

PURCHASING GUIDE

How to Capitalize on Pre-owned Software

Legally obtain
and use pre-owned
Microsoft volume licences



Pre-owned volume licences give you the opportunity to significantly reduce the costs associated with using standard Microsoft software.



The legitimacy of this business model is still occasionally being questioned, but these days, such concerns are unfounded. Throughout the EU, UK and Switzerland, the resale and acquisition of pre-owned software licences is allowed, provided that a very specific process, is followed.

Capefoxx has specialized in the execution of that process, and to support you in your toughest licensing challenges. While building the business case dedicated to your requirements, the licensing experts also ensure that the conditions set for the process – and all of the legal requirements – are met.

For many organisations, the cost factor associated with licensing for Microsoft software is not to be underestimated. Furthermore, there is a significant upward trend in the magnitude of these costs.

THE REASON FOR THIS IS SIMPLE:

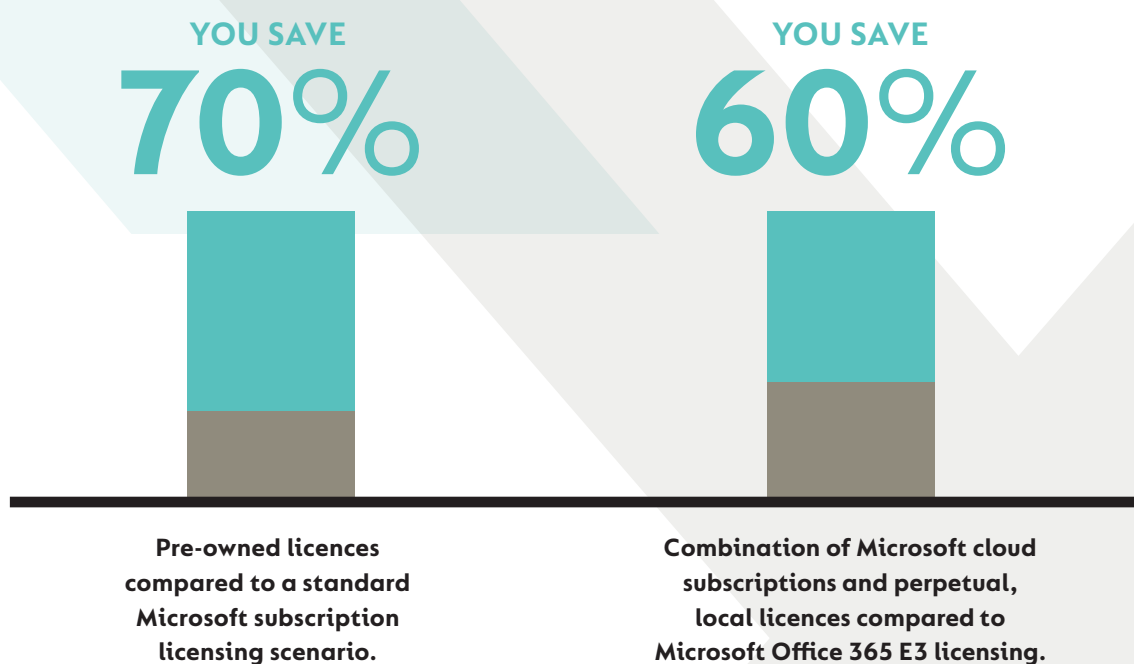
Microsoft is constantly enhancing its range of products and is always adding new functionality to its existing software suites. This tends to lead to price increases – not only for the Microsoft product as a whole but also for the individual licences when the product is updated as per the contractual agreement.

However, licensing scenarios in which software is updated on a regular basis are not a realistic reflection of the migration planning for many organisations. Each version change comes hand in hand with compatibility problems and the need for employee training. So once a version of the software has been rolled out, most organisations try to use it for as long as they can – as long as it fulfils its purpose and there are no significant limitations or compromises – and in the meantime, their software is not being upgraded. Nonetheless, the options to licence Microsoft software provided by Microsoft inherit that even these organisations are confronted with the cost increases.

THE PRE-OWNED LICENSING MARKET OFFERS THE OPPORTUNITY TO AVOID THIS.

Pre-owned Microsoft software licences from Capefoxx make it possible to implement alternative licensing scenarios that are smart, legally compliant and cost-effective.

