

## ENERGEENIES GMBH Terms and Conditions

(Last updated on October 14, 2021)

### Introduction

- (1) Thanks for using ENERGEENIES! ENERGEENIES takes our current and very real concerns about environmental issues and sets out to educate players about them through a fun and rewarding geolocation-type game. By consulting with experts in the field of renewable energy, the game takes good care to fictionally represent and gamify scientific data in a way that stays true to it, while wrapping it up in an easily accessible and highly entertaining game experience.
- (2) These ENERGEENIES Application (“**App**”) Terms of Service (“**Terms**”) describe your rights and responsibilities as a user of our App. These Terms constitute a legally binding agreement.
- (3) These Terms are between you and the ENERGEENIES entity that owns or operates the App that you are using. The operator of the App is ENERGEENIES GMBH, with its registered office at Girmes-Kreuz-Str. 55, 41564 Kaarst, Germany, registered at the district court Neuss under HRB 21721, VAT identification number DE345740221, E-Mail: info@energeenies.com, website: <https://www.energeenies.com>, (hereinafter referred to as “**ENERGEENIES**”, or “**we**” or “**us**”).
- (4) “**You**” means you individually.
- (5) If you have any questions about the App, we can be reached at info@energeenies.com. General questions will also be answered in the App under "Help & FAQ".
- (6) These Terms are effective as of the date you first click “I agree” (or similar button or checkbox) or use or access the App, whichever is earlier (the “**Effective Date**”). These Terms do not have to be signed in order to be binding. You indicate your assent to these Terms by clicking “I agree” (or similar button or checkbox) at the time you use or access the App for the first time after downloading.
- (7) We maintain other terms and policies that supplement these Terms like our Privacy Policy, which describes our collection and use of personal data.

- (8) To use our App, you represent that you are at least 13 years of age and that if you are under 18 years of age, your parent or guardian has reviewed and accepted these Terms and agrees that you may access and use our App. To the extent that certain countries or platforms require a higher age of consent for the collection of personal data, ENERGEENIES requires the consent of your parent or guardian before creating an Account and collecting the associated personal data

## **1 General**

- 1.1 The App is aimed exclusively at persons who make use of the services offered as consumers ("**User**"). A consumer is any natural person who enters into a legal agreement for purposes that are predominantly neither commercial nor self-employed (Section 13 German Civil Code).
- 1.2 ENERGEENIES stores the text of the contract after conclusion of the contract in compliance with data protection. These Terms are accessible any time on the website <https://www.energeenies.com> in printable version. They can also be viewed within the app under "Settings > Legal > General Terms and Conditions".

## **2 Versions and Functions**

- 2.1 The currently available basic version of the app is available for free.
- 2.2 With the availability of further releases, you will be able to purchase additional paid functionalities through In-app purchases in the future.
- 2.3 More details on In-App purchases, see figure 5.

## **3 Registration and conclusion of contract**

- 3.1 Use of the app is only possible for registered users with a personal user account. The user agreement is concluded as of the download of the app. To do this, you must register when you start the app for the first time or via the "new account" tab. The registration can be done via email ("**ENERGEENIES registration**") or via your Apple ID ("**Apple registration**"), your Google account ("Google registration") or your Facebook account ("**Facebook registration**").

## 3.2 ENERGEENIES Registration

3.2.1 Each registration is valid for a single user only, unless expressly agreed otherwise with ENERGEENIES. Registration for access and use of the App may also require credentials, such as a username and password, or compliance with other specific access requirements, as determined by ENERGEENIES from time to time in its sole discretion. You hereby agree to treat your access information, such as username and password, as confidential information and not to disclose it to any third party. You have the opportunity to correct your information at any time during the registration process before clicking on the "Create Account" button

3.2.2 By clicking the "Create account" button, you submit an offer to conclude a usage agreement with full use of the app. Upon receipt of the offer, ENERGEENIES will send a link to the email address provided by the user with a request for confirmation. The registration process and the contract are not concluded until you confirm by clicking on the link in the confirmation email.

