XUVER

Terms and Conditions XUVER Applications B.V.

By registering with us, or by using the Services, you agree to be bound by these Terms and Conditions which we may update from time to time. Your continued use of the Services constitutes your consent to such changes. If you do not agree to these terms and conditions, you may not use the services.

These terms and conditions apply to all usage of Xuver's Software. They form an integral part of the Agreements concluded with the User.

These terms and conditions are available via www.xuver.com, and will be sent by electronic means or other means upon request.

1. Definitions

1.1. For the purposes of these terms and conditions, the following definitions apply:
- *Xuver:* the private company Xuver Applications B.V., based in Ulvenhout at Anneville-laan 4 (4851 CC);
- *User:* the natural person or legal person who registers on Xuver's platform or with whom Xuver has concluded the Agreement;
- *Software:* the 3D visualization computer software (web-based 3D viewer, publisher platform and CAD extensions), in computer-readable form (object code);

2. Subscriptions and Purchases

2.1 The pricing of our various subscription options is available at https://app.xuver.com/products or https://xuver.com/pricing. Payment is due at the beginning of each subscription period, payable securely via Ingenico (https://www.ingenico.com/). Xuver will email payment invoices to Users or upon request. In the event of a pricing change to your Paid Services plan, we will inform you within 1 (one) month before the new prices take effect. If you do not wish to continue your current Paid Services plan with the new prices, you may cancel your Paid Services plan.

2.2 You represent and warrant that you have the legal right to use any bank account(s) or credit card(s), that you use to pay for the Xuver services. You agree to pay all charges incurred by you or any users of your account at the prices in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. Verification of information applicable to a purchase may be required prior to our acceptance of any order.

2.3 If you pay with a credit card, the money is immediately debited at the time of payment.

2.3 In case of errors or questions about your electronic transactions, mail to support@xuver.com.

3. Terms of Sale

3.1 Xuver offers a full 14-day free trial. No credit card is required. At the end of the trial version, the User is not obligated to continue service.

3.2 Xuver offers to users subscriptions who correspond to the needs of the user, through a monthly or yearly subscription.

4. Right of use

4.1 Xuver hereby grants the User the non-exclusive and non-transferable right to use the Software, subject to any terms and restrictions.

4.2 For the right of use, the User pays the fee stated in the Xuver pricing table.

5. Scope of the right of use

5.1 Xuver ensures the optimal availability of the Software via the online interface provided by Xuver. The User is not provided with any physical carrier holding the Software, nor any access to the source code.

5.2 The User is responsible for the availability of all necessary (ICT) resources to enable use of the Software, including stable and sufficiently fast internet as well as the appropriate computer facilities. The proper functioning of and ability to use the Software depends on whether the User meets the technical environment and system requirements indicated by Xuver. Xuver may modify these requirements.

5.3 The right of use applies only to the accounts to which Xuver has granted access rights.

5.4 The User may only use the Software for private purposes and in the context of internal business processes within its own company and within the companies of its subsidiaries (within the meaning of Article 2:24a Dutch Civil Code). Unless otherwise stipulated, the Software may not be used in such a way that it leads to further exploitation, whether commercial or otherwise.

5.5 Xuver will save the data/designs uploaded by the User for the duration of the subscription and will keep them available via the Software. Xuver is authorized to make use of a third (hosting) party for this purpose. Unless otherwise agreed, Xuver is not obligated to make backups. In any case, the User always remains responsible for the backup of their own data/designs.

5.6 Xuver is entitled at its own discretion to release updates that bring about new, adapted or deleted functionalities/graphic elements in the Software. Insofar as the essential functional characteristics of the Software are impaired as little as possible, the User does not have to be informed of this in advance.

5.7 Xuver is permitted to temporarily interrupt the Software for (emergency) maintenance. If possible, it will inform the User about this in advance and will endeavor to schedule this maintenance at the least disruptive time possible.