For example, with a ‘cost reduction optimization scenario’, in which predominantly pre-owned licences are deployed, we made overall **cost savings of up to 70 percent** compared to the standard Microsoft subscription licensing scenario. Further examples include our hybrid cloud scenarios, which combines Microsoft cloud subscription licences with perpetual licences for Software which remains “on-premise” anyway. These scenarios **reduce the overall cost by up to 60 percent** compared to a Microsoft Office 365 E3 licensing plan.



If you are considering to purchase pre-owned software or sell your organisation's excess software, you do not need to worry. The transfer of software licences, given specific conditions are met, is legal in the EU EFTA trade zone. The legal basis for this is referred to as the 'principle of exhaustion'. This principle means that the copyright holder's exclusive right to distribute a copy of a copyrighted product is exhausted on its first legal sale.

Supreme Court decisions have clearly confirmed this legal situation for EU countries and Germany:

**EUROPEAN COURT OF JUSTICE –
JUDGEMENT ISSUED ON 3 JULY 2012
(CASE C-128/11)**

Where the copyright holder makes a copy of a software product available to his customer – whether on a material medium or as a download – and at the same time concludes, in return for payment of a fee, a licence agreement granting the customer the right to use that copy for an unlimited period, that right holder sells the copy to the customer and thus exhausts his exclusive distribution right. This means that the copyright holder can no longer oppose the resale of this copy by the customer (first acquirer) if the customer makes his own copy unusable at the time of the resale. This even applies if the licence agreement prohibits a subsequent transfer.

**BUNDESGERICHTSHOF
(GERMANY'S FEDERAL COURT OF JUSTICE) –
JUDGEMENT ISSUED ON 17 JULY 2013
(CASE I ZR 129/08)**

For the resale of a copy of a program that has been downloaded from the website of the copyright holder, there is no requirement for the subsequent acquirer to receive a data carrier with the 'exhausted' copy of the computer program. It suffices if he downloads a copy of the program from the website of the copyright holder. Contractual provisions cannot revoke the right of the subsequent purchaser of the 'exhausted' copy of a computer program to use the program for its intended purpose. Nevertheless, the exhaustion of the right to distribute this copy can only be successfully invoked by this subsequent acquirer if the first acquirer has made his own copy unusable.

**BUNDESGERICHTSHOF –
JUDGEMENT ISSUED ON 11 DECEMBER 2014
(CASE I ZR 8/1)**

The exhaustion of the distribution right for copies of a computer program applies regardless of

whether the right holder agrees to the transfer of a certain number of physical data carriers, or whether he agrees to a corresponding number of copies being created by downloading one copy of the computer program and creating additional copies of this copy. This means that the splitting and individual resale of 'volume licences' by the right holder's customer (first acquirer) is permissible, provided that he makes a corresponding number of copies in his possession unusable.

As such, the fundamental permissibility of selling pre-owned software licences – even licences acquired via volume licensing agreements – is no longer in doubt.

THE DISTRIBUTION OF THESE LICENCES IS, HOWEVER, SUBJECT TO CERTAIN CONDITIONS:

1. The products must be individually marketable (i.e., standard software products).
2. The licence issued by the manufacturer must be perpetual.
3. The software must have been distributed legally. The law about further distribution does not apply to "pirate copies".

Another requirement is that the software needs to be transferred in real terms.

This means it is necessary to ensure that the seller's copy of the software is made unusable.

Good to know: The legal situation in Switzerland is very similar to that in the European Union and the UK.

By acquiring pre-owned software licences, you can unlock several significant benefits. The main ones are:

MAKING SIGNIFICANT SAVINGS

You can dramatically reduce your company's IT expenditure by saving up to 70 percent on licensing costs for standard Microsoft software. For example, you might acquire pre-owned licences to complement your licence pool, or if you need additional computers and thus exceed the number covered by your contract with Microsoft. Each pre-owned licence you buy will help to reduce costs.

ACQUIRING LICENCES THAT SUIT YOUR NEEDS

Buying second-hand licences enables you to tailor your licensing arrangements to suit your specific requirements and your long-term IT planning. In concrete terms, it enables you to acquire the precise software version that you actually need for your IT infrastructure, which may well be a specific version that predates the latest release. This saves you the unnecessary expense of acquiring the newest edition of a licences with downgrade rights. Pre-owned licences for the latest versions are generally available at a good price as well, if you do happen to need them.

