect data is not permitted. In case of changes, you must update all data immediately so that we can ensure a smooth usage of the application.

2.4. As part of the registration process, you will be requested to click on “I agree to the terms and conditions”. Read carefully the Terms of Use before clicking on “I agree to the terms and conditions” or statement to the same effect. By clicking on “I agree to the terms and conditions” or statement to the same effect, you accept to be bound and to comply with the conditions of the Terms of Use including all legal obligations imposed on you. If you do not agree with those conditions or if you do not wish to be bound by the Terms of Use, do not click on “I agree to the terms and conditions” or statement to the same effect and return to the home page. By clicking on “I agree to the terms and conditions” or statement to the same effect, you acknowledge and agree, among others, that the Terms of Use will cover all possible use of DiviD.

2.5. After the registration we will send you a confirmation of your registration by e-mail. Upon full Completion of the Registration, a user agreement is formed between you and us.

2.6. We have no obligation to let you enter into a user agreement. We may refuse your registration request at any time without providing any reasons. In that case, we will, of course, delete any information and data you have already entered.

2.7. By accepting these Terms of Use, you accept the use of electronic communications to conclude contracts or to order goods as well as to transmit notifications, directives and transaction records relative to the subject-matter of these Terms of Use. Moreover, in accordance with applicable law, you accept to waive any rights or obligations you may have by virtue of other laws or rules imposing a manual original (non electronic) signature, or the transmission or conservation of non-electronic records.

2.8. We recommend you keep a copy of these Terms of Use by making a computer copy, by printing them or by any other means.

2.9. Construction Synergy reserves the right to modify these Terms of Use at any time subject to a notice to you by electronic mail, which will inform you of the URL through which you can access the modified version. The modified version will enter into force thirty (30) days after the date of the above-mentioned notice, unless you have accepted it before by clicking on “I agree” or statement to the same effect, in which case it will enter into force upon your clicking. By continuing your use of DiviD after expiry of the above-mentioned time period or by your express

acceptance through you clicking on “I agree” or statement to the same effect you confirm your acceptance to be bound by the modified Terms of Use. If you do not wish to accept the modified Terms of Use, you have the right to terminate these Terms of Use by sending an email to support@dividapp.com with effect at the date on which the modified Terms of Use would have entered into force. Without prejudice to the above, you agree that Construction Synergy will not be bound by previous versions of the Terms of Use that have been removed from the Website even if they are still available on other websites or through any other means. You can at any time request the latest version of the Terms of Use via support@dividapp.com or access it at www.dividapp.com.

3. Subject-matter of the Agreement

3.1. The subject-matter of this agreement is the use against payment or free of charge, as applicable, of DiviD, as accessible via the Website.

3.2. With DiviD, we provide you a platform to bring users together so they are able to network with each other independently. We provide you with the technical prerequisites and applications to do so. We do not take part in the contents of the networks and communications.

3.3. Construction Synergy may be improving DiviD on a regular basis and may also need to change technical features from time to time for that purpose. Accordingly, you acknowledge and agree that the functionality of DiviD may vary from time to time. Technical requirements for use of DiviD and feature descriptions are available on the Website. You may need to upgrade to a new version in order to enjoy the benefit of certain features or functionalities.

4. About the DiviD offer

4.1. Each user (for user categories, see Section 5 below) has his or her own profile, which can be personalized.

4.2. Each premium user profile contains some tools and features pre-installed for each projects space. You can use these projects space and also create your own projects space and invite other members to use them. You, as the administrator, are responsible for the projects space you have created and can freely decide whom to invite.

4.3. In addition, every user can participate in project spaces that were created by a premium user as administrator. When you have "joined", you can fully use the project space on the DiviD app installed on your mobile device. Administrators can freely decide whether they make their project space available for other project administrators with a premium account or whomever they invite to join the project for use with the DiviD app installed on a mobile device. You have no right to the use of other's project spaces, except upon invitation.

4.4. Each project space contains various applications.

4.5. In addition, you can invite people who have not registered on DiviD by typing in their e-mail address.

5. User Categories

5.1. You may use DiviD as a “Premium user” or as a “Standard user”.

5.2. As a “standard user” you may use the DiviD app with all functionality on your mobile device as offered on the Website.

5.3. As a “premium user” you may additionally use all functionality to create and manage project spaces as offered on the Website

5.4. You may use some features of DiviD initially for free for a trial period as set out on the Website. After the trial period it is up to you to decide how you want to continue with your account. You may continue to use DiviD as a standard or premium user. You can switch from one user category to the other at any time, provided that any fees paid will not be refunded to you.

