



# **Terms and Conditions, Service Level Agreement (SLA)**

## **ELPRO Cloud**

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# 1 Preamble

These terms and conditions ("Terms and Conditions") govern the contractual relationship between the Customer and ELPRO-BUCHS AG in 9470 Buchs SG, Switzerland (hereafter ELPRO) to define rights and duties for Customer's use of the website and connected services and functionalities (in the following called "Platform") available under [www.elpro.cloud](http://www.elpro.cloud) and sub domains of [elpro.cloud](http://elpro.cloud) (\*.elpro.cloud).

## 2 Contract Subject

Subject of use under these Terms and Conditions are various software solutions available online on the Platform to collect, store and analyze measurement values, to alarm in case of deviations, to create reports and further use of measuring data collected by ELPRO or 3rd party devices ("ELPRO Cloud").

Explicitly excluded from the Platform's services is the internet connection between the measuring devices and the Platform as well as the internet connection of each user to the Platform.

The specific range of functionalities of the Platform and system requirements in order to use the Platform are listed in the respective product description and related user documentation.

### 2.1 Commercial Use

The Platform is intended to set up a professional temperature monitoring system for commercial or scientific applications. It is not intended for private use by consumers.

### 2.2 Platform Not Suitable for Alarming Dangers to Life and Limb

The Platform is not designed and therefore must not be used for surveillance of so-called Critical Alarms through which risks for life and limb can be prevented.

## 3 License Granted and Scope of Functionalities

### 3.1 Right to Use

If and as long as a Customer is registered as a user of the Platform and has a valid license for at least one sensor connected to its account, ELPRO grants to Customer a unlimited, non-exclusive, non-transferable right to use the account within a shared instance of the Platform made available to Customer as "Software as a Service".

Notwithstanding a differing explicit agreement, the right to use the Platform does not include other services than those defined in this contract, e.g. not support, training, adaptation, programming or consulting.

### 3.2 Functionalities

ELPRO does not guarantee a specific set of functionalities. ELPRO provides technically state-of-the-art solutions at all times. Hence, for reasons of security, technical development, integrity of the Platform, or maintenance, ELPRO reserves the right to modify or deactivate functionalities, applications, or programs of the Platform insofar as the purpose of the contract underlying the use of the Platform is not impaired by the adaptation and the change does not bear an unacceptable disadvantage for the Customer.

In any case, ELPRO will inform the Customer of any change according to terms defined in section 4.

#### 3.2.1 Alarm Functionalities

As with the Platform in general (see section 4.1), ELPRO does not guarantee permanent availability of the alarm functionalities. Consequently, ELPRO cannot guarantee that messages via email or SMS are delivered as planned, as their deliverability relies on factors outside of ELPRO's power (e.g. spam filter rules on receiving servers, outages of network connections, web servers or web services). In accordance with section 8.2, ELPRO is not liable for damages resulting from delayed or missing alarm messages.

## **4 Service Levels, Periodic Updates and Support**

### **4.1 Availability**

ELPRO shall use its reasonable best efforts to provide the Platform non-stop. ELPRO guarantees an overall availability of 95% and 98% during Swiss business hours (working days Monday to Friday, 08:00-12:00 and 13:00-17:00 CEDT/CET).

The following exceptions from the availability of service apply:

- Necessary adjustments of the Platform (maintenance, checks etc.)
- Safety updates
- Updates of new versions of the Platform
- Acts performed on Customer's request and failures caused by Customer
- Acts necessary for deflecting damages on the Platform

### **4.2 Periodic Back-ups**

Backups of the ELPRO Cloud database are made every 5 minutes and stored for 30 days each.

However, ELPRO does not guarantee backup for a specific purpose or time. Hence, the Platform is especially not suitable for compliance with commercial law- or tax law-related retention periods. If the Customer requires such retention, e.g. for invoices generated by the Platform, the Customer is responsible to procure an adequate additional solution.

### **4.3 Data Ownership**

All data generated by the Customer's users or system (data loggers) remain the property of the Customer.