FREEDING YOURSELF FROM DEPENDENCIES

You can free yourself from a contractual dependency on an individual supplier, which may span many decades. By doing so, you will be somewhat redressing the imbalance of power between your company and the strong market player, Microsoft. This will significantly improve your negotiating position.

RELEASING FUNDS FOR INVESTMENT

The use of pre-owned licences reduces costs, which frees up funds for investment. For example, it might enable you to invest in new technology sooner, which in turn would boost your innovative potential. Or, it might mean that budgetary constraints no longer require that you choose just one of two possible projects (e.g., MS SharePoint and/or MS Skype for Business) – you will be able to get two new technologies for the price of one.

SHOWING INITIATIVE

If you are the member of staff who is responsible for software procurement, you can participate in an initiative to purchase pre-owned licences. As well as bringing your company significant benefits, you will make your mark by thinking and acting entrepreneurially.





Companies enjoy numerous benefits when they utilize pre-owned software.

WHERE DOES PRE-OWNED SOFTWARE COME FROM?

All of the pre-owned Microsoft licences that Capefoxx offers come from companies that have purchased them legally and with the first intention to bring them into commerce in the EU, UK and Switzerland. The licences have generally been in use prior to resale.

Companies may part with their licences for a variety of reasons. For example, they may have unused licences following an organisational or infrastructural restructure. Capefoxx is also able to acquire software licences from the insolvency

assets of companies that have become insolvent. The important thing is always to ensure that there is evidence to show that the licences were acquired and used legally.

WHAT IS THE PROCESS FOR BUYING PRE-OWNED SOFTWARE LICENCES?

For the main part, the process for buying pre-owned Microsoft licences does not differ from the usual procurement process for new licences from this manufacturer. There are, however, a few differences.

At enterprise level, the various different contractual models available mean that licensing for Microsoft's PC software is somewhat complex. It becomes a bit more complex when using pre-owned licences. This is because the licence conditions that apply are the ones for whichever version of the program that you acquire – and it might be that neither the software version nor the licence version are recent.

Owing to this complexity, an especially trained expert should always be involved when agreeing a licensing deal. Experts such as the staff at Capefoxx, who are specialists in this field and will advise you about the kind of licences required for the software environment you are planning. They will also help you to choose alternatives if pre-owned licences are not suitable for your unique business scenario.

RE-LICENSING WITH CAPEFOXX



LICENCEE OBLIGED

to provide proof



DISCLOSURE OF LICENSING CHAIN

from first acquirer



COMPLETE DOCUMENTATION

of the licensing chain and
maintenance agreements



MICROSOFT CONTRACT

of the first acquirer



SUBMISSION OF THE CONFIRMATION

of deletion of the first acquirer



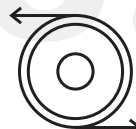
MANUFACTURER NOTIFIED*

of the transfer of the licence



INDEMNIFICATION CLAUSE*

in the event of legal disputes



RIGHT OF WITHDRAWAL*

* Note regarding 6.:
We use the Perpetual Licence Transfer Form (PLTF) to report the transfer of licences to Microsoft.

* Note regarding 7.:
If a third party asserts a claim against the customer in conjunction with our licence transfer, our indemnification clause, which is a component of our ordering process, comes into effect.

* Note regarding 8.:
Capefoxx grants the customer the right to withdraw from the contract if he receives a written statement from the responsible representative of the software manufacturer containing legal justification for the non-acceptance of the licence transfer. This justification must be mutually accepted by the acquirer and Capefoxx. The right of withdrawal is valid for three months after the manufacturer is notified of the transfer.

If you have decided to acquire pre-owned software licences from Capefoxx and you place an order with us, we will provide you with Microsoft's administrative forms so that the licences you have requested can be transferred to your organisation.

These documents must be signed by a designated 'authorized signatory' from your organisation and returned to Capefoxx so that the transfer of the licences to your organisation can be finalized with the software provider. Unlike stocks of new licences, the inventory of pre-owned licences is not at a specified level at any time – it varies according to what is on offer at the time. As such, good inventory planning is essential for procuring large numbers of licences. Capefoxx can help you with this.

One of the final steps in the process, the proof of actual entitlement to the licence(s), differs from what you might be used to when purchasing new licences. Since there are no supplier systems for registering transferred licences, the documents and invoices that Capefoxx sends you are the only proof you have of entitlement to the licence(s).