3.2.3 You can view and change your registration information at any time under "Settings" > "Edit Profile".

3.3 Apple registration, Google registration, Facebook registration.

3.3.1 In addition to the ENERGEENIES registration with username and password, you can also register with the access data you have stored at Apple, Facebook or Google, provided you have an Apple, Facebook or Google account.

3.3.2 If you choose Apple registration, Google registration or Facebook registration, additional terms and conditions of the service provider may apply.

## 4 License Grant

Subject to your continued compliance with these Terms, ENERGEENIES provides to you a single, revocable, limited, non-exclusive, non-transferable, and non-sublicensable license to access and use the App during the term of these Terms on your mobile phone or other mobile computing devices and only for personal purposes. The content layout, formatting, features of and online or remote access processes or privileges for the App shall be as specified by ENERGEENIES in its sole discretion.

## **5 In-App purchases**

- 5.1 Our App will include other additional features that may be purchased for an additional fee. You may purchase additional virtual money and virtual goods on a one-time basis for the purchase price indicated in each case. In order to benefit from or use the virtual money and/or virtual goods in the App, you may first need to reach a certain Game level. You agree that virtual money, virtual goods and/or subscriptions have no monetary value and can never be exchanged for real money, real goods or real services from us or others. You agree that virtual money, virtual goods are not transferable to others, you will not and will not attempt to transfer virtual money, virtual goods to others.
- 5.2 You acquire a single, revocable, limited, non-exclusive, non-transferable, and non-sub-licensable license to use virtual goods and virtual money. A balance of virtual goods and/or virtual money does not reflect any stored value.
- 5.3 You agree that all In- App purchases of Virtual Money and/or Virtual Goods by you from us are final and we will not provide refunds for transactions once completed. An in-app purchase constitutes a contract for the delivery of digital content on a non-tangible medium (Section 312 f German Civil Code). You expressly agree that ENERGEENIES may commence performance of the Agreement prior to the expiration of the revocation period and acknowledge that you hereby forfeit your right of revocation upon commencement of performance of the Agreement (Section 356 German Civil Code). For the purposes of this section, a "purchase" is deemed to be completed once the relevant virtual goods or virtual money have been successfully credited to your account on our servers.
- 5.4 If you do not link your Game progress on your Device to your Account, in the event that your Device is lost or damaged, we will have no way to recover Virtual Money or other data associated with your Game progress on another Device. Accordingly, for devices that are not linked in this manner:
- 5.4.1 the entire risk of loss of virtual money purchased from us on your Device will pass to you upon completion of the purchase in accordance with clause 5.3;
- 5.4.2 the entire risk of loss of virtual non-purchased money on your Device will pass to you upon the successful crediting of the money to your account on our servers; and
- 5.4.3 any risk of loss of other data related to your game progress will be transferred to you at the moment of generation of the relevant data.

- 5.5 The data associated with the receipt of Virtual Goods - whether you purchased the relevant goods with Virtual Money or otherwise obtained them - will be stored locally on your Device and will not be synchronized between different Devices. Accordingly, the risk of data loss will be transferred to you at the moment (i) when the purchase of the Virtual Goods has been completed in accordance with clause 5.3, and/or at the moment (ii) when the relevant Virtual Goods have been awarded or credited to you in other cases.
- 5.6 You agree that invoices may be issued in electronic format
- 5.7 We reserve the right to monitor, regulate, change or remove any Virtual Funds and Virtual Goods without liability to you.
- 5.8 We reserve the right to change the prices of virtual goods and virtual money at any time. In addition, we may limit the total amount of Virtual Goods and Virtual Money you may purchase at one time, and/or the total amount of Virtual Goods and Virtual Money you may have aggregated in your account. You may obtain Virtual Money and Virtual Goods only from us and not in any other way.
- 5.9 Depending on which platform you use, purchases of Virtual Goods and Virtual Money are subject to the terms and conditions of use of your platform provider. The usage rights for different purchases may vary depending on the item. All fees and applicable taxes will be handled through the participating mobile app provider, such as Google PlayStore or Apple AppStore (collectively, "App Stores"), from which you originally downloaded the App. You can view the applicable rules and policies for in-app purchases directly from the applicable App Store. Please see <https://play.google.com> or <https://www.apple.com/legal> for more information. If you are unsure about usage rights, fees, and taxes, please contact your platform provider or our customer support before making a purchase. Unless otherwise stated, content available within the App is subject to the same age rating as the App.
- 5.10 If we suspend or close your Account in accordance with these Terms, you will lose all Virtual Funds and Virtual Goods and we will not compensate you for such loss or provide any refund to you.