Privacy issues are defined in ELPRO's Privacy Policy, available at: <https://www.elpro.com/privacy-policy/>

### **4.4 Software Updates**

ELPRO provides updates for the software periodically or as required. Software updates contain new or changed functionality as well as adaptations to new hardware and system software; furthermore error corrections could be part of them. A software update leads to a new software version of the Platform. ELPRO will inform about the availability of new software updates and its installation date with a lead time of 30 days for major changes and 7 days for minor changes by email.

If there is additional functionality in future versions, which is licensed as separate module and purchased optionally, this is not included in the updates.

#### **4.4.1 Test/Validation Account**

For major updates ELPRO will provide an account to the new software version of the Platform independent of the productive instance prior to the update of the productive instance in order to allow for testing and customer side validation of the new version upon request. These test/validation accounts may be at extra cost and will only be available for a limited time. Hence, they must not be used as a productive system.

### **4.5 Software Patches**

Software patches correct programming errors or incorrect functionality of a software version. Software patches are provided as needed for the current version of the Platform. ELPRO will inform about the availability of new software patches and its installation date with a lead time of 30 days for major changes and 7 days for minor changes, respectively, by email. In case of security relevant issues ELPRO may directly solve the issue without prior notification, but will inform the customers right after the patch has been installed.

## 4.6 Qualification Templates

ELPRO recommends a qualification according to the customer requirements for the qualification of ELPRO Cloud. In order to support the customers in their efforts, ELPRO offers templates for the Installation and Operation Qualification.

## 4.7 Support and Reaction Times

ELPRO offers extensive support content including videos online at: <https://www.elpro.cloud/support>. ELPRO maintains and supports the current version of the Platform; older software versions are not supported. Additional support, such as support for the initialisation procedure of the software, can be provided at extra cost by telephone, chat or email during Swiss business hours (working days Mon-Fri 08:00-12:00 and 13:00-17:00 CET/CEDT).

## 4.8 Training

ELPRO offers extensive training content including videos online. Individual training courses can be offered at extra cost upon request.

# 5 Customer Duties

## 5.1 Information in Case of Malfunction and Cooperation for Problem Resolution

The customer must inform ELPRO about a malfunction and provide all information, access to the relevant data and full good faith cooperation reasonably necessary to enable ELPRO to deliver the services. If the customer fails to do so, ELPRO will be relieved of its obligations to the extent that the obligations are dependent upon customer's performance.

## 5.2 Defined System Owner on Customer's Side

The customer appoints an employee as system owner who ensures the first level support for other system users and acts as the responsible contact person for ELPRO. By default, the user who has registered the organization account (organization administrator) to the Platform is the system owner.

The Customer has to maintain a valid email address through which ELPRO can reach the system owner. Email addresses can be maintained within the Platform in the User Profile Settings.

## 5.3 No Violation of Applicable Laws

When using the Platform, the Customer has to obey any and all applicable laws and other obligations. In particular, but not limited to, the Customer must not transfer any data or content to the Platform that violates any law, e.g. copyrights or other third-party rights.

## 5.4 Keep Password Secure and Inform ELPRO about any Suspicious Activities

The Customer is not allowed to transfer the access data required to use the Platform to any other person. The Customer is responsible to protect the access data from unauthorized access by third parties. In case of any suspicious activities, the Customer shall immediately change his access data (change the password) and inform ELPRO.

# 6 Subcontractors

In order to provide the Platform, ELPRO shall have the right to involve third-party subcontractors. ELPRO only works with providers offering state-of-the-art services, such as:

- Amazon Web Services (<https://aws.amazon.com>) for hosting of the Platform
- Stripe (<https://stripe.com>) for payment and invoicing

- Twilio (<https://www.twilio.com/>) for sending SMS

Only information required to provide the service is shared with external partners.

## **7 Prices, Payment Terms and Contract Duration**

### **7.1 Prices**

Any ELPRO Cloud functionality is sold within ELPRO Cloud with prices stated explicitly before a purchase is made. The Fee shall be invoiced in advance for the time period stated (normally for one year). Any further fees (such as for support or training) shall generally be invoiced on a monthly basis in arrears. ELPRO shall be free to change the price of any ELPRO Cloud functionality for the subsequent years.

### **7.2 Payment Terms**

Payment for ELPRO Cloud functionalities for the first period is due immediately after purchase via credit card. Payment for the subsequent periods are due and shall be deducted automatically from the Customer's credit card on the day prior to the beginning of such period.

