

Terms and Conditions KOLIBRI Cloud

KELLER Druckmesstechnik AG / Switzerland

I. General provisions

1. The present terms and conditions (hereinafter "terms of use") constitute the contractual basis between the Customer and KELLER Druckmesstechnik AG (hereinafter "KELLER"). They shall apply to the use of the service and the application (defined below) by the Customer, and also for any information, recommendations and/or services of any kind which are made available to the Customer by KELLER and/or the service.
2. By consenting to or using the service, the application or related services, the Customer enters into the present contract with KELLER (the "Contract").
3. The provisions of these terms of use shall also apply to legal entities, legal entities under public law and special funds under public law.
4. Conflicting provisions in the Customer's general terms and conditions shall only be binding if they have been approved in writing by KELLER.

II. Service

5. KOLIBRI Cloud by KELLER consists of a web app ("KOLIBRI web app") and an interface ("KOLIBRI API") (together hereinafter the "Application").
6. The Customer can only use and shall only have the right to use the KOLIBRI Cloud after he/she has purchased from KELLER devices (certain sensors and transmitting units) that enable the use of KOLIBRI Cloud ("devices"). Such devices can send data such as device data and/or measurement data regarding the Customer's devices to a server maintained by KELLER or by the Customer. KELLER determines the procedure in this respect in consultation with the Customer.
7. KELLER or a third party determined by KELLER (for example, a data centre) can gather user data from the server, delete data from the server and save it in a data bank determined by KELLER; thereafter KELLER may allow access to the Customer's user data to the Customer, the Customer-Administrator, users authorised by the Customer (defined below), as well as system integrators, through the KOLIBRI web app (or, insofar as KELLER enables the Customer to do so, through the Customer's own software) and the KOLIBRI API ("Service").
8. The application can be accessed by authorised users through a browser specified by KELLER. Authorised users can then access the user data after authorisation. Besides the device data and/or measurement data, the user data can also include settings, login details, details about termination of the contract or KOLIBRI web app settings.
9. As stated above in Paragraph 7, KELLER can enable users authorised by the Customer to access user data using Customer software through the KOLIBRI API. In this case, it is the Customer's sole responsibility to ensure the functioning and compatibility of his/her own software with the KOLIBRI app.
10. Subject to the warranty and liability exclusions and limitations in these terms of use (in particular in paragraph 37 ff), KELLER shall endeavour to make the service available to the Customer 99% of the time, 24 hours a day, from Monday to Sunday.
11. The availability of the service and the application may be interrupted at any time due to maintenance work, updates, modification or for any other unavoidable reasons. This may cause restrictions on availability which shall not be taken into account when determining availability. As a rule, these shall be communicated by KELLER and KELLER shall endeavour to repair these interruptions quickly or to limit them to a relatively short time.
12. Availability is further limited by the services and obligations of KELLER's service partners and their availability, and this shall not be taken into account when determining availability.

III. Use of the service

13. KELLER regulates the procedure for the use of the service by the Customer separately at its own discretion.
14. Subject to any separate communications from KELLER to the Customer, the following applies:
 - the Customer nominates a person who is responsible and authorised to act as the contact with KELLER ("Customer Administrator").
 - KELLER nominates a KOLIBRI Cloud Support Team ("Support Team") and gives the Customer the relevant contact address.
 - In order for the Customer to use the service and/or the application, a user account has to be set up for the authorised user. In the registration process, the Customer provides the required data (including e-mail address). Once the account is opened, authorised and allocated, the Customer or the authorised user is given a KELLER user account which the Customer or authorised user can access using a password of their choice.
 - The Customer-Administrator designates those persons who are to be given access as users to the devices and the user data and specifies the authorised e-mail addresses of the users so designated ("authorised users"). Several users can have their e-mail addresses authenticated asynchronously in the process.
 - KELLER may share with the Customer Administrator all the user names and other information about the authorised users.