6. DiviD’s availability

6.1. DiviD is available on a 24 hour/7 days a week/365 days a year basis with a ninety-five (95) percent average annual availability. We will notify you in a timely manner if possible when maintenance is required as a result of which DiviD is not available. Platform downtimes due to maintenance will not be counted as unavailability periods for the calculation of DiviD’s availability. We are not responsible for Internet or web-related downtimes, especially downtimes during which DiviD cannot be accessed through the Internet due to technical or other problems that are beyond our control (e.g. force majeure, third party fault, etc.).

7. Rules for the Use of DiviD

7.1. When using DiviD, you must observe all applicable laws and other regulations. In particular, you may not post and/or distribute data or content such as texts, images, graphics and links which violate regulations or infringe third-party intellectual property rights, copyrights or other rights of third parties. You are solely responsible for the information and content provided by you. We neither review the contents for their accuracy nor check for viruses or virus-related process ability.

7.2. You may upload and add files, such as documents, plans, files, pictures, etc., in project spaces. Before uploading any files or photos, you must ensure that you are entitled to the exclusive usage rights to the photo or file and that the public disclosure of the image or file is not in violation of any laws, public morals and/or does not infringe any rights of third parties. Images or photos of people other than you may only be posted in DiviD if approval has been given by those people.

7.3. You may not upload and/or make publicly available any files with the depiction of violence or pornographic, discriminatory, offensive, racist, defamatory or other illegal contents or depictions. Furthermore, it is prohibited to upload image files that wholly or partially represent company signs, trademarks or commercial marks or other proprietary signs. This does not apply, of course, if you are entitled to them, i.e. if you are the proprietor of the rights to those logos or if the proprietor of the rights has authorized you to use them.

7.4. Both you and we can delete or replace posted pictures and files at any time. In particular, we are entitled to remove pictures or files without prior notification if any concrete evidence exists

that their publication in DiviD violates any legal regulations, public morals and/or third-party rights.

7.5. Contents and texts posted in DiviD may not be copied, distributed or otherwise made publicly available without permission from the proprietor of the right, unless this is permitted by law.

7.6. It is prohibited to carry out or encourage anti-competitive acts, including progressive customer acquisition, such as chain, pyramid or ponzi schemes.

7.7. Harassing actions such as sending chain letters or sexually suggestive or explicit communications are prohibited.

7.8. It is prohibited to carry out attacks on the performance of DiviD, such as the mass sending of e-mails (SPAM), hacking attempts, brute force attacks, the use or the sending of spyware, viruses and worms.

7.9. If you violate these rules, we are entitled to warn you, suspend you and even completely exclude you from using DiviD. We have the right to remove illegal content immediately.

8. Other Content

8.1. DiviD may contain links to third-party websites or resources. We do not endorse and are not responsible or liable for their availability, accuracy, the related content, products, or services. You are solely responsible for your use of any such websites or resources. Also, if we provide you with any software under an open source license, there may be provisions in those licenses that expressly conflict with these Terms of Use, in which case the open source provisions will apply.

8.2. Moreover, we shall not be responsible for any texts, pictures, data and/or information or more generally any content posted or provided by you and any other users of DiviD. We specifically exclude any warranty that these contents are true, accurate or fit for a specific purpose.

9. Data Backup

You are responsible for implementing the necessary arrangements to secure data and content entered, uploaded and saved by you on DiviD.

This must be done on a regular basis and in accordance with the risk level thus creating your own backup to ensure the re-accessing of data and information in case of their loss.

10. Identity of Users

It is technically not possible for us to establish with certainty whether a registered user of DiviD actually has the identity which he or she claims to have. Therefore we cannot guarantee the correct identity of users.

11. Account Security

You are responsible for maintaining the confidentiality of your password. This means that you will

keep your access password secret and will not tolerate or allow it to be known to third parties. You are responsible for any activity using your account, whether or not you authorized that activity. In case of actual or suspected misuse or loss of this information, you must notify us immediately by e-mail at support@dividapp.com.

12. Right of Withdrawal for Consumers

12.1. If you are a consumer, subject to Section 12.2, you are entitled to notify Construction Synergy that you withdraw from entering into this agreement within fourteen (14) days from the day of entering into an agreement with us for the use of DiviD, without any indemnity or penalty, without giving any reasons in text form (e.g. letter, e-mail). Any notification should be sent to us at: Construction Synergy BV Marconistraat 16, 3029 AK Rotterdam, The Netherlands or via support@dividapp.com

12.2. You will lose the right of withdrawal set forth in Section 12.1 if performance of the agreement begins with your agreement before the end of the fourteen (14) day period referred to in Section 12.1.

