

susensoftware » background » FAQ about the topic pre-owned software, shelfware software

susensoftware

Don't be Afraid of The Unknown: FAQ – Frequently Asked Questions

- › What is pre-owned software?
- › Are purchasers of pre-owned software entitled to use the update functions?
- › Do I have a loss of quality if I purchase pre-owned software?
- › Is the support guaranteed for pre-owned software?
- › Who buys pre-owned software?
- › Why does not everyone buy pre-owned software by SAP or Microsoft yet?
- › Can I only purchase older or also current software from you?
- › Can I as a private person buy licenses from you?
- › I only need SAP licenses for 6 months. Does that work with pre-owned software?
- › I do not receive any documents of the software manufacturer after the purchase. What does that mean?
- › From where does Susensoftware get the pre-owned software licenses from?
- › May I sell on an OEM-version? The license agreement that I have to accept for the installation with a mouse click prohibits it.
- › Which software license packages can I sell to Susensoftware?
- › What kinds of multiple licenses are there?
- › What do I have to consider when selling used software?
- › Which problems may occur when selling or buying licenses?
- › Is a notarial attestation necessary?
- › What do I need to know about usage restrictions?
- › What do I need to know about the GTC?
- › What does "first sale doctrine" mean?

Further questions?

- Phone:
+49 (0)
241 963
1700
- info@susensoftware
- [Online contact form](#)

What is pre-owned software?

Pre-owned software is software that was initially purchased by a user, installed on his computer, and was therefore accounted for as an asset on his balance sheet. And since software does not wear out, the value of the

software license is not reduced over time. The price is only determined by supply and demand. Nevertheless the software often stays unused on the companies' computers. Most times the companies do not even know which valuable licenses are unused. Only ca. 50% of all German companies regularly check these stocks. In contrast about 30% are over-licensed. Having detected these values, they can be used to the company's advantage.

Are purchasers of pre-owned software entitled to use the update functions?

Yes. If the software was updatable before the sale, it also will be after the transfer of license. The purchase of pre-owned software does not lead to any losses.

Do I have a loss of quality if I purchase pre-owned software?

The purchase of pre-owned software does not lead to any losses of quality for the purchaser. Software does not wear out. The fact that newer versions are offered on the market does not mean that the already existing software is obsolete. The older software still serves its purpose. The used software corresponds to the new one and can always be re-used. Therefore the "second-hand-software" is as good as the original. Another advantage when purchasing pre-owned software is the significant cost saving compared with the purchase of current license products. The quality is the same.

A purchaser of a SAP-license would only have a loss of quality, if the purchase of the licenses did not include a maintenance contract. Our experience as well as a written statement of SAP showed that SAP offers all purchasers of used SAP-products maintenance. Thus also after the license purchase, SAP provides the customer with the reliability and quality of its products.

The maintenance of Microsoft products is subdivided into two versions. There are supported versions with regular bug fixes, error treatment, and patches. The no longer current versions like Windows 95 are not supported anymore, independent of whether the software is used or new.

Is the support guaranteed for pre-owned software?

First of all we differentiate between support and maintenance. A software manufacturer offers product support on the basis of the seller's warranties, which typically can be used without restrictions by all licensees. This includes the correction of software errors in the form of patches. In addition to this duty, several software manufactures, especially SAP, offer maintenance subject to charge. For the licensee this often leads to a more stable use of the software.

Whether maintenance is necessary, required or not provided depends on the implemented software product. In order to guarantee the quality and reliability of its software products also after the license purchase, SAP, for example, consented in writing to provide the purchasers of pre-owned SAP software with maintenance. As an alternative, Susensoftware with the help of its partners, offers cost-optimised maintenance solutions for SAP R/3 systems if required.

Several are of the opinion SAP-licenses in the production, warehouse management, etc. do not require maintenance, since they are rarely subject to changes in statutory regulations – contrary to the fields of human resources management (HCM) and finance (FI/CO).

With Microsoft you usually do not need any maintenance.

Who buys pre-owned software?

We believe in social market economy. Our customers are dependent – on their customers – but not on their suppliers.

Our customers if ever want to swallow competitors, but not foreign standards.

Susensoftware counts among its customers companies from various, totally different fields, such as financial service providers, automotive suppliers, and trading companies. All companies have one thing in common: A limited budget for the area of IT, which often declines every year. Nevertheless, all planned projects must be run and new software needs to be bought. With the purchase of pre-owned software, these companies experience a significant saving of costs and therefore are able for example to run projects that were not even part of the budget. The liquidity of the total company could be increased; in practice, however, the money is spent in the specialty department. Further a pressure to change weighs on the company. Everybody expects that something is taken from him, because it cannot go on like before. The slogan comes up: If I use the market leader, I also want the best price. Or: If I most often rely on SAP anyway, I also want to use every possible freedom!

There is yet another reason to implement pre-owned software: Often companies do not need the latest software licenses, since their employees are trained to use older versions and throughout the company the older versions are installed. This concerns examples such as Windows 98 and SAP R/3. The software manufactures do not deliver these versions anymore; Susensoftware helps.

