

## GENERAL TERMS OF USE FOR THE ENERIA WEBSITE EFFECTIVE FROM 25/05/2018

### DEFINITIONS

In these General Terms of Use, the terms below will have the following meanings:

- **ToU** means these General Terms of Use, which apply to the ENERIA Site.
- **Personal Data** means any information relating to a specific or identifiable individual. A person is considered identifiable if they can be identified, either directly or indirectly, by reference to an identification number or to one or more elements that are specific to that individual's identity.
- **User ID** means the personal User ID associated with the User's account, as well as any confidential code or password given to the User by ENERIA that has subsequently been modified by the User and that allows the User to identify itself with a view to access the Services on the ENERIA Site.
- **Regulation on Personal Data Protection** means EU regulation 2016/679 of the European Parliament and Council of 27 April 2016 in its entirety, which became applicable from 25 May 2018 ("data protection regulation") and the French "Freedom of Information" n°78-17 of 6 January 1978 relating to Data Protection (*loi relative à l'informatique, aux fichiers et aux libertés*), amended by Law n° 2004-801 of 6 August 2004.
- **Parties** means ENERIA and the User collectively.
- **Services** means the entirety of the Services provided by the Site and made available to Users by ENERIA, such as the online Spare Part Order Replacement Service via the application Parts.Cat.com @, and access to the Espace Pro service, subscribing to the ENERIA Newsletter, etc.
- **Site** means the website [www.eneria.fr](http://www.eneria.fr).
- **User** means any individual that uses the Site and accesses the Services provided by ENERIA through the Site.

Unless otherwise indicated in these ToU:

- Where words and phrases have a defined meaning, all other forms of that word or phrase will have a similar meaning;
- Words used in the singular are understood to include their plural form and vice versa;
- Reference to a document, a standard, a legal provision, a code or any other document implies any amendment or update to that document, standard, legal provision or code;
- If a time period is specified and starts from a given day or date of acceptance of these ToU, this period is to be calculated from that date.

### LEGAL NOTICES

The Services on ENERIA's Site are used by ENERIA, a Simplified Joint Stock Company with a share capital of 10,000,000 euros and registered at the Company Registry in EVRY under number: B 352 774 079, with registered offices at Rue de Longpont – BP 10202 – 91311 MONTLHERY Cedex.

Managing Editor: Ms. Marion Le Goff

Hosting Company: The Site is hosted by CLARANET BUSINESS APPLICATIONS, a Single-Member Simplified Joint Stock Company with a share capital of 6,000,424 euros and registered at the Company Registry in Nanterre under number: 538 762 162, with registered offices at 28 quai Galliéni - 92150 SURESNES.

## PURPOSE OF THESE ToU AND VERSION IN FORCE

The purpose of these ToU is to define the terms under which the Users may access, and use, the Services.

Any User who accesses the Services made available by the Site agrees to observe these ToU unreservedly. If the User does not agree with these ToU, in part or in their entirety, it is recommended that they not use the Site and the Services.

ENERIA is free to amend these ToU at any time so that they reflect changes in the law, regulations, case law and/or technical developments. The version that will prevail is that which can be viewed online on the following website: <https://www.eneria.fr/terms>. All Users are, therefore, responsible for checking the online version on the date they access and use the Services.

The User is expressly informed that the only version of the ToU on the Site that is valid is that which can be found online on the Site, which it acknowledges and accepts without reserve and agrees to periodically refer to each time it connects.

## INFORMATION, LIABILITY AND WARRANTIES RELATING TO THE MEANS OF ACCESS TO THE SITE

ENERIA has made the necessary means available to ensure the correct functioning of the Site and will take the necessary measures to maintain its continuity and quality.

The User acknowledges that its use of the Site is at its own risk and peril. The Services on the Site are provided "as is" and are accessible without any guarantee with regard to their availability and dependability. ENERIA will, however, endeavour to provide the Site and its associated Services on a 24/7 basis, except in the event of *force majeure* or events outside of ENERIA's control, within maintenance periods for potential breakdown, technical hazards arising from the nature of the internet network or malicious acts or any violation of the material or ENERIA tools.

