



DIVVY Parking

General Terms and Conditions

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1 Parties and Binding Effect

- 1.1 This is a binding, legal agreement between the operator of the website located at www.divvyparking.com (the "Site"), Divvy Parking Pty Limited ("Divvy") ACN 162 877 867) and each person who registers as a member on the Site ("Member"). This agreement incorporates these General Terms (as updated from time to time) together with the Privacy Policy, (together, this forms the "Agreement"). By registering as a Member, you agree to accept and be bound by all the terms and conditions of the Agreement.
- 1.2 This Agreement is also a binding, legal agreement between Divvy and each person who is not a Member but who accesses or uses the Site ("User") in which event, to the extent applicable, references in this Agreement to "Members" refers to such Users, and references to "you" refers to both Members and Users unless the context otherwise permits. Unless a User becomes a Member, such User has no rights or benefits accorded to a Member pursuant to the Site.
- 1.3 You accept that Divvy may, from time to time in its sole discretion, revise this Agreement. Divvy will post a notice on the Site whenever it revises or otherwise updates this Agreement and such changes shall be effective immediately on such posting, unless otherwise agreed to in writing by Divvy in a separate agreement. You agree that, by continuing to use or access the Site following notice of any revision, you shall be deemed to have accepted any such revision. It is your responsibility to review these General Terms, the Cancellation and Refund information contained on the Site, and the Privacy Policy periodically, and if at any time you find any of them unacceptable, you must immediately cease all use of the Services, takes steps to unregister as a Member of the Site and cease using the Site.

2 Use of Site and Services

- 2.1 In consideration of Divvy permitting you access to and use of the Site, you hereby accept the terms and conditions of this Agreement, and agree that for you to use or access any of the services available on or from the Site (the "Services"), you must register as a Member by establishing an Account on the Site.
- 2.2 In registering an Account with Divvy on the Site, you warrant and represent that:
 - a) you have read these General Terms, Cancellation and Refund information, and the Privacy Policy, and understand and accept that they comprise a binding, legal agreement between you and Divvy and govern your use of the Site and Services;
 - b) in the case of a corporation, one or more of the Corporation's agents or authorised representatives must be nominated as the contact person ("Nominated Person") for the purpose of all communications;
 - c) all information you provide to complete the registration process is accurate and complete
 - d) in the case of a corporation, each Authorisation which is required in relation to:
 - i. the execution, delivery and performance by it of this document and the transactions contemplated by this document;
 - ii. the validity and enforceability of such documents,has been obtained or effected, is in full force and effect, and has been complied with;



- e) Divvy is not responsible for any losses you incur due to informational or technical errors in the registration process, and will not be liable for any loss or damage you incur as a result of an unauthorised person using your Account, including the use of any personal details you provided in the registration process; and
- f) Divvy reserves the right to suspend or terminate any Account, membership or the Services, without notice and liability to you in the event you have breached, or have threatened directly or indirectly to breach, this Agreement in any respect, or Divvy reasonably believes that you may have violated this Agreement in any respect, as determined by Divvy at its sole and absolute discretion.

As a Lister

- g) You will register a valid bank account for the purpose of receiving rental payments, and authorise Divvy to deduct any outstanding fees from due rental payments, and return funds to the Parker, you agree to make prompt payment to Divvy for any rent overpayment made to you and any outstanding fees as detailed in the FAQ section on the Site.
- h) In relation to clause 2.2 (h), in certain circumstances, Divvy may agree in writing to provide a Lister with a period to remedy a breach before terminating or suspending the relevant Account.

As a Parker

- i) You will register a valid credit or debit card, or bank, building society or credit union account (a "Finance Account"), and authorise Divvy to debit, under its name, such card or account to pay all booking fees and other payments due from you in accordance with this Agreement;