Advantages:

- Significant savings potential (up to 50%) without loss of quality, as compared with the first purchase

of the software

- The product quality stays the same (software does not wear out)
- Purchase is legally protected due to the coordination of the license transfer with the manufacturer
- Increase of liquidity
- After sales services (maintenance, support) are guaranteed
- Simple transaction due to online order system
- Fast delivery and after sales option
- Optimisation of business processes with regard to cost savings
- No supply shortfalls
- Saving of working hours
- Prevention of under-licensing due to quality software management
- Image enhancement

Why does not everyone buy pre-owned software by SAP or Microsoft yet?

The awareness of being able to buy affordable used software from colleagues of other companies is not present on the market yet. Some brokers attempt to make this option public; however, they face certain insecurity – often caused by the licensor – among the respective companies.

Can I only purchase older or also current software from you?

Susansoftware provides the customer with older as well as current software. Susansoftware receives the current software not as a new good from a wholesaler. It derives from the purchase of unused licenses from insolvencies, company take-overs, and changes of system software or production. In many cases the software packages are originally shrink-wrapped.

Can I as a private person buy licenses from you?

Yes, also private persons are free to purchase pre-owned software. Just like a tradesperson, you have to meet the manufacturer's guidelines. Send your inquiry to us via [Email](#). Please note that Susensoftware can rarely meet individual orders; for these cases we recommend Ebay.

I only need SAP licenses for 6 months. Does that work with pre-owned software?

The purchase of pre-owned SAP software is especially suitable if you require the SAP licenses only for a limited period of time. You become the legal owner of the SAP software and can implement it without the risk of under-licensing. Our partners would like to help you with the installation, adaptation and operation.

I did not receive any documents from the software manufacturer after the purchase. What does that mean?

This is a difficult answer, since there are also licenses that can only be reached or covered by a numerical code on the internet. As a rule, however, an acquisition in good faith is not possible when purchasing software licenses. When buying software, it is not sufficient, for example, to receive just an invoice or a notarial attestation. You should insist on documents or at least duplicates of the manufacturer corresponding to the licenses. Otherwise, one can assume that the ownership cannot be proven. In plain, the missing of the respective documents may mean that you do not own the licenses. As a result, you will be liable for breach of license due to under-licensing. This, as a rule, results in the licensor's claim for indemnification in the amount of the licenses' original price. In addition, you will be requested to purchase the licenses. In this way, you pay for them several times. But there's even more to it. Depending on the implementation of the illegally used licenses, the profit generated with them may be skimmed off. Evidence may be difficult in a given case, but the risk remains. Absolutely no bargain for the licensee!

From where does Susensoftware get the pre-owned software licenses from?

Susensoftware receives the pre-owned software from three different sources:

1. Insolvent companies offering their valuable software licenses in order to repay debt.
2. Leasing companies offering the so-called leasing returns for re-sale. Leasing returns are software that was provided by a leasing company to another company for a limited period of time and is returned after the expiration of contract.
3. Ordinary companies that are over-licensed as a result of sale, restructuring or reduction of jobs.

Further reasons to sell software licenses are:

- Change to another system software
- Change to another range of products
- Change to another manufacturer

- Malinvestment

May I sell on an OEM-version? The license agreement that I have to accept for the installation with a mouse click prohibits it.

Yes, you may! You are neither liable to prosecution nor to compensation. The license agreement is only part of the purchase contract if you buy the software directly from the manufacturer. You do not need a "permission" (that's what the word "license" means) from the manufacturer. OEM is the acronym for "Original Equipment Manufacturer".

Which software license packages can I sell to Susensoftware?

Susensoftware has specialized on all Microsoft- and SAP-products. Susensoftware not only acquires current versions, but also software that has been on the market for a longer time (e. g. MS DOS 6.22 and Office 97) in large amounts. We can publish software products of other manufactures on our [special items list](#). The sale is accomplished as soon as a purchaser is found.

What kinds of multiple licenses are there?

Other kinds besides the usual workplace licenses are:

- concurrent user license
- named user license
- enterprise license
- volume license (depending on usage)
- net license (for a network)

The sale of multiple licenses sometimes is equivalent to a right of reproduction with the determination of the exact number of permitted copies. When selling these licenses, take care that the purchaser is already in possession of this or a similar right of reproduction. Otherwise, one could assume that the licensor did not want to entitle the licensee to this right of reproduction. If that was the case, one has to reckon that the licensor contests the sale of the right of reproduction. This certainly is a side issue. But sometimes these side issues are decisive!

What do I have to consider when selling used software?

The manufacturer has issued individual license agreements for every software product. These provisions vary greatly from manufacturer to manufacturer and from product to product. If a licensee wants to sell software licenses, he has to adhere to the license agreement of the respective software manufacturer. Our [check list](#) provide tips for the selling of software licenses. For further [questions](#), please call us under +49 (0)241.9631700.

Which problems may occur when selling or buying licenses?

Problems may always arise when the seller of used software licenses does not adhere to the sale conditions described in the license agreement. Difficulties do arise, such as when the seller keeps the update on his computer and wants to sell the underlying full version. Therefore, before the sale or purchase of licenses to or from a third party, one should always make sure that the licenses are alienable and complete. Please also note that software products that were only supplied as a download version are not resellable according to European law. We do not expect a German court to change this regulation, although it would be recommended. Our [check list](#) may help you.

Is a notarial attestation necessary?

No. In order to guarantee legal compliance of the license sale Susensoftware passes an original certificate of the software manufacturer (e. g. Microsoft) on to