ENERIA assumes no responsibility for disturbances to the internet network resulting from *force majeure* based on existing case law from the French Court of Cassation (*Cour de Cassation*) and maintenance operations to be carried out on the Site that have been planned by ENERIA. ENERIA, likewise, accepts no liability from the installation and functioning of the terminals used by the User when accessing the Site and that have not been provided by ENERIA.

More generally, under no circumstance does ENERIA accept any liability for disruption to the Site, irrespective of the reason for such, nor does it for the duration or frequency of the disruption.

Transfer fees and response times for information from the Site via the Internet are not guaranteed by ENERIA. The User acknowledges that the transmission speed of this information is not dependent on ENERIA, but rather on characteristics inherent to the electronic communications network based on its connection (able, ADSL, 3G, 4G, etc.) and its access to the internet.

ENERIA will not, under any circumstance, be liable for the repair of possible harm, either direct or indirect, that be suffered by the User when navigating the Site or the use of the Services. Indirect harm is understood to mean that which does not derive exclusively and directly from a fault attributable to ENERIA.

Furthermore, ENERIA is not liable for acts carried out by the User or by third parties using the Site.

Any tool downloaded by the User or obtained by any other means when using the Site, is at the risk and peril of the User.

## INITIAL INFORMATION RELATING TO THE SERVICES OFFERED BY THE SITE

The Site offers Users the possibility of using the online Spare Part Order Replacement Service via the application: Parts.Cat.Com ®; of accessing Espace Pro and subscribing to the ENERIA Newsletter and receiving information and documents that form part of ENERIA's marketing service.

The Services are provided to the User free of charge.

However, equipment (in particular computers, telephones, tools, electronic methods of communication) enabling access and use of the Services offered by the Site will be paid for by the User, in the same way as fees for electronic communication (in particular, phone costs, internet access costs) resulting from the use of such. It is the User's responsibility to inform themselves of the equipment or services through the relevant operators. The User alone is liable for these fees.

## TERMS OF ACCESS TO SITE SERVICES

Access to the [www.eneria.fr](http://www.eneria.fr) is free.

Access to Espace Pro is conditional on the creation of an account by filling in a form (<http://www.eneria.fr/inscription-espace-pro/>), which will contain the following information: Username, post code, telephone number, country. The request is received via [marketing@eneria.com](mailto:marketing@eneria.com), and it is ENERIA's marketing service that will approve, or reject, the account.

Access to the Parts.Cat.Com ® App is conditional on the creation of an account by filling in a form (<https://parts.cat.com/UserRegistrationForm>) which will contain the following information: first name, surname, telephone number, country/region, company address, Username, password. Final validation of the client's account in DBS will be given by BERGERAT MONNOYEUR.

ENERIA reserves the right to refuse access any person acting in competition with ENERIA.

When opening the account, the User will fill in the online form with correct, exact, up-to-date and complete information relating to their identity. In particular, the User agrees not to create a false identity with a view to deceive ENERIA or a third party and not to impersonate another individual. In the event the data initially provided changes, the User agrees to update these immediately.

If the User provides false, inexact, outdated, incomplete, misleading or of a nature that could give rise to error, ENERIA may, immediately and without warning or indemnity, suspend or close the User's account and refuse further access to all or part of the Services provided via the Site, either temporarily or definitively. The User's account comprises, in particular, the User's User IDs, which are under the sole responsibility of the User. The User agrees to keep these secret and not to divulge them in any form whatsoever. If the User's identifying information is lost or stolen, it must inform ENERIA of such without delay, which will proceed to cancel and/or immediately update the User ID concerned.

The User alone is responsible for how its User IDs are used, even if the User presaves their User ID on their computer, mobile phone or any other device, so allowing automatic connection to the Site.

Any access, use of the Site or of the associated Services and transmission of data from a User's account will be understood to have been carried out by that User. The User is responsible for maintaining its User ID confidential. Likewise, the User is responsible for ensuring that, at the end of each session, it has disconnected correctly from the Site, in particular when accessing the Site from a public computer. The User is responsible for any loss, misappropriation or unauthorised use of their User ID, and their resulting consequences. In each of the above situations, the User will be responsible for informing ENERIA, without delay and by email to the following email address: [dpo@eneria.com](mailto:dpo@eneria.com), specifying their User ID, first name and surname so that ENERIA can reinitiate the User's account.