## **6 Availability**

- 6.1 ENERGEENIES strives for a high average availability of the App. However uninterrupted availability is not technically feasible. Interruptions of the internet that cannot be influenced by ENERGEENIES or other circumstances for which ENERGEENIES is not responsible,

in particular those based on force majeure, as well as regular and unscheduled maintenance work on the database system to eliminate malfunctions, can lead to a temporary interruption or malfunction of the App.

6.2 In addition, ENERGEENIES endeavours to continuously adapt the App to the current technical requirements. ENERGEENIES therefore reserves the right to make changes to adapt the system to the state of the art, to optimize the system, in particular to improve user-friendliness and to change content, if the latter is necessary to correct errors, to update and complete the app or to optimize the program.

6.3 You need a smartphone with Internet access to use the app. Depending on your contract with your Internet provider you may incur additional costs for using the Internet, in particular international fees such as roaming costs. ENERGEENIES is not responsible for your Internet connection and does not bear its costs. You are responsible for protecting your smartphone with up-to-date anti-virus software, firewall and system updates and for preventing access to the hardware.

## **7 Rules of Conduct**

7.1 You shall keep the information provided during registration up to date and update any changes without delay.

7.2 You shall keep your access data confidential. If you allow third parties to access your user account intentionally or negligently, you shall be liable for the conduct of such third parties and thus, if applicable, for any claims arising from such use, in particular for damages and reimbursement of expenses.

7.3 You are responsible for any information and content that you publish about yourself or your fellow travelers.

7.4 You must follow this code of conduct and must not help or induce others to break or circumvent these rules:

7.4.1 Act with integrity and treat others with respect

7.4.2 Do not lie, misrepresent something or someone, or pretend to be someone else;

7.4.3 Be polite and respectful when you communicate or interact with others;

- 7.4.4 Do not discriminate against or harass others.
- 7.4.5 Do not scrape, hack, reverse engineer, compromise or impair the App
- 7.4.6 Do not use bots, crawlers, scrapers, or other automated means to access or collect data or other content from or otherwise interact with the App;
- 7.4.7 Do not hack, avoid, remove, impair, or otherwise attempt to circumvent any security or technological measure used to protect the App or Content;
- 7.4.8 Do not decipher, decompile, disassemble, or reverse engineer any of the software or hardware used to provide the App;
- 7.4.9 Do not take any action that could damage or adversely affect the performance or proper functioning of the App.
- 7.4.10 Only use the App as authorized by these Terms or another agreement with us
- 7.4.11 Do not use the App, our messaging tools, or other users personal information to send commercial messages without the recipient's express consent;
- 7.4.12 Do not use Content unless you have permission from the Content owner or the use is authorized by us in these Terms or another agreement you have with us;
- 7.4.13 Do not use, copy, display, mirror or frame the App, any Content, any ENERGEENIES branding, or any page layout or design without our consent.
- 7.4.14 Honor your legal obligations
- 7.4.15 Understand and follow the laws that apply to you, including privacy and data protection laws;
- 7.4.16 Do not use the name, logo, branding, or trademarks of ENERGEENIES or others without permission;
- 7.4.17 Do not use or register any domain name, social media handle, trade name, trademark, branding, logo, or other source identifier that may be confused with ENERGEENIES branding.

## **8 Rights of ENERGEENIES in the Event of Violations**

8.1 You undertake to indemnify ENERGEENIES to the maximum extent permitted by applicable law against any claims by third parties based on your infringing use of the App. This includes any damages as well as reasonable costs and expenses, in particular the necessary costs of legal defense. You undertake to inform ENERGEENIES immediately of any claims made by third parties due to unlawful use of the app or your user account.