2.3 In using the Services and operating an Account on the Site, you warrant and represent that:

- a) you will promptly update your Account information on the Site any changes of your details that were required to be provided to Divvy when registering your Account,
- b) you assume full responsibility for maintaining the confidentiality of your Account name and password;
- c) you (or in the case of a corporation, the Nominated Person) are the only individual or responsible agent who will use the Services using your Account, and that you will not allow any other individual whether acting under your instructions or not, to use your Account to use the Services, and will actively takes steps to prevent any other individual to do such;
- d) you will notify Divvy immediately by written notice via any of the means available to contact Divvy as supplied on the Site if you become aware there has been an unauthorised use of your Account;
- e) you will not use the Account, Site or Services for any purposes other than those clearly contemplated by Divvy in the operation of the Site;
- f) you will not use the Account, Site or Services in a manner which will or which may compromise the security or normal operation of the Site or the Services, including the doing of any acts in the nature of "spamming", "flooding", "crashing", "hacking", "bypassing", "phishing", or any other act that Divvy deems, in its sole and absolute discretion, "harmful" to the normal operation of the Site or Services, and that in the event you do such or similar acts, you are liable to Divvy and fully indemnify Divvy for all losses and damages incurred



by Divvy and its officers, employees, agents, partners and other third parties who could reasonably be expected to suffer damages or loss in such circumstances; and

- g) it is your responsibility to ensure your own compliance with all applicable laws when using the Site and Services, and Divvy disclaims any responsibility and liability for this to the full extent permitted by law; and
- h) when entering into a booking, and during the length of the booking, you have the correct and appropriate level of insurance in place.

3 Privacy Policy

Divvy respects your privacy and permits you to control the treatment of your personal information. A complete statement of Divvy's current privacy policy can be found at <http://www.divvyparking.com/Privacy-Policy>. Any information you provide in registering an Account or in using the Site or any Services will be collected, used and treated in accordance with such Privacy Policy.

4 Cancellation and Refund information

A complete statement of Divvy's current Cancellation and Refund information can be found in the FAQ section of the site. You understand that Divvy has no control over cancellations, when they occur, and the notice period given. Divvy does not guarantee that a booking period will be completed, or a car space will be available.

5 Intellectual Property and User Content

5.1 You agree that by Divvy making the Site or Services available to you:

- a) any software you download from the Site, including all files and images contained in or generated by the software, and accompanying data (collectively called the "Software") is only used by you under licence from Divvy for the limited purpose of enabling you to use the Services whilst you are a Member and strictly in accordance with, and subject to, this Agreement;
- b) you will only use the Software for personal and private use in relation to the Services, and not for any commercial gain which is not contemplated by these Terms and Conditions;
- c) Divvy does not in any circumstances transfer any title or intellectual property rights in or to the Software to you or any other person that has access, whether authorised or not, to the Site and the Services;
- d) Divvy retains full and complete title to the Software as well as all intellectual property rights therein;
- e) you will not sell, redistribute, or reproduce the Software, nor may you decompile, reverse-engineer, disassemble, or otherwise convert the Software to a human-perceivable form;
- f) Divvy reserves all rights not expressly granted to you in this Agreement; and
- g) all content, regardless of its form, published on or by the Site and Services, including the Site layout, these General Terms, the Privacy Policy, and all trade marks and logos displayed on the Software or the Site, are owned by Divvy or its licensors, and you may not copy, edit or use them in any manner outside this Agreement.



- 5.2 In relation to any information, images or any other material you make available to the Site, whether by posting, uploading, displaying, performing, transmitting or otherwise, or which you otherwise provide to Divvy in respect of your use of the Site or any Services ("User Content"):
- a) you hereby grant Divvy, its affiliates, officers, directors, employees, consultants, agents and representatives a perpetual, royalty-free licence to use the User Content: (i) for the term of this agreement; and (ii) solely for the purpose of providing its services under this agreement.
 - b) you agree that Divvy may disclose personal information where required to do so as a matter of law, or to assist any party in the resolution of a complaint or claim for civil relief in relation to activities by you, another Member or Divvy in relation to the Site or Services;
 - c) you warrant and represent that you own all rights to the User Content and are entitled to provide such User Content to the Site without restriction and that Divvy including its affiliates, employees, agents and representatives, may use such User Content without infringing any rights of any third party (including without limitation all intellectual property rights and rights of privacy and confidentiality) without otherwise giving rise to any risk of an adverse claim against Divvy including its affiliates, employees, agents and representatives;
 - d) you warrant and represent that each time you provide User Content to the Site or the Services, such User Content (and every part of it) must not be:
 - i. defamatory;
 - ii. abusive, harassing or threatening;
 - iii. obscene or pornographic;
 - iv. fraudulent, misleading or deceptive;
 - v. tending to be a breach of any criminal law or give rise to any civil liability; or
 - vi. directly or indirectly endorse any other product or service not operated or provided by Divvy;
 - e) you acknowledge and agree that Divvy will be entitled to remove any User Content from the Site for any reason (and without being required to disclose that reason to you) at its sole and absolute discretion or when the Account is cancelled by the User or is required by the User to comply with relevant Laws; and
 - f) you acknowledge and agree to edit, remove or add, whichever the case is necessary, any information regarding the User Content you have made available to the Site or the Services if you become aware or have a reason to suspect the accuracy of the content in the User Content has changed or you have become unable to confirm the truth of the matters therein stated.

