

**SALES GUIDE**

# How to Turn your Dormant Software Capital into Liquid Assets

Legally compliant.  
Uncomplicated.  
Transparent.



**Software licences that you no longer need – or have never used – are dormant capital. It makes much more sense to consider selling these kinds of licences, since doing so is generally both possible and legal.**



Volume licences for standard Microsoft programs are of particular interest. They are in high demand, so they provide an opportunity to quickly free up idle capital and make it productive.

Although the legality of this business model is still called into question occasionally, there are no grounds for such concerns. Throughout the EU, UK and in Switzerland, the resale and acquisition of pre-owned software licences are allowed, provided that a few conditions are met. The team of specialists here at Capefoxx has many years of experience, which enables us to ensure that these regulations are adhered to when usage rights are transferred. Our processes for this are constantly reviewed by an external auditor and legal expert and no objections have ever been made. What does this mean for you? With our help, you can capitalise on the significant benefits of divesting your surplus software licences – without having any misgivings.

*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.



*If you decide to transfer your unused or redundant software licences, there will be numerous advantages for you. Here are just a few of them:*

#### **SIGNIFICANT INCOME**

Firstly, and most importantly, you will be generating significant income from an area outside your normal area of business. This extraordinary revenue gives your business greater manoeuvrability, perhaps enabling it to make new investments – projects in the areas of IT and communication may be of particular interest, for example.

#### **POSITIONING**

With projects like this, the IT department can show itself to be entrepreneurially minded. It is perfectly placed to show initiative in this area because it generally has the best overview of the company's software licences – it knows which are unused or redundant.

#### **FLEXIBLE COST STRUCTURE**

The sale of software licences helps to turn a capital-intensive cost structure into a more flexible cost structure that is more focused on operating costs. In order to achieve this, you can recapitalise some of your assets and you will not need to enter any corresponding write-offs. This would make it easier to clearly justify the plan to integrate your IT infrastructure with the cloud, for instance.

#### **MORE FREEDOM**

In general terms, reselling your software licences gives you more freedom to redesign your software licensing arrangements. The depreciation of the licences you no longer require does not need to be recorded (or at least not fully recorded). If nothing else, this can also provide extra leverage and strengthen your negotiating position with your software provider.

#### **CLARITY WITH RESPECT TO SOFTWARE MANAGEMENT**

Before you can sell unused software licences, you will first need clarity about your inventory of licences and how they are used. Embarking on a project to resell licences also provides you with a welcome opportunity to bring clarity and order into the way your company manages its software.



*If your company has surplus software licences that are suitable for distribution, or will have in the next two or three months, you should get in touch with Capefoxx without delay. This will enable our experts to inform you about all of the relevant steps at an early stage.*

If you then provide us with your most recent 'Microsoft Licence Statement' (MLS) for the corresponding contract (or if you provide us with access to the relevant Microsoft volume licensing contract in the 'Volume Licensing Service Centre'), we can let you know how many licences can be legally transferred for which products and versions.

It is important to know that Capefoxx can only transfer licences where the country of use was in the European Economic Area (EEC) and licences where the first acquirer was in the EEC. In this respect, we partner with one of the world's leading auditing firms. As an external body, this partner provides additional confirmation that the licences we offer and the way we purchase them comply with the stipulations of the European Court of Justice.

Once all of this information is available, Capefoxx calculates a bundled procurement price and compiles an official offer. If the supplier accepts the conditions in the offer, Capefoxx will send an

official procurement agreement, which restates all of the contractual requirements of the procurement (including the payment conditions and a list of the licences that are to be transferred). The subsequent transfer of licences to Capefoxx is made via the official Microsoft 'Perpetual Licence Transfer Form' (PLTF) and by notifying Microsoft of the transfer. Once the contract is signed, proof is shared and the licence keys are made available, the procurement process is concluded.

In our experience, the following areas within a company should be involved in the sale of surplus software licences:

- › **The senior management teams**
- › **The accounting department**
- › **The licence manager (or any licence management service providers)**
- › **The head of the IT department**



## ANALYSIS



## OFFER



## TRANSFER

The transfer of software licences is legal throughout the EU, UK and in Switzerland. However, several conditions must be strictly followed. Capefoxx ensures that these conditions are adhered to by using a transparent workflow:

- › Upon sale, the second acquirer is shown the relevant proof.
- › The seller retains the right to view details about any subsequent sales.
- › Microsoft's European headquarters in Ireland is notified of every transaction.

## LICENCE TRANSFER WITH CAPEFOXX



### PRESENTATION TO CUSTOMER

Requirements for transferring a licence, procurement scenario, determining the data basis



### VERIFICATION OF THE DATA BASIS



### QUOTE



### CLARIFICATION OF OUTSTANDING QUESTIONS



### CONCLUSION

of the sale and exchange  
of all relevant documents  
and contracts



### REVIEW

Right to view details  
about any subsequent sales,  
manufacturer notified  
of the transfer of the licence

# How to get the process started?

## Step 1:

### *Prepare all the information needed*

A number of preconditions need to be met for licences to be transferred in a legally compliant way. Please gather the following details (as far as they are already known) for us so we can inform you whether we can transfer the licences you wish to sell and make a corresponding purchase offer:

---

› Which licences exactly do you wish to sell?  
(product name, version/edition, amount)

---

› What kind of licences are they?  
(EA, MPSA, Open, Select)

---

› Who is the registered owner authorized to decide upon selling?

---

› What proof of ownership do you have for the licences?

---

› In which country have the licences been used until now?

---

› Are the licences available or when will they be?

---

## Step 2:

### *Contact us!*

Do you have all the details ready or do you still have questions? Give us a call!

#### **CONTACT:**

Mobile +45 419 90280

Mobile +49 176 313112619

procurement@capefoxx.com

#### **ADDRESS:**

Capefoxx AG

Mühlegasse 18

6340 Baar | Switzerland

www.capefoxx.com



*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.