5.8 Xuver does not guarantee that the Software will operate without interruptions or that it is free of defects or errors that do not significantly affect performance, or that the Software meets all of the User's business needs. Xuver will endeavor to resolve (which includes a temporary workaround of) any reproducible defect of the Software as soon as possible after discovery or notification thereof from the User. With regard to the resolution and the resolution period, Xuver may take into account the seriousness of the defect and foreseeable damages/costs.

6. Restrictions on the right of use

6.1 The User will not publish, show or otherwise make the Software (and the access codes) available to any third party, including employees who do not need to work with the Software. The User may not enable or permit others to use the Software via their account details.

6.2 The User may not copy or otherwise reproduce or modify the Software, unless this is necessary for the legitimate use of the Software or is permitted by mandatory law. The User is not permitted to remove or circumvent any technical measures that Xuver has installed in the Software.

6.3 The User may not decompile or reverse engineer the Software, or multiply or translate the code, except to the extent permitted by mandatory law.

6.4 The User is not permitted to:
   i. use the Software for pornographic, terrorist or offensive purposes;
   ii. use the Software in such a way that the computer network of Xuver (or its ICT supplier) is unnecessarily impeded, other Users are prevented from accessing said computer network or their use of said network is unnecessarily impeded by the User;
   iii. use the Software in such a way that the (functionality of the) Software is damaged or restricted;
   iv. use the Software in such a way that copyrighted material is reproduced or made public, except insofar as such use is permitted by the rights holder or by law;
   v. use the Software in violation of applicable legislation or common decency.

Xuver is entitled to remove data uploaded by the User that appears to be in conflict with the obligations under Article 6.4

7. Security and privacy

7.1 Using both hardware and software, Xuver will endeavor to protect (or arrange protection of) the Software and uploaded data/designs against misuse of and unauthorized access to the User's data. Xuver also endeavors to keep the Software up-to-date with regard to security aspects. However, Xuver never guarantees that the information security is effective under all circumstances.

7.2 In the context of the Agreement, Xuver may process personal data for the benefit of the User, exclusively in accordance with their written instructions and under their responsibility. The User guarantees that the content, use and remit for the processing of personal data are lawful at all times. Xuver will take the technical and organizational security measures that the General Data Protection Regulation requires of it as a data processor. It guarantees that the persons authorized to process personal data have made a commitment to observe confidentiality.

7.3 Xuver will not engage another data processor without the prior written consent of the User. Xuver is in particular entitled (but not limited thereto) to appoint sub-processors that are necessary for the execution of the subscription (including hosting companies). Xuver imposes on its sub-processors the same data protection obligations as stated in these terms.

7.4 Xuver offers the User, insofar as reasonably possible, assistance with the fulfilment of their privacy obligations, as stated in Article 28 paragraph 3 of the General Data Protection Regulation. In addition, Xuver will provide the User with all information necessary to demonstrate that it complies with its obligations as stipulated in Article 28 of the General Data Protection Regulation and to enable and contribute to audits, including inspections, carried out by the User or another authorized auditor. The costs of this audit are borne by the User.

7.5 After the end of the subscription, Xuver will remove or return (at the User's discretion) all personal data, unless the law requires storage thereof.

7.6   Xuver is entitled at all times to (temporarily) suspend its services with immediate effect if the User appears to be contravening its privacy obligations.

8.   Intellectual property rights

8.1   The copyright and any other intellectual property rights as well as similar rights to protection of information relating to the Software and associated documentation exclusively belong to Xuver (and its licensors).

8.2   The copyright and any other intellectual property rights relating to designs that have been used, delivered or disclosed to Xuver by the User remain with the User at all times.

8.3   Xuver guarantees to the User that the Software it has developed and the use thereof granted to the User does not infringe the copyrights of third parties. Xuver indemnifies the User against any legal claim by a third party based on the assertion that the Software infringes the copyright of said third party. This indemnification is conditional upon the User reporting an alleged infringement directly to Xuver and, if Xuver so desires, fully leaving the defense against such a claim to Xuver and providing all requested cooperation and information thereby. The obligation to indemnify lapses if the infringement is related
(i) to materials made available to Xuver by the User for use, handling, processing or incorporation, or;
(ii) to modifications that said User has made in the Software or other materials or has allowed to be installed by third parties.