8.2 Without prejudice to further rights (in particular termination without notice and the assertion of claims for damages), ENERGEENIES may also sanction a violation of these Terms by taking reasonable and appropriate measures such as the temporary or complete deletion of content, a warning, blocking or other restrictions concerning the use of the App. ENERGEENIES shall choose the measure taking into account all relevant concerns, in particular the severity of the violation and the degree of fault, liability risks, etc. ENERGEENIES shall be entitled to take such measures at its own discretion. You shall immediately remove any Content for which there is a reasonable suspicion of an infringement or if you are requested to do so by ENERGEENIES.

## **9 Reporting Violations**

If you believe that another user or Content poses an imminent risk of harm to a person or property, you should immediately contact local authorities before contacting ENERGEENIES. In addition, if you believe that another user or Content has violated our Terms, you should report your concerns to ENERGEENIES.

## **10 Term**

The agreement between you and ENERGEENIES reflected by these Terms is effective with your registration of and is concluded for an indefinite period of time. It and remains in effect until either you or we terminate the agreement in accordance with these Terms.

## **11 Termination**

11.1 You may terminate this agreement at any time by sending us an e-mail or by deleting your account.

- 11.2 We may terminate this agreement and your account for any reason by giving you 14 days' notice via e-mail or using any other contact information you have provided for your account.
- 11.3 We may also terminate this agreement immediately and without notice and stop providing access to the App if you breach these Terms, you violate applicable laws, or we reasonably believe termination is necessary to protect ENERGEENIES or third parties.
- 11.4 If your account has been inactive for more than two years, we may terminate your account without prior notice.
- 11.5 When this agreement has been terminated, you are not entitled to a restoration of your account or any of your Content. If your access to or use of the App has been limited, or your account has been suspended, or this agreement has been terminated by us, you may not register a new account or access or use the App through an account of another person.
- 11.6 Parts of these Terms that by their nature survive termination, will survive termination of this agreement.

## **12 Modification of our Terms**

- 12.1 We may modify these Terms at any time if the amendment is only beneficial to you, if there is a need for amendment due to certain legal requirements or court rulings or an official decision against ENERGEENIES as well as in the case of technical revisions that require an amendment to the Terms and are reasonable for you.
- 12.2 You will be notified in text form (e.g. by e-mail) at least six weeks before the planned modification date of any change to these Terms intended by ENERGEENIES. Your consent shall be deemed to have been granted if you have not objected to their validity towards ENERGEENIES by the planned date of amendment. Users who do not agree may terminate the contract with ENERGEENIES at any time - not only before the planned date of change, but also thereafter. You will be separately informed again by ENERGEENIES within the notification of the intended changes you're your silence is seen as agreement to the changes and that you can terminate the contract at any time.
- 12.3 When we make material changes to these Terms, we will post the revised Terms on our website and update the "Last Updated" date at the top of these Terms.

### **13 Liability and Disclaimer of Warranties**

- 13.1 We provide the App and all Content “as is” without warranty of any kind and we disclaim all warranties, whether express or implied.
- 13.2 ENERGEENIES is liable under statutory provisions for intent and gross negligence by us, our legal representatives, directors, or other vicarious agents. The same applies to the assumption of warranties or any other strict liability, or in case of a culpable injury to life, limb, or health.
- 13.3 For any negligent breaches of essential contractual obligations by us, our legal representatives, directors, or other vicarious agents ENERGEENIES’ liability is limited to the typically occurring foreseeable damages. Essential contractual obligations are such duties of ENERGEENIES in whose proper fulfillment you regularly trust and must trust for the proper execution of the contract.
- 13.4 Any additional liability of ENERGEENIES is excluded.
- 13.5 Some jurisdictions do not allow disclaimers and limitations of liability like the one listed above. Therefore, the above terms may not apply to you. Instead, in such jurisdictions, the above disclaimers will apply only to the extent permitted by law in those jurisdictions. In addition, you may have additional legal rights in the jurisdiction that applies to you. Nothing set forth in these Terms of Use shall violate any legal rights you may have as a customer of the Service.