6 Complaint Procedures

If you wish to lodge a complaint about any matter in relation to the use of the Site, the Services, the operation of your Account, or Divvy, you must notify Divvy in writing via any of the means available to contact Divvy as supplied on the Site with full details of the complaint and allow Divvy a reasonable amount of time to investigate the complaint before giving you a written response.



7 Financial Matters

- 7.1 In using the Services, you agree to pay all fees, charges and other payments by the due date, without deduction, set-off or counterclaim, time being of the essence.
- 7.2 If you are entitled to payment as a result of a transaction involving another Member, but that Member fails pay the relevant amount due to Divvy, you accept and agree that you may only look to such other Member to recover the amount due to you and, in no circumstances will Divvy be liable to you or any other party in any respect arising out of the failure by that Member to pay such relevant amount.
- 7.3 Divvy reserves the right to withhold payment or charge back to your account any amounts otherwise due to us under this Agreement, or any amounts due as a result of a breach of this Agreement by you, pending Divvy's reasonable investigation of such breach. You agree that payment and / or refund requests will be subject to additional terms as outlined on the Site (and which is expressly incorporated into this Agreement by this reference). You acknowledge that the FAQ section located on the site may include terms providing for the payment of administrative fees to Divvy, and you agree to pay any such fees consistent with this information.

As a Lister

- 7.4 You are responsible for the accuracy of all information in your listing and any information you provide to us in relation to a booking. You may be liable to the Parker if the information you provide is inaccurate, incomplete or misleading in any way. Your liability may include any reasonable losses incurred by the Parker as a result of such inaccurate, incomplete or misleading information provided by you and you may be ordered to pay reasonable damages on the basis of misrepresentation, breach of contract or otherwise.

8 Appointment as Agent

As a Lister

- 8.1 You appoint us as your agent for the purposes of forming binding agreements ("Car Space Licence") between you and the Parker to whom you agree to allow the use of the Parking Space. You also appoint us to collect all of the payments from the Parker.
- 8.2 You may not incorporate any additional terms into the Car Space Licence other than the restrictions clearly included in your listing. You agree not to propose to the Parker any additional terms or amendments to the Car Space Licence after a booking has been made without our consent. The Parker is not obliged to accept any further terms once we have accepted a booking on your behalf.

For both Parkers and Listers

- 8.3 The Car Space Licence and any additional restrictions included in a listing are a contract between the Lister and the Parker. We are not a party to that agreement and we will not be liable to the Lister, the Parker or any third party for any breach of the Car Space Licence or otherwise in relation to the Parking Space or its use by the Parker. We are not a real estate broker, agent or insurer. We have no control over the conduct of Parkers or Listers and disclaim all liability in this regard.
- 8.4 At the time we confirm the Booking of the Parking Space and receive payment from the Parker, a binding Car Space Licence will be formed between the Lister and the Parker. The Car Space



Licence will be provided and attached to each Booking, and will only include any additional restrictions included during the registration process relating to the listed Parking Space.

