

SPECIFIC TERMS AND CONDITIONS ON

THE RENTAL OF A VPS SERVER

SECTION 1: PURPOSE

The purpose of these Specific Terms and Conditions, which are complementary to Divvy Hosting's General Terms and Conditions of Service, is to define the technical and financial terms and conditions pursuant to which Divvy Hosting agrees to rent and host on its platform the Customer's VPS internet server.

The Customer hereby recognizes expressly that Divvy Hosting shall not participate in any way in the design, development, realization and set-up of the Customer's website and/or services and of its management and administrative computer tools within the meaning of this agreement.

In the event of a conflict between the General Terms and Conditions and these Specific Terms and Conditions, the latter shall prevail.

SECTION 2: MEANS

The Divvy Hosting platform server, where the Customer's VPS server will be installed shall be accessible to the public on the internet network via stations connected to the network.

SECTION 3: TECHNICAL SUPPORT

Technical assistance is made available to the Customer by Divvy Hosting pursuant to the terms and conditions provided under the General Terms and Conditions of Service.

SECTION 4: DELIVERY OF SERVICE TERMS AND CONDITIONS

Divvy Hosting shall inform the Customer by e-mail when the VPS server becomes available. Invoicing shall begin on the effective date of the online launching of the VPS server.

The server shall become available within a maximum of 7 days of the effective payment date by the Customer of the purchase order.

After such deadline has expired and if Divvy Hosting fails to make available the server to the Customer, said Customer shall be entitled to request the cancellation of the transaction and the reimbursement of amounts already paid.

The server rented to the Customer shall remain the property of Divvy Hosting. Any server rented or hosted by Divvy Hosting has a static IP address. The server shall be hosted on Divvy Hosting's server platform.

The Customer is the administrator of the server rented from Divvy Hosting. He/It may install on his/its own the software applications on the server. He/It is fully responsible for the software installation, and Divvy Hosting may not be held liable for any server malfunction following such installation.

SECTION 5: DIVVY HOSTING'S OBLIGATIONS

Divvy Hosting agrees to use all due care and due dispatch to provide a quality service in compliance with professional standards and the state of the art. Divvy Hosting agrees to:

5.1. Keep the material in good working condition. In the event of failure of the material rented out to the Customer, Divvy Hosting agrees to replace any defective parts at its earliest convenience, except in cases where it is not liable for the failure, or of any other intervention which would require an interruption of service beyond the usual replacement wait times. In the latter case, Divvy Hosting shall immediately notify the Customer.

5.2. Ensure access to the server via internet 24 hours a day, every day of the year. Divvy Hosting reserves the right to interrupt the server for a technical intervention designed to improve its operation.

5.3. At the customer's request intervene quickly in the event of a malfunction not resulting from a misuse of the server by the Customer.

5.4. Ensure that its tools are maintained at the highest quality level in compliance with professional rules and standards.

SECTION 6: DIVVY HOSTING'S LIABILITIES

Divvy Hosting reserves the right to interrupt the rented server's internet connection if such server constitutes a danger regarding the maintenance of security on Divvy Hosting's hosting platform, whether this is as a result of the piracy of such server, the detection of a flaw in the security system, or the need to update the server.

Divvy Hosting shall, to the extent possible, notify the Customer in advance and within a reasonable deadline, by informing him/it of the nature and the length of the intervention, in order to enable such Customer to make arrangements in that regard. Divvy Hosting shall restore the connection as soon as the corrective measures have been completed.

Divvy Hosting shall not be liable for the content of information, sound, text, images, elements of form, or data accessible on the websites hosted on the Customer's server, which are transmitted or placed online by the Customer for any reason whatsoever.

Divvy Hosting shall not be liable in case of a violation, in whole or in part, of an obligation or of a network operators' flaw in transmission to the internet, especially if it involves its access provider(s).

LIMITED LIABILITY

THE CUSTOMER ACKNOWLEDGES THAT DIVVY HOSTING AUTHORIZES OTHER SERVICE USERS TO INSTALL THEIR WEBSITES AND SERVERS IN ITS FACILITIES. DIVVY HOSTING SHALL NOT BE LIABLE IN ANY WAY WHATSOEVER FOR DAMAGES, COSTS OR LOSSES INCURRED BY THE CUSTOMER (OR BY THE LATTER'S OWN CUSTOMERS) AND CAUSED BY ANOTHER SERVICE USER'S ACT, MATERIAL OR FAILURE TO ACT. DIVVY HOSTING'S LIABILITY IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) BY STATUTE, OR OTHERWISE, TO THE CUSTOMER (OR THE LATTER'S OWN CUSTOMERS), CONCERNING PERFORMANCE OR NON-PERFORMANCE, AS APPLICABLE, OF ANY OBLIGATION CREATED UNDER THIS AGREEMENT, WITH REGARD TO ANY CLAIM, SHALL BE LIMITED AND SHALL NOT, IN THE AGGREGATE, EXCEED THE TOTAL FEES PAID BY THE CUSTOMER TO DIVVY HOSTING UNDER THIS AGREEMENT IN THE THREE- (3-) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE. IN NO EVENT SHALL DIVVY HOSTING BE LIABLE FOR ANY LOST PROFITS, OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