13. Reporting of breaches or infringements

If you notice or suspect use of DiviD in violation of any laws or these Terms of Use or third party right infringement, you must report it immediately at: support@dividapp.com.

14. Indemnity

You agree that you will be responsible for your use of the Service provided by DiviD, and you agree to defend, indemnify, and hold harmless DiviD and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the "Construction Synergy Entities") from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with (i) your access to, use or misuse of, or alleged use or misuse of the Service; (ii) your violation of these Terms or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (iii) your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; (iv) your User Content, or (v) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (and without limiting your indemnification obligations with respect to such matter), and in such case, you agree to cooperate with our defense of such claim.

15. Warranty and Liability limitation

15.1. Construction Synergy B.V. strives to enable access to DiviD and perform its obligations under these Terms of use with all due skill and care. You acknowledge that Construction Synergy's obligations in this regard are contracted on a "commercially reasonable efforts" basis. Furthermore, in no event shall Construction Synergy be liable in case of inaccessibility, unavailability, interruption or bad quality of DiviD or any part thereof for any reason beyond

Construction Synergy's control, including but not limited where services of another operator or access services supplier are used, in which case Construction Synergy shall in no event be liable for any act or omission of that third party. It is expressly agreed that Construction Synergy does not provide any warranty regarding Internet connections or transmissions or regarding 4G or other similar communications.

15.2. In no event shall the DiviD application be liable for any failure in its performance under these Terms of Use due to an unanticipated cause or event.

15.3. In case of willful misconduct or intentional breach, or in the event of personal injury caused by a defect in DiviD, in no event shall Construction Synergy be liable for any indirect loss or damage whatsoever, including but not limited to lost profits, loss of customers, lost data, loss of intangible goods, or for damages that are not foreseeable (including as to their extent), arising out of the use and/or impossibility to access DiviD and /or unauthorised access to DiviD by a third party and/or actions by a third party and/or any other cause related to DiviD.

15.4. Without prejudice to any other provision of this agreement except in the case of willful misconduct or intentional breach, or in the event of personal injury caused by a defect in DiviD, in no event shall Construction Synergy's liability in respect of all causes of action that arise hereunder exceed the total amount paid by you for the use of DiviD during the twelve (12) month period preceding the date of occurrence of the damage or, in the case of a series of damages before the last damage occurred.

15.5. The warranty and liability limitations and disclaimers set forth in this section are also set forth to the benefit of all third party suppliers and licensors.

15.6. Some applicable laws do not allow some exclusions or limitations as set forth above, so the above exclusions or limitations may not apply to you, especially if you are a Consumer. In such an event Construction Synergy's warranty and liability will be limited as far as legally possible under the applicable legislation.

16. License

Subject to your compliance with these Terms of Use, you are granted a limited, non-exclusive, non-sublicensable, non-assignable license to use the DiviD application through your individual user account for the duration of your user agreement. Access to DiviD is for your individual use. You shall not resell or commercialise access to or the use of DiviD to any third party.

17. Intellectual Property Rights

17.1. You acknowledge and accept that, as between you and Construction Synergy and without prejudice to any third party's intellectual property rights, all intellectual property rights in and within accordance to DiviD and all elements or components of the website, are and shall remain the exclusive property of Construction Synergy BV. Nothing in these Terms of Use shall be construed as assigning or conferring you the ownership of any intellectual property right. Only those rights expressly set forth in these Terms of Use are granted to you. Under these Terms of Use, you are only permitted a limited use of the intellectual property rights mentioned here above. You shall refrain from any action that would jeopardize, limit or adversely affect Construction

Synergy's intellectual property rights. You acknowledge and accept that any use of these intellectual property rights other than authorized Terms of Use constitutes a breach of these Terms of Use and an infringement of intellectual property laws, including but not limited to those on copyrights and trademarks, and may result in automatic and immediate termination of your right to use DiviD and your user agreement, without notice and without prejudice to any damages that you might be liable to pay.

17.2. Except with Construction Synergy's prior written authorization (including under these Terms of Use), you may not copy or download any part of the Website or its content.