- The Customer Administrator determines which devices operated by the Customer belong to each Customer group. Then the Customer Administrator informs the support team which authorised user belongs to the customer group.
 - Based on this, the support team shall assign the authorised user to the Customer group. As a result of this, the authorised users see the device data of the Customer group to which they have been assigned.
 - The authorisation process for authorised users can be carried out by KELLER or a third party determined by KELLER.
 - Changes to the authorised users, the Customer groups and the corresponding allocations must be communicated to the support team in writing or by e-mail by the Customer Administrator.
 - Only the Customer Administrator may contact KELLER to update the user profiles of authorised users, authorise new ones or delete existing ones.
 - The right to use user names and passwords expires if (i) these terms of use end, or (ii) permission for access to the service, the application and/or the user data is withdrawn from an authorised user.
 - The Customer is obliged to keep his/her user information up-to-date and to keep it correct, comprehensive and current at all times. If the Customer's data is no longer correct, complete and up-to-date, or if for other reasons communication with the Customer is not possible, in some circumstances KELLER is no longer in the position to offer the Customer smooth running of the service and it may be that the Customer or the authorised user no longer has access to the service or can no longer use it or that KELLER cancels, suspends or stops the service.
15. The Customer hereby affirms and guarantees that all the designated authorised users likewise acknowledge and accept these terms of use. The Customer is entirely responsible for compliance with these terms of use by such authorised users and is directly and unconditionally liable for violations of the terms of use by such authorised users.
 16. The Customer guarantees that the information he/she provides KELLER is in all cases correct, complete and up-to-date.

IV. Customer's responsibility

17. The Customer is solely responsible for the procurement, installation, maintenance and updating of compatible hardware, software and devices as well as data network access required for access to the service and the application and its updates and the appropriate usage. The Customer hereby assumes all costs and expenses in this regard. KELLER provides no guarantee that the service, the application or any part thereof will function on the relevant hardware, software, devices and data network access. Regarding this matter, the Customer agrees not to rely on support from KELLER. In addition, interruptions and delays may occur when using the service or the application as a consequence of using the Internet and electronic means of communication. KELLER assumes no responsibility for equipment which becomes obsolete or if adjustments or modifications are necessary.
18. The Customer is solely responsible for the setting-up and functioning of the data network necessary for use of the service and the application as well as any associated costs which may arise. The Customer is solely responsible for any data and connection charges and fees which may arise during access to and/or use of the service and the application.
19. The Customer is responsible for all activities on his/her user account and the accounts of authorised users and he/she is obliged to ensure that he/she and the authorised users keep the user names and passwords safe and secret at all times. The Customer must manage and update this information, and ensure that appropriate security measures are in place and enforced. The Customer has a responsibility to monitor and control the use of user data, the service and the application by the authorised users and, if necessary, to have the support team withdraw the access permissions and to inform KELLER accordingly. The Customer should in particular be aware that an authorised user who leaves the company could continue to access the account. It is up to the Customer, for example via the Customer Administrator, to prevent this, for instance by contacting the support team and arranging to have the appropriate user access deleted.
20. The Customer in particular undertakes as follows and guarantees that his/her authorised users similarly undertake, in addition to being familiar with and adhering to the present user agreement:
 - The Customer shall use the service and the application only for the agreed purposes of the Customer (and not for third parties) in accordance with these present terms of use and shall not pass this information on to third parties;
 - the Customer shall not allow a third party to use his/her user account;
 - the Customer shall not transfer, transmit or in any other way make the account accessible to another person;
 - the Customer shall comply with all appropriate laws and regulatory conditions when he/she uses the service and/or the application and he/she shall only use the service and the application for lawful purposes;
 - the Customer shall not use the service and the application to cause trouble, inconvenience or unpleasantness;

Terms and Conditions KOLIBRI Cloud

KELLER Druckmesstechnik AG / Switzerland

- the Customer shall not attempt to damage the service and/or the application in any way;
 - the Customer shall not attempt to limit or hinder the operation or the function of the service and/or the application in any way;
 - the Customer shall not attempt to obtain unauthorised access to any part of the application and the system connected with it or the networks or the data of other users, or to compromise the above;
 - the Customer shall prevent any unauthorised access to the service, the application and the user data, impede its unlawful use and inform KELLER immediately, insofar as he/she has gained knowledge about unauthorised use.
21. KELLER specifically reserves the right to end the service and use of the application directly if the Customer does not comply with all of the above requirements.