SECTION 7: CUSTOMER'S OBLIGATIONS AND LIABILITIES

7.1 With respect to hosting, the Customer shall remain solely and exclusively responsible the server. It is therefore the Customer's responsibility to take all the required measures to insure the server. The Customer may either elect to become his/its own insurer or to purchase appropriate insurance. In such cases, the Customer shall not be entitled to request any reimbursement, replacement or compensation whatsoever from Divvy Hosting for damages or failures to the server.

7.2 The Customer acts as an independent entity and therefore assumes all the risks related to his/its activities. The Customer is solely liable with regard to the use of the services and websites hosted on his/its VPS server, the content of the information transmitted, posted or collected, including operations and updates, as well as with regard to all files, including address files. The Customer agrees, more specifically, to comply with the rights of third parties, human rights, and intellectual property rights, such as copyrights, patent rights or trademarks. Divvy Hosting shall therefore not be liable, in any way whatsoever, for the content of information transmitted, posted or collected, used, and updated, as well as for any files, including address files.

The Customer shall also refrain from any breach or attempted breach activities (such as port scanning, sniffing, spoofing, etc.) while using the server.

In such cases, the Customer shall not be entitled to the reimbursement by Divvy Hosting of amounts already.

7.3 The Customer alone shall bear the consequences of a server malfunction resulting from the use by his/its staff or by any other person to whom the Customer has provided his/its password(s). The Customer shall also bear alone the consequences resulting from the loss of such password(s).

7.4 In order to maintain the security level of the Customer's server, and of all its servers on its hosting platform, Divvy Hosting agrees to notify the Customer of the availability of updates for its applications where security flaws have been reported. If these application updates are not carried out at Divvy Hosting's request, Divvy Hosting reserves the right to interrupt the server's connection to the internet network.

Similarly, in the event Divvy Hosting detects that a Customer's computer is subject to piracy, an e-mail shall be sent to such Customer, advising him/it that he/it should use a reinstallation procedure in order to ensure the integrity of his/its server and of the entire hosting platform. The Customer may order such procedure from Divvy Hosting after backing up all his/its data. While awaiting the computer's reinstallation, Divvy Hosting reserves the right to interrupt the server's connection to the internet network. Divvy Hosting is not required to transfer the data from the pirated system to the new system; such operation is the Customer's responsibility. Divvy Hosting hereby agrees to limit its intervention to the installation of the new system.

7.5 For security reasons, Divvy Hosting can proceed with the immediate suspension (without notice) of any server on which would be offered paid or free public proxies, such as IRC, VPN, TOR for which Divvy Hosting have knowledge of misuse, fraudulent or unlawful use.

7.6 The Customer shall take all required measures to ensure the backup of his/its data.

7.7 The Customer shall pay for any license or right to use he/it has agreed to with Divvy Hosting, or with a third party, failing which, Divvy Hosting reserves the right to suspend the service without prior notice.

Divvy Hosting reserves the right to suspend the service without prior notice, as provided under section 7 of Divvy Hosting's general service terms and conditions, in the event the Customer fails to comply with Divvy Hosting's specific and general terms and conditions of service and, generally, with all laws and regulations in force, as well as with rights of third parties.

7.9 The Customer is reminded that Divvy Hosting's intervention in connection with the contract on a VPS server is limited to installing the server. Divvy Hosting only insures in that regard the rental of a specialized infrastructure, without any control whatsoever over the content of the hosted websites or the contractual relationship between the sites' editor and their Web host, an Divvy Hosting Customer under a VPS server rental contract. The Customer shall therefore be considered a Web host.

7.10 The Customer acknowledges and agrees to be also subject to the laws applicable in the territory on which the equipment are installed. Hence, the Customer acknowledges Divvy Hosting's right to suspend his service if it is used for a prohibited activity at the place of physical location of the equipment provided by Divvy Hosting. The Customer also agrees that the same right applies on IP addresses and the Customer acknowledges Divvy Hosting's right to suspend an IP if it is used for a prohibited activity at the place of registration of the IP. In the event of such use, Divvy Hosting may suspend all the IP address of the Customer registered in the same location.

SECTION 8: BANDWIDTH

Bandwidth: computer data rate in bits per second, and determining the exchange capacity between the server and the Divvy Hosting network.

Divvy Hosting guarantees bandwidth up to the rate shown on the Divvy Hosting site for the concerned range of server.

The bandwidth is no longer guaranteed when the server or servers are used for the following activities:

- Anonymization service (proxy), CDN service;
- Storage Platform or file exchange (including but not limited to cyberlocker);
- Downloading platform;
- Service bypassing limitations imposed by downloading platforms (downloaders);
- Platform for watching online videos;
- Server(s) used for downloading and sending files on peer to peer networks (including but not limited to seedbox).