9 Warranties and Liability

9.1 Users and Members acknowledge and accept the following:

- a) Divvy makes no warranties or representations as to the accuracy of the information of any kind displayed on the Site or which is available to anyone using the Site or Services, and you bear all losses and damages incurred acting in reliance on that information;
- b) Divvy is not obliged to and makes no undertaking whatsoever to check or otherwise verify that any User Content provided by another Member is not in breach of this Agreement;
- c) Divvy is entitled to process all transactions using your Account and is not required to check that you have authorised such transactions. For the avoidance of any doubt, Divvy will not be entitled to debit a payment account, including debit cards, credit cards, and bank accounts unless provided with this initial authorisation by you;
- d) Divvy does not warrant the Site and Services will be available for use free of technical or functional errors, including the presence of “viruses” “Trojans” “spyware” “adware” “bots” and other similarly harmful computer effects, nor that it will be available uninterrupted. Any losses you incur as a result, or because Divvy has chosen to temporarily or permanently suspend the Services and/or the Site, is a risk borne by you;
- e) you are prohibited from violating or attempting to violate any security features of the Site or Services, including, without limitation:
 - i. accessing content or data not intended for you, or logging onto a server or account that you are not authorized to access;
 - ii. attempting to probe, scan, or test the vulnerability of the Services, the Site, or any associated system or network, or to breach security or authentication measures without proper authorization;
 - iii. interfering or attempting to interfere with service to any user, host or network, including, without limitation, by means of submitting a virus to the Site or Services, overloading, “flooding,” “spamming,” “mail bombing,” “hacking,” or “crashing;”
 - iv. using the Site or Services to send unsolicited e-mail, including, without limitation, promotions, or advertisements for products or services;
 - v. forging any TCP/IP packet header or any part of the header information in any e-mail or in any posting using the Services; or
 - vi. attempting to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human perceivable form any of the source code used by Divvy in providing the Site or Services;
- f) any violation of system or network security may subject you to civil and/or criminal liability;
- g) Divvy has no control over and does not warrant the accuracy of any third party content (including without limitation of any of Divvy’s partners, affiliates or sponsors), including websites that may be linked to or from the Site and has no control over the content and performance of such third party sites,



- h) you bear any losses or damage however incurred for use or inability to use the Site, or in reliance on third party content on the Site or available from the Site and Divvy shall not, to the maximum extent permitted by law, be liable in any circumstances for any loss or damage howsoever incurred by you, in relation to the use of the Site or the Services;
- i) Divvy provides the Site and Services on a purely 'as is' basis without warranty of any kind and without any express warranties and to the maximum extent permitted by law, Divvy (for its own benefit and on behalf of its officers and employees) expressly disclaims any and all liability and any warranties or guarantees, express or implied, regarding the Site and Services, including, but not limited to, any implied warranties or guarantees of fitness for a purpose, fitness for a purpose made known to you or non-infringement of third party rights; and
- j) to the maximum extent permitted by law, in no event shall Divvy be liable for any loss or damages of any kind (including, but not limited to, consequential loss) arising out of or in connection with your use of the Site or the Services and whether arising from breach of contract, tort or any other legal claim.

As a Lister

- k) You represent and warrant that you have all necessary regulatory and planning approvals to enter a Car Space Licence to use the Parking Space and that the Licence to use the Parking Space will comply with all applicable laws, tax requirements and rules and regulations that may apply to the Parking Space, including but not limited to zoning laws and laws governing rental of or licenses to use residential and other properties.
- l) You agree to notify us immediately upon receiving any notice, correspondence or contact in any other form from any governmental authority, landlord, executive committee, or management company in connection with the use of your Parking Space for purposes envisaged by this Agreement and/or your agreement with the Parker; and upon request, you agree to provide copies thereof to us. Following such notice from you we reserve the right to terminate this agreement and remove the Parking Space from the Site.
- m) Before any Booking Period you must ensure that the Parking Space is in a satisfactory condition and is able to meet the requirements of the Parker under the booking.
- n) You represent and warrant that you own the Parking Space or that you are authorised to allow third parties to use the Parking Space and, where necessary, you have permission from your landlord, tenant, executive committee, or management company to do so. If you are in any doubt you should check the terms of your lease (or sublease), freehold title, mortgage, deed of trust, by-laws or any other documents of record to ensure that you are able to enter a Car Space Licence to allow use your Parking Space in the manner envisaged by this agreement and/or your agreement with Parkers.

For Parkers and Listers

- o) We will not be liable to the Lister, the Parker or any other third party (such as a landlord, tenant, executive committee or management company) if a Lister does not have the necessary authority and you indemnify and hold harmless Divvy for any loss we may suffer as a result of a breach of any representation and warranty, or breach of any other term of this Agreement.