As regards any further fees, payments are due 30 days after the receipt of an invoice. Should an invoice not be paid within the timeframe set out in the invoice, the Customer shall automatically be in default.

### **7.3 Contract Duration**

The contract shall enter into effect on the date of the Platform account activation. Licenses are per sensor and can have different starting dates and durations. In case the user has activated automatic renewal for a sensor license, the term will automatically be extended by one year with unchanged configuration for the sensor at the end of the licensed period, ensuring uninterrupted service, unless terminated with respecting prior notice. In case automatic renewal is not activated, the user will receive a notification via email before the license is terminated in order to extend the term.

### **7.4 Consequences of Missing Licenses**

If no valid license is available for a sensor, ELPRO may stop the service for this sensor. However, ELPRO will keep historic data of this sensor for at least 30 days after termination of the license and will send another notification via email prior to the sensor and related data being deleted, allowing the Customer to export the data from the Platform.

## **8 Copyright and Liabilities**

### **8.1 Copyright**

The software is owned by ELPRO-BUCHS AG and is protected by laws of Switzerland, international treaty provisions, and all other applicable national laws. According to section 3.1 Customer may use the Platform, but must not transfer the software or parts of it, product manual(s) or written materials accompanying the software to any storage devices.

ELPRO-BUCHS AG warrants that the software and accompanying hardware delivered do not violate the rights of others, including patents and copyrights.

### **8.2 Warranty and Liability**

ELPRO-BUCHS AG warrants that (1) ELPRO-BUCHS AG owns or otherwise has the right to provide the Platform to Customer under these Terms and Conditions; (2) all services provided under these Terms and Conditions are rendered with the care customary in the IT industry and that the software shall substantially operate as described in the documentation. Any further warranty of ELPRO is excluded.

ELPRO shall be liable for direct damages that result from gross negligence or intent. ELPRO shall not be liable for any damages that result from slight negligence. ELPRO shall furthermore not be liable for any indirect,

consequential or subsequent damages including (but not limited to) lost income, lost profits, loss in net asset value, capital costs or a diminution of goodwill. ELPRO shall not be liable for any errors or misrepresentations in any Data. Any further liability of ELPRO is excluded.

### **8.3 Force Majeure**

No party is liable for damages resulting from a force majeure event such as storms, fire, water, war, strikes, virus attacks, epidemics or a disruption of the public communication or public transportation infrastructure.

## **9 Termination of Contract**

### **9.1 Extraordinary Termination by Customer**

The Customer may terminate the contract at any time by deleting his account. There is no refund of payments already made. Any licenses continue to run until their expiration or termination.

### **9.2 Termination by ELPRO in Case of Breach of Contract**

In case of severe breach of contract, ELPRO may terminate these Terms and Conditions at any time without prior notice.

### **9.3 Automatic Termination in Case no Sensors are Licensed**

In case there are no sensors registered in an account on the Platform or all sensors once registered in the account have been deleted because of missing licenses (see section 7.4), ELPRO reserves the right to terminate the contract and to delete the account.

## **10 Miscellaneous**

### **10.1 Confidentiality**

Documentation, qualification and training materials, which are provided within the scope of these Terms and Conditions, have to be kept confidential. The customer may not share or make available such information to any third party.

ELPRO commits itself to keep customer data confidential and to use them only for the purpose of fulfilling this contract, including sending information of available updates and relevant changes to the product portfolio.

### **10.2 Applicable Law and Jurisdiction**

These Terms and Conditions are subject to Swiss law under the exclusion of the United Nations Treaty dated 11th April 1980 regarding contracts governing the international sale of goods. The ordinary courts of Buchs-SG/Switzerland shall have sole jurisdiction with respect to disputes arising under or in connection with these Terms and Conditions.

### **10.3 Modifications of Terms and Conditions**

ELPRO reserves the right to change these Terms and Conditions as long as insofar as the respective change does not cause an unreasonable disadvantage for the Customer, which is the case i.e. if the respective change does not mean a substantial legal or economical disadvantage. In any case ELPRO will inform the Customer of any changes of these Terms and Conditions with adequate notice period of at least 30 days.