8.4   In the event of an (alleged) infringement or if, in Xuver's opinion, there is a reasonable chance that such an infringement may occur, Xuver is entitled to (temporarily) modify the Software or to restrict its operation, even if this results in the functional properties of the Software being impaired. In that case, Xuver will immediately seek/develop replacement software (including a temporary workaround) in order to be able to supply similar Software in the shortest possible time. If Xuver fails to do so, the User is entitled to dissolve the subscription with future effect.

8.5   Apart from the provisions of this Article 8, Xuver is not obliged to pay compensation to the User in the event of an infringement of third parties' intellectual property rights.

8.6   While using the Software, User may upload any copyright protected documents. Xuver is entitled to edit these documents to show User any possible improvements that can be made by using the Software. By uploading (copyrighted) documents via the Xuver Software, the User grants Xuver permission to edit these documents.

9.   Force majeure

9.1   In the event of force majeure, Xuver's fulfilment of the obligations arising from the subscription will be partially or totally suspended for the duration of the force majeure. If this situation lasts longer than sixty days, each party has the right to cancel the subscription in writing as of that date.

9.2   Force majeure shall in any case include: governmental measures; disruption to internet, computer network or telecommunications facilities; staffing issues; strike; general transport problems; and shortcomings or non-(timely/complete) availability of the products/services of suppliers, including hosting companies, ISPs and (open source) software vendors.

10.   Duration and termination

10.1   The right of use as stipulated in Article 3 is granted for the period stated in the subscription. It can only be terminated or dissolved in one of the cases referred to in this Article or in the subscription.

10.2   Xuver has the right to (partially) terminate, in writing, the provisions in these terms with immediate future effect:
   i.   in the event of (repeated) violation by the User of one or more of their obligations pursuant to Articles 2.2 and 6;
   ii.   if the User's company is discontinued as a result of bankruptcy, liquidation or otherwise.

10.3   In the event of premature termination of the subscription, the User is still liable to pay for that which has already been performed.

11.   Liability

11.1   Xuver's total liability due to an attributable failure to comply with these terms and conditions or for any other reason is restricted to compensation of direct damage up to the amount stipulated for the subscription (excluding VAT). If the Agreement is essentially a continuing performance contract with a term of more than one year, the price stipulated for the Agreement is hereby set at the total of the compensation (excluding VAT) stipulated for one year.

11.2   Xuver's liability for consequential loss, loss of profit, lost turnover or savings, reduced goodwill, damage due to business stagnation, damage as a result of claims by the User's customers, data mutilation, data loss or incorrect display of data, is excluded. Furthermore, Xuver is not liable for damage caused by the acts or omissions of its suppliers, including the hosting companies, resellers and (open source) software suppliers that it has engaged.

11.3   The liability exclusions and restrictions referred to in this Article shall apply mutatis mutandis to Xuver's indemnity obligation referred to in Article 8. However, these do not apply if and insofar as the damage is the result of intent or deliberate recklessness on the part of Xuver's management.

12.   Other provisions

12.1   Xuver is entitled to periodically modify and/or supplement these terms and conditions. The User accepts these modifications if they continue to use the Software after said modifications have been made.

12.2   If any provision of these terms and conditions proves to be void or voidable or is or becomes invalid in whole or in part for any other reason, the remaining provisions will remain in full force. The parties will replace the invalid clause with a clause that is valid and of which the legal consequences, considering the content and scope of these terms and conditions, correspond as far as possible to those of the invalid clause.

12.3   These terms and conditions are exclusively governed by Dutch law.

12.4   All disputes between the parties that arise from or relate to these terms and conditions will exclusively be submitted to the Zeeland-West-Brabant District Court.

These Terms and Conditions became effective on April 2020.

Xuver Applications is a Dutch company registered under the chamber of commerce number 71880410 and VAT number NL858885852B01

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