The following documents, which contain details of the delivery from Capefoxx, should therefore be kept in a safe place:

- › Delivery note
- › Invoice
- › Applicable product use right *
- › Copies of the relevant Microsoft licensing agreements
- › The product's licence key, where applicable
- › Perpetual Licence Transfer Form (PLTF) **
- › Statement of deletion
(made by the previous owner)
- › Data carrier (on request)

* PUR – document from the manufacturer regarding the underlying licence contract and the product that has been acquired

** PLTF – a form which registers the licence transfer with Microsoft

Pre-owned software is no longer considered shady, and at many companies it is already implemented in the procurement strategy. Despite this, some clients still have unfounded concerns about potential legal uncertainties. This prevents them from engaging with this topic, which is a pity because there is so much potential for optimization – and they are missing out!

If you currently require licences for standard Microsoft software, we would like to make an urgent recommendation: Ensure that you also explore and learn about the option of acquiring pre-owned licences. We will help you with the process – even if you are still in the planning stage and are not yet able to specify your exact requirements. Even our initial pricing information can help you to identify the cost-saving potential and make your company more aware of what is possible. The decision about whether or not to choose pre-owned software is a fundamental one and if possible, it should not be made by just one individual. We recommend that the decision-making process should involve colleagues who specialize in law, purchasing and IT – and other areas where relevant. Taking this approach will mean that legal and organisational issues can be clarified before the licences are acquired.

Here at Capefoxx, we can offer support during this clarification process. We can provide you with insights into the current legal situation and

the legal and organisational conditions that need to be fulfilled, and we can inform you about the actions recommended by the manufacturer and auditing firms. We will also show you how our business model fulfils and implements all of these criteria, while also telling you about the corresponding documentation that we provide. You will also discover what is available on the pre-owned software market as a whole (and from Capefoxx in particular) – and where we and the market reach our limits. If we have discussed all of these topics with you and you feel comfortable with the idea of using pre-owned software, we will take the next step and focus on the contractual and sales-specific aspects of the process.

TO PUT IT BRIEFLY

Start thinking about it at an early stage and only buy pre-owned software licences from us if you feel good about it and have confidence in the quality of what we offer.



Range of products*

APPLICATIONS

- › Microsoft Office volume licences
(2019 / 2016 / 2013
Professional Plus / Standard)
- › Microsoft Project volume licences
(2019 / 2016
Professional / Standard)
- › Microsoft Visio volume licences
(2019 / 2016
Professional / Standard)

OPERATING SYSTEMS

- › MS Windows 10 Enterprise
Upg. LTSC and LTSC
- › MS Windows 10 Professional Upg.

CALS

- › Microsoft Enterprise
and Core CAL Suite
- › Microsoft Windows CALs
- › Microsoft Exchange CALs
- › Microsoft SharePoint CALs
- › Microsoft Skype for Business CALs
- › Microsoft SQL CALs

SERVER

- › Microsoft Windows Server licences
- › Microsoft Exchange Server licences
- › Microsoft SQL Server licences
- › Microsoft SharePoint Server licences
- › Microsoft Skype for Business
Server licences

* Please ask for availability



Capefoxx partners with Deloitte, a renowned software auditor, to ensure the highest quality levels of our software licences.



Capefoxx was created as part of the acquisition of Relicense AG, one of Europe's leading providers of second hand software, in 2020. Our owner has a passion for South Africa; therefore we have chosen the cape fox as inspiration for our logo. The cape fox is an agile and tough animal. It must be one, if it wants to survive in the sub-saharan Africa populated by predators like lions, jackals and African leopards. The cape fox has large ears, so it can hear its prey and its enemies in due time.

The idea behind Capefoxx is to further expand the used software business by building on the success Relicense has had over the past 10 years all over Europe. Capefoxx also intends to expand its trading business and add new products and services to its portfolio. I.e. software from other vendors, cloud solutions, consulting services, etc.

OUR OBJECTIVES ARE:

1. We act in the interest of our clients, and offer them a smarter, more flexible, and more cost-effective way to licence the software they need.
Smart – Safe – Legal
2. We challenge the status quo!
3. Much like the real cape fox we have to survive amongst big software predators like Microsoft, Adobe, Oracle, VMware and many others. Therefore, we have to be agile and tough, but most of all listen to our clients' needs.

* Regarding the purchase and sale of licences, Capefoxx verifies that all requirements are met in order for licences to be transferred in line with the law and approved in audits.

INTERESTED IN LEARNING MORE? SEND US AN E-MAIL!

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