In addition, Divvy Hosting cannot guarantee the bandwidth when the server activity requires an intensive bandwidth use. In this case, Divvy Hosting will contact the client to explore his consumption in detail.

SECTION 9: MEASURES AGAINST SPAM SENDING FROM DIVVY HOSTING NETWORK

Divvy Hosting is implementing a set of technical measures to fight against the sending for fraudulent emails as well of SPAM from its infrastructures.

To this end, Divvy Hosting performs some verification on the traffic sent from the server used by the client to port 25 (SMTP) on the Internet. The traffic is analyzed by automatic tools.

Emails sending are neither filtered nor intercepted but checked with a time lag of a few seconds. These operations are performed in parallel and in sequentially before the emails are sent to the Internet.

Similarly, no operation is performed on the emails sent: Divvy Hosting does not tag emails, and does not alter in any way the emails sent by the Client. No information is stored by Divvy Hosting during these operations outside of statistics.

This operation is done regularly and is fully automatic. No human intervention is performed when checking traffic to port 25 (SMTP port).

In the case of the emails sent from a Client's server identified as spam or fraudulent, Divvy Hosting will inform the Client by email and will block the SMTP server port.

Divvy Hosting does not retain any copies of emails sent from the SMTP Server even when identified as spam. The Customer may request the unblocking of the SMTP port through the management interface.

Any new email identified as spam will result in a new blocking of the SMTP port for a longer time. From the third blocking, Divvy Hosting reserves the right to refuse any request to unblock the SMTP port.

SECTION 10: MITIGATION (PROTECTION FROM DOS AND DDOS ATTACKS)

Divvy Hosting is implementing a protection against Denial Of Service (DOS) and Distributed Denial Of Service (DDOS) computer attacks and provided when made in a massive way. This feature is intended to prevent the Customer's operations to be inaccessible during the attack.

This object of this feature is to check the traffic to the Customer's Service and from outside of the Divvy Hosting network. The illegitimate qualified traffic is then rejected upstream in the Client's infrastructure, allowing legitimate users to access the Service despite the undergoing cyberattack.

These safeguards do not prevent other computer attacks such as SQL injection, bruteforce, security vulnerabilities' exploitation etc.

Due to the great complexity of this Protection Service, Divvy Hosting is not subject to an obligation of means; it is possible that the attack is not detected by the tools in place, and that the tools developed do not prevent the operation of the Service to be interrupted.

Depending on the nature of the attack and its complexity, Divvy Hosting deploys a protection at different levels of traffic to preserve its infrastructure and the Customer Service.

Mitigation is activated only after the attack is detected by Divvy Hosting tools, and a minimum of 26 hours. Therefore until the activation of mitigation, the Service is frontally affected by the attack, which can lead to its unavailability.

As soon as the cyber-attack is identified and mitigation is automatically activated, mitigation cannot be disabled until the end of a 26 hours period.

Throughout the duration of the activation of mitigation, Divvy Hosting cannot guarantee the availability and accessibility of the Client's applications but will try to limit the impact of this attack on Customer's Service and on Divvy Hosting's Infrastructure.

If, despite the activation of mitigation, the cyber-attack is likely to jeopardize the integrity of the Divvy Hosting's or of other Divvy Hosting customers, Divvy Hosting will strengthen its protective measures which may cause a degradation of the Customer Service or impact its availability.

Finally, it is possible that some of the data generated by the attack cannot be detected by the Divvy Hosting equipment and reach the Customer Service. The effectiveness of mitigation also depends on the configuration of the Customer's Service; as such, it is up to them to verify that they have the necessary skills to ensure proper administration.

The mitigation does not exempt the Client to secure its Service, to implement security tools (firewalls ...), to regularly update its system, backup its data or to ensure the security of its computer programs (scripts, codes etc.).

SECTION 11: RATES AND INVOICING

The rates indicated on Divvy Hosting's website do not include applicable taxes

The rates vary, based on the range of services and the rent term selected by the Customer when ordering. The rate indicated on the purchase order edited by Divvy Hosting shall represent the total amount to be paid by the Customer.

Because the offer may not be modified once the contract is in effect, the Customer shall be required to determine which offer best suits his/its needs.

The main IPv4 of a VPS server is included in the server's renting cost and can never be charged for as an independent element of the service

Divvy Hosting can offer a number of additional IPv4s, which may or may not be charged for.

Since the growing scarcity of IPv4s in different countries across the world means growing purchase costs, Divvy Hosting may apply charges to IPv4s that have previously been offered free of charge.

In the case where an IPv4 that had previously been free of charge becomes billable, the client will be offered the choice to either accept the charge, or release the concerned IPv4.

ACRONYMS

- VPS - Virtual Private Server
- IPv4 – IP version 4