9.2 You hereby agree to release Divvy and its affiliates, officers, directors, employees, consultants, agents and representatives from and against:

- a) any and all third party claims, proceedings, losses, liability, damages and/or costs (including legal fees on a solicitor and own client basis) arising from your misuse of the Site and/or your breach of any warranty, representation, term or condition of this Agreement; and
- b) any and all claims, proceedings, losses, liability, damages and/or costs (including legal fees on a solicitor and own client basis) from another user of the Site or Services, except to the extent caused or contributed to by Divvy or its employees, agents or contractors.

10 Non-solicitation

You shall not attempt to solicit or perform services for or induce or attempt to induce, any customer, supplier, licensee or business relation of Divvy Parking or any Parker or other Lister through any communication including written and oral communication made by yourself or a third party, unless in the form of a general advertisement, to transact outside of the Site.

11 Entire Agreement

This Agreement constitutes the entire agreement between you and Divvy relating to your use of the Site and any Services.

12 Severability

If, for whatever reason, a court of competent jurisdiction finds any term or condition in this Agreement to be unenforceable, all other terms and conditions will remain unaffected and in full force and effect.

13 Waiver

Divvy shall not be taken to waive the enforcement of any of its rights, whether for past, future or continuing breaches, contained under this Agreement unless made in writing and signed by an authorized representative of Divvy.

14 Mediation

You agree that should a dispute arise with Divvy or any other Member of the Site or the Services regarding any matter contained in this Agreement, you will notify Divvy as required by Clause 6 above, and consent to any dispute resolution procedure that Divvy, in its sole and absolute discretion, directs you to attend before you take any other action relating to such dispute, and if Divvy does direct you to attend a dispute resolution procedure, you agree that you shall participate in good faith and accept that Divvy may organise the conduct of such dispute resolution procedure however it believes fit regardless of whether it actively participates or not, to its sole and absolute discretion.

15 Withdrawal from Membership

If you wish to cancel your registration with the Site you can email helpdesk@divvyparking.com with your details and your request.



16 Modifications and Discontinuance

Divvy may, in its sole and absolute discretion and without prior notice:

- a) modify the Site and/or the Services; or
- b) discontinue the Site and/or Services at any time,

without liability to you.

17 Merger

To the extent of any inconsistencies between these General Terms and Conditions, the Cancellation and Refund information, and the Privacy Policy, you agree that the General Terms and Conditions shall prevail, and that in the event there is any inconsistency between this Agreement and any other information, representation or article regarding the Site or Services, or any other material accessible, available or observable on the Site or Services, including information prepared by Divvy known as the "FAQs", this Agreement shall prevail, unless otherwise agreed to separately by Divvy in writing.

18 Electronic Communications

To the extent that any communications between you and Divvy are via electronic means, such as by emails, text messages or by other electronic messaging services, you:

- a) consent to receive communications from Divvy in an electronic form; and
- b) agree that all notices, terms and conditions, agreements, disclosures and other communications that Divvy provides to you electronically satisfy any legal requirement that such communications would satisfy if they were in writing.

19 Governing Law

This Agreement shall be construed in accordance with and governed by the laws of New South Wales, Australia, and the Federal Laws of Australia where applicable. You hereby irrevocably consent to the exclusive jurisdiction of the state or federal courts in Australia in all disputes arising out of or related to the use of the Site or Services.

20 Further Definitions

In this Agreement:

- a) "Parker" means a Member or User who enters into a Car Space Licence for use of a parking space.
- b) "Lister" means a Member or User who enters into a Car Space Licence as owner of a parking space.
- c) "Account" – means an account created by the Member on the Site



21 Promotional Terms and Conditions

- 21.1 Divvy Parking holds the right to limit any promotion to specific locations and on limited inventory per location.
- 21.2 Divvy Parking holds the right to end the promotion before the stated end date.
- 21.3 The promotion is subject to availability of promotional spaces and may be unsuccessful should all promotional inventory be fully booked.
- 21.4 Users may not cancel a standing booking with Divvy Parking to rebook the same space on the same date using a promotion code. Promotions may only be used on forward booking with Divvy Parking.
- 21.5 Promotions only apply to the daily parking product.
- 21.6 Users may only apply one promotion per transaction.
- 21.7 Promotions can only be redeemed if applied on checkout before completion of the booking.
- 21.8 The promotion code is non-transferable. It may not be duplicated and there is no cash value.