Users may cancel their account at any time by emailing ENERIA at: [dpo@eneria.com](mailto:dpo@eneria.com).

## THIRD-PARTY SITES

In the event that the Services contain hyperlinks from websites edited by third parties (Third-Party Sites) over which ENERIA has no control, ENERIA assumes no responsibility for the content of those Third-Party Sites or for the content that the Third-Party Sites might forward on.

The presence of hyperlinks from Third-Party Sites should not be interpreted to mean that ENERIA in any way endorses the content of those Third-Party Sites. ENERIA accepts no liability for any amendments or update relating to Third-Party Sites nor does it accept liability for the release of information by those Third-Party Sites, or to their poor functioning.

## INTELLECTUAL PROPERTY

The Services on the Site and all elements that compose them are, unless specially mentioned, the exclusive property of ENERIA.

Any representation or reproduction, be it partial or wholly, of the Site without the ENERIA's prior written consent is prohibited. The brands and logos that appear on the Site are trademarks. Specifically, the brand CATERPILLAR® is a trademark registered by Caterpillar Inc. Any reproduction, use, imitation, affixation, erasure or amendment to these elements without ENERIA and/or CATERPILLAR's prior written consent is prohibited and will constitute infringement, which will be actionable per sé.

Therefore, and in accordance with the French Intellectual Property Code (*Code de la propriété intellectuelle*), the legislative and regulatory provisions in all countries and international conventions, any reproduction, dissemination or representation, be it full or partial, of the brands or logos ENERIA® and CATERPILLAR® and ENERIA Services or any other element that compose them, including amendment to them, is prohibited. The User is particularly prohibited from adapting, improving on, amending, correcting, combining, translating into any or all language, take to market either without cost or for value, market the Services provided by ENERIA in their entirety or in part, or any other element that composes them, irrespective of means or method. No provision in these ToU is to be construed as an assignment of intellectual property rights, be it implicitly or by any other means.

## SOCIAL NETWORKS

The User of the Site has the option to click on the icons dedicated to the following social networks: Twitter, Facebook, LinkedIn and Google Plus, which appear on the Site or on the ENERIA App.

Social networks enable the Site to improve its friendliness and help promote it through their shares. The video share service enriches the ENERIA Site with video content and increases its visibility.

When the User clicks on these buttons, ENERIA will gain access to the personal information that the User has indicated as published and accessible through its Twitter, Facebook, LinkedIn and Google plus profiles. However, ENERIA has not created nor does it use any database independent of Twitter, Facebook, LinkedIn and Google Plus, other than the personal information that the User publishes on these networks. Therefore, ENERIA will not process any datum relating to the User's private life.

If the User does not wish ENERIA to have access to the personal information in the public domain on its profiles or social accounts, the User should make use of the means made available by Twitter, Facebook, LinkedIn and Google Plus to limit the access to these data.

## DATA PROTECTION

### The User's personal data

ENERIA expressly invites the User to consult its Data Protection Policy, which forms an integral part of these ToU.

### IP Address

Upon request from judicial authorities, ENERIA may release the User's IP address so that the User and its internet provider are identified.

## AGREEMENT IN RELATION TO EVIDENCE

Messages received by fax or electronic means and, more generally, electronic documents exchanges between ENERIA and the User are written in accordance with article 1366 of the French Civil Code (*Code Civil*), i.e.: they have the same value as agreed originally. Faxes and electronic correspondence should be saved as these may constitute true and lasting copies in accordance with article 1379 of the French Civil Code.

## **WAIVER**

The waiver by one or both of the parties of one or more of the provisions of these ToU does not, under any circumstance, imply the waiver of that party of the right to later enforce that provision.

## **SEVERABILITY**

If any of the provisions of these ToU are held to be inapplicable for whatsoever reason, including as a result of an applicable law or regulation, the parties will continue to be bound by the other provisions in these ToU.

## **APPLICABLE LAW AND JURISDICTION**

These ToU are subject to French law. Any disputes arising from the validity, application or interpretation of these ToU will be submitted, in the absence of an amicable resolution, to the competent courts of PARIS, to which the parties attribute territorial competence, irrespective of the place of execution or the domicile of the respondent. This attribution of competence will also apply summary proceedings, if there are multiple respondents or third-party claims.