### **14 Dispute Resolution, Venue and Governing Law**

- 14.1 If you reside or have your place of establishment outside of the United States, this Section applies to you and these Terms will be interpreted in accordance with the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 14.2 The choice of law does not impact your rights as a consumer according to the consumer protection regulations of your country of residence. Legal proceedings that you are able to bring against us arising from or in connection with these Terms may only be brought in a court located in Germany or a court with jurisdiction in your place of residence.
- 14.3 If ENERGEENIES wishes to enforce any of its rights against you as a consumer, we may do so only in the courts of the jurisdiction in which you are a resident.

14.4 The European online dispute settlement plat-form can be accessed at <http://ec.europa.eu/consumers/odr>. ENERGEENIES is not prepared or obliged to participate in dispute resolution proceedings before an arbitration body under the German Consumer Dispute Resolution Act (VSBG). However, ENERGEENIES will use its best endeavours to resolve a possible dispute with you and thus avoid legal action.

## 15 **Interpretation of these Terms**

Except as they may be supplemented by additional terms, conditions, policies, guidelines, standards, and in-product disclosures, these Terms constitute the entire agreement between ENERGEENIES and you pertaining to your access to or use of the ENERGEENIES App and supersede any and all prior oral or written understandings or agreements between ENERGEENIES and you. These Terms do not and are not intended to confer any rights or remedies upon anyone other than you and ENERGEENIES. If any provision of these Terms is held to be invalid or unenforceable such provision will be struck and will not affect the validity and enforceability of the remaining provisions.

## 16 **Assignment**

You may not assign, transfer or delegate this agreement or your rights and obligations hereunder without ENERGEENIES's prior written consent. ENERGEENIES may without restriction assign, transfer or delegate this agreement and any rights and obligations hereunder, at its sole discretion, with 30 days' prior notice. Your right to terminate this agreement at any time pursuant to Section 11 remains unaffected.

## 17 **United States Governing Law and Venue**

17.1 If you reside or have your place of establishment in the United States, these Terms will be interpreted in accordance with the laws of the State of California and the United States of America, without regard to conflict-of-law provisions.

17.2 Judicial proceedings (other than small claims actions) that are excluded from the arbitration agreement in Section 25 must be brought in state or federal court in San Francisco, California, unless we both agree to some other location. You and we both consent to venue and personal jurisdiction in San Francisco, California.

## 18 United States Dispute Resolution and Arbitration Agreement

- 18.1 This Arbitration Agreement only applies to you if your country of residence or establishment is the United States. If your country of residence or establishment is not the United States, and you nevertheless attempt to bring any legal claim against ENERGEENIES in the United States, this Arbitration Agreement will apply for determination of the threshold issue of whether this Section applies to you, and all other threshold determinations, including residency, arbitrability, venue, and applicable law.
- 18.2 ENERGEENIES is committed to participating in a consumer-friendly dispute resolution process. To that end, these Terms provide for a two-part process for individuals to whom this Section applies: (1) an informal negotiation directly with ENERGEENIES' customer service team (described below), and if necessary (2) a binding arbitration administered by the American Arbitration Association ("AAA"). You and ENERGEENIES each retain the right to seek relief in small claims court as an alternative to arbitration.
- 18.3 At least 30 days prior to initiating an arbitration, you and ENERGEENIES each agree to notify the other party of the dispute in writing and attempt in good faith to negotiate an informal resolution. ENERGEENIES will send its notice of dispute to the email address associated with your ENERGEENIES account. A notice of dispute must include: the party's name and preferred contact information, a brief description of the dispute, and the relief sought. If the parties are unable to resolve the dispute within the 30-day period, only then may either party commence arbitration by filing a written Demand for Arbitration (available at [www.adr.org](http://www.adr.org)) with the AAA and providing a copy to the other party as specified in the AAA Rules (available at [www.adr.org](http://www.adr.org)).
- 18.4 You and ENERGEENIES mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the applicability, breach, termination, validity, enforcement or interpretation thereof, or any use of the App, or any Content (collectively "**Disputes**") will be settled by binding individual arbitration (the "**Arbitration Agreement**"). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and ENERGEENIES agree that the arbitrator will decide that issue.
- 18.5 You and ENERGEENIES each agree that the following causes of action and/or claims for relief are exceptions to the Arbitration Agreement and will be brought in a judicial proceeding in a court of competent jurisdiction:

- 18.6 any claim or cause of action alleging actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights;
- 18.7 any claim or cause of action seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack);
- 18.8 a request for the remedy of public injunctive relief. You and ENERGEENIES agree that the remedy of public injunctive relief will proceed after the arbitration of all arbitrable claims, remedies, or causes of action, and will be stayed pending the outcome of the arbitration pursuant to section 3 of the Federal Arbitration Act.
- 18.9 This Arbitration Agreement evidences a transaction in interstate commerce and the Federal Arbitration Act governs all substantive and procedural interpretation and enforcement of this provision. The arbitration will be administered by AAA in accordance with the Consumer Arbitration Rules and/or other AAA arbitration rules determined to be applicable by the AAA (the "**AAA Rules**") then in effect, except as modified here. The AAA Rules are available at [www.adr.org](http://www.adr.org). In order to initiate arbitration, a completed written demand (available at [www.adr.org](http://www.adr.org)) must be filed with the AAA and provided to the other party, as specified in the AAA rules.
- 18.10 In order to make the arbitration most convenient to you, ENERGEENIES agrees that any required arbitration hearing may be conducted, at your option:
- 18.10.1 in the U.S. county where you reside;
- 18.10.2 in San Francisco County;
- 18.10.3 via phone or video conference;
- 18.10.4 if all parties agree, by solely the submission of documents to the arbitrator.
- 18.11 Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Rules and, where appropriate, limited by the AAA Consumer Rules. If such costs are determined by the arbitrator to be excessive, ENERGEENIES will pay all arbitration fees and expenses. Either party may make a request that the arbitrator award attorneys' fees and costs upon proving that the other party has asserted a claim, cross-claim or defense that is groundless in fact or law, brought in bad faith or for the purpose of harassment, or is otherwise frivolous, as allowed by applicable law and the AAA Rules.

- 18.12 The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court with proper jurisdiction. The arbitrator may award any relief allowed by law or the AAA Rules, but declaratory or injunctive relief may be awarded only on an individual basis and only to the extent necessary to provide relief warranted by the claimant's individual claim.
- 18.13 You and ENERGEENIES acknowledge and agree that we are each waiving the right to a trial by jury as to all arbitrable Disputes.
- 18.14 You and ENERGEENIES acknowledge and agree that, to the fullest extent permitted by law, we are each waiving the right to participate as a plaintiff or class member in any purported class action lawsuit, class-wide arbitration, private attorney general action, or any other representative or consolidated proceeding. Unless we agree in writing, the arbitrator may not consolidate more than one party's claims and may not otherwise preside over any form of any class or representative proceeding. If there is a final judicial determination that applicable law precludes enforcement of the waiver contained in this paragraph as to any claim, cause of action or requested remedy, then that claim, cause of action or requested remedy, and only that claim, cause of action or requested remedy, will be severed from this agreement to arbitrate and will be brought in a court of competent jurisdiction. In the event that a claim, cause of action or requested remedy is severed pursuant to this paragraph, then you and we agree that the claims, causes of action or requested remedies that are not subject to arbitration will be stayed until all arbitrable claims, causes of action and requested remedies are resolved by the arbitrator.
- 18.15 Except as provided in Section 0, in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable, such provision will be severed and the remainder of the Arbitration Agreement will be given full force and effect.
- 18.16 If ENERGEENIES changes this Section 25 after the date you last accepted these Terms (or accepted any subsequent changes to these Terms), you may reject that change by sending us written notice (including by email) within 30 days of the date the change is effective. Rejecting a new change, however, does not revoke or alter your prior consent to any earlier agreements to arbitrate any Dispute between you and ENERGEENIES (or your prior consent to any subsequent changes thereto), which will remain in effect and enforceable as to any Dispute between you and ENERGEENIES.