17.3. You accept that you shall not remove, obscure or alter any proprietary rights or notices affixed to or contained within any part of DiviD or the Website. Except as strictly required for the use of DiviD under these Terms of Use, nothing in these Terms of Use grants you any right to use the trademarks, service marks, trade names, signs, logos, slogans, on-line or other contents, under any form whatsoever, belonging to or used by Construction Synergy for its promotion or that of its products or activities.

17.4. We are entitled to freely use any feedback, comments, or suggestions you send us or post in our forums without any obligation to you. This will not result in any right to DiviD or any part thereof belonging to you.

18. Pricing and Payment Terms

18.1. The prices for the use of DiviD are based on pricing set out on the website at the date of the order which you may always access at www.dividapp.com, subject to gross mistakes or changes made to the VAT. Any third-party applications or third-party product will be subject to the pricing of and are the sole responsibility of each individual vendor.

18.2. Where you purchase the right to use DiviD on a subscription basis (monthly), you acknowledge and agree that this payment shall be made to Construction Synergy by the method you have chosen in advance.

18.3. Construction Synergy may change the prices, including those applicable to subscriptions, at any time without any prior notice to you. You can choose whether or not to accept the new prices prior to completing your next purchase. The new prices will apply to your next purchase after the new prices have been published or, for subscriptions, at the end of the then current subscription period (you will be informed of the new prices before your payment for the next period is made).

18.4. If you are in default with any payment obligations (immediately after the first non-payment), we are entitled to deny access to DiviD and/or terminate our agreement with you without notice.

18.5. We reserve the right to assert further claims for default of payment.

19. Duration of use and Termination of Your User Agreement

19.1. Depending on the pricing model, the agreement is formed for a certain fixed term as agreed with the subscription made by you.

19.2. Construction Synergy reserves the right to withdraw or change the subscriptions at any time. In the event of such a change, Construction Synergy will notify you by email stating the changes and their effective date. If you do not wish to accept these changes, you are entitled to terminate your subscription, with effect from the date on which the changes are due to take effect.

19.3. Construction Synergy shall be entitled at any time, without any prior notice, summon or judicial action, to terminate your user agreement with immediate effect by sending an e-mail to the address that you have provided for the purpose of the conclusion of these Terms of Use and/or by suspending your access to DiviD, or closing your access to DiviD, without being liable to pay any indemnity or damages, in case of your breach of law or breach of these Terms of Use or in the event of a 'force majeure' event preventing Construction Synergy from fulfilling its obligations under these Terms of Use or of any circumstance that would render Construction Synergy's performance of its obligations so costly it would result in an imbalance between the parties' obligations.

19.4. Construction Synergy shall be entitled at any time, without any summon or judicial action, to terminate these Terms of Use subject to a two (2)-month notice sent by e-mail to the address that you have provided for the purpose of the conclusion of these Terms of Use, without being liable to pay any indemnity or damages except that Construction Synergy shall refund to you any outstanding prepaid fees on a proportional basis.

19.5. Upon termination of your user agreement, (a) you acknowledge and accept that all licenses and usage rights related to DiviD shall terminate; and (b) your access to DiviD shall terminate, without any refund of any amount paid by you (unless in the case of termination by us due to an event of a 'force majeure' event or as set forth in Section 19.3).

20. General

20.1. Entire Agreement

These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Construction Synergy regarding your use of and access to the Service, and except as expressly permitted above may be amended only by a written agreement signed by authorized representatives of all parties to these Terms.

20.2. Severability

If any provision of these Terms of Use or the application thereof to any party or circumstance shall to any extent be declared invalid, illegal or unenforceable in any jurisdiction, that provision shall be severed from these Terms of Use as to such jurisdiction (but, to the extent permitted by law, not elsewhere), and shall not affect the remaining provisions hereof. The parties agree to substitute for such provision a valid provision that most closely approximates the intent and economic effect of such severed provision.

20.3. No waiver

The failure or delay by Construction Synergy to exercise any right or action under these Terms of Use shall not be construed as a renunciation of this right or action nor preclude any other or further exercise thereof.

20.4. Assignment

Construction Synergy shall have the right at its discretion to assign these Terms of Use or any part of its rights and/or obligations hereunder. You are not entitled to assign any of your rights or obligations under these Terms of Use.

20.5. Applicable law

These Terms of Use will be governed by European law, without giving effect to its conflict of laws provisions or those of your actual state or country of residence if you are a Consumer or those of your registered office if you are a Business.

20.6. Jurisdiction

Construction Synergy and you agree to submit to the exclusive jurisdiction of the commercial courts of Rotterdam, The Netherlands except in the event where the jurisdiction of another court is imposed by mandatory applicable law.