V. License

22. Insofar as the Customer complies fully with these terms of use, KELLER grants him/her a limited, non-exclusive, non-sublicensable, revocable and non-transferable licence to use the KOLIBRI web app and KOLIBRI API for his/her business operation to access user data and to use this data in connection with use of the service. All rights not expressly herein granted, including rights to the service, the application and intellectual property rights, are reserved by KELLER and KELLER's licensors. This applies to all updates as well as modifications made by the Customer, changes or additions, all rights to which the Customer hereby transmits to KELLER.
23. The Customer is not entitled to: (i) delete copyrights, brands or other intellectual property rights from the KOLIBRI web app and/or KOLIBRI API; (ii) reproduce, change, create second-hand works, distribute, license, rent, sell, resell, transfer, publicly make known or interpret, transmit, stream, broadcast or exploit in any other way, partly or in full, the application without KELLER's express permission, (iii) decompile, redevelop or disassemble the KOLIBRI web app and/or KOLIBRI API, other than when it is permitted by law.
24. The user is not granted any rights either by these terms of use or by the use of the service: (i) in reference to the service, the KOLIBRI web app and/or KOLIBRI API, with the exception of the above granted limited license, or (ii) for the use of or the quotation of KELLER's company name, logos, brands, other trademarks or those of KELLER's licensors.

VI. Installation and user data

25. The Customer must install and configure the devices for use himself/herself. The Customer is entirely responsible for the configuration/installation and the resulting measurement data. The Customer is entirely responsible for the quality and the quality of the measurement data.
26. In addition, the Customer is entirely responsible for checking the devices, data and calculations.
27. The Customer acknowledges and agrees that KELLER Customers shall not be provided with consultancy or other services. KELLER shall not check, examine or analyse or confirm data for the Customer, and the customer data shall not be checked or managed by KELLER for the Customer in any form.
28. The Customer is aware that measurement data can go missing and that data is sometimes lost when transmitting data from devices to the server (for example, IoT wireless protocol). He/she hereby assumes the entire responsibility for this.
29. KELLER shall endeavour to perform backups of user data at regular intervals but is not liable for any resulting loss of data.
30. Both KELLER and the Customer (through the authorised users) have access to the user data. KELLER needs this access for maintenance and support. KELLER is entitled to use and analyse the user data in any form.
31. KELLER is entitled to use the user data for internal purposes such as statistics, analysis of device types, battery behaviour and temperature influences. KELLER will never pass on the user data to a third party without the express wish of the Customer.
32. KELLER is entitled to delete the Customer's user data and any further data after two years following the initial registration.
33. As a general rule, KELLER endeavours to save the user data for at least one year after the initial registration. If user data is to be deleted, KELLER shall inform the Customer in advance. KELLER allows the Customer three months after the dispatch of the information to independently secure his/her own user data (for example, in his/her own data bank).
34. If KELLER cancels the service entirely or in part or suspends the service entirely or in part, KELLER shall endeavour to give the Customer a year to independently secure his/her user data (for example, in his/her own data bank).
35. The Customer may at any time ask for the erasure of his/her user data in consultation with KELLER; this does not include the anonymised log files.

VII. Price

36. The Customer shall pay KELLER the agreed price in advance.

VIII. Warranty/Liability

37. Any warranty by KELLER, in particular for the service and the application, is hereby excluded. KELLER makes no representations, gives no warranty or guarantee. The service is provided "AS IS" and "AS AVAILABLE".
38. KELLER in particular assumes no liability for the availability of the service, the application or user data.
39. KELLER in particular cannot guarantee that the service and the application is free of errors, defects, malware and viruses or that it is correct, up-to-date and error-free.
40. In addition, KELLER in particular gives no guarantee and provides no warranty for the service not being interrupted or otherwise being error-free, and there is no guarantee regarding the reliability, quality, suitability or availability of the service or other services connected with the service and the application. Intermittent interruptions or errors may occur and the service and the application may be subject to limitations, disruptions, delays and other problems.
41. KELLER shall not be liable for this to the extent permitted by law. In particular, KELLER shall not be liable for support staff, even in the case of premeditation and gross negligence.
42. KELLER in particular is not liable for any damages, which are a result of the use of (or the inability to use) the application or the service, including damages caused by malware, viruses or any errors incompleteness.
43. KELLER is not liable in any circumstances for any data loss or damage to data. The Parties acknowledge that such loss of data or damage to data may occur in spite of KELLER's endeavours to carry out regular backups. KELLER is also not liable if the devices can no longer send data, or for access, processing, deletion or destruction of data by a third party.
44. In particular, KELLER is not liable for false, missing or lost measurement data or calculations; in accordance with paragraphs 25 to 29 these come within the sole responsibility of the Customer. The Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability and suitability of the user data.
45. In any event, KELLER's total liability is limited to the amount paid by the Customer in accordance with paragraph 36.
46. The Customer agrees to release and hold KELLER harmless for all complaints, damages, obligations, costs and expenses which arise in connection with (i) violations of the present terms of use by the Customer, the Customer Administrator, the authorised users or on the Customer's user account, (ii) culpable conduct by the Customer, the Customer Administrator, the authorised users or on the Customer's user account, (iii) violations of applicable laws and/or regulatory conditions by the Customer, the Customer Administrator, the authorised users or on the Customer's user account.

IX. Duration

47. The current contract is valid from the date of its coming into effect. Each Party may cancel this agreement in writing within a period of 30 days. KELLER is also entitled to cancel or end this contract according to the further options mentioned in these terms of use.
48. KELLER may cancel these terms of use or this contract with the Customer and the service partly or in full at any time immediately at its sole discretion and without liability, it may partly or in full change, modify, limit, cease or suspend (including the availability of any data, data banks or contents) the service or the application or all related services, or deny at any time, partly or in full, for any reason whatsoever, access to this service or all related services and connected data; in particular KELLER may also partly or in full block or delete any Customer accounts and/or those of authorised users.
49. After cancellation, the Customer's right to use the service, the application and access to user data expires. KELLER is not obliged to reimburse the Customer for any payments. KELLER may delete all the Customer's backup data and all saved user data within 30 days of the contract expiring or cancellation.

Terms and Conditions KOLIBRI Cloud

KELLER Druckmesstechnik AG / Switzerland

X. Other conditions **Applicable law and jurisdiction**

- 50. KELLER may ask the Customer to confirm any modified version of these terms of use online. Should the Customer continue to use the service and/or the application after KELLER has communicated the changes to him/her, this shall mean that the Customer agrees with the changes made.
- 51. KELLER may supply information to the Customer in particular about the service or the application using general communication or by e-mail to the e-mail address of the Customer Administrator or in writing by regular post to the address stored by KELLER in the user accounts.
- 52. The Customer shall not transfer his/her rights and obligations in these terms of use to a third party without KELLER's express written permission in advance. However, if the Customer lends or sells devices to a third party, then this third party may apply to KELLER to agree a user contract in accordance with the present terms of use. KELLER shall not hinder such an agreement without good reason. A valid reason could, for example, be the difficulty and/or the cost of the delimitation of access between the data of the Customer and the third party.
- 53. If any individual clause of this contract is invalid or if the contract is found to contain an omission, this shall not affect the validity of the remaining clauses. In this event, the invalid clause shall be replaced by another, valid clause that mirrors the contractual parties' original commercial intent as closely as possible. The same shall apply in the event of an omission.
- 54. Deviating individual agreements (including deviation from the requirement for the use of the written form) shall only be valid if they are agreed in writing.
- 55. These terms of use are subject to Swiss law to the exclusion of the provisions of international law; the application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 56. The city of Zurich, Switzerland, is the exclusive jurisdiction for all disputes arising from or in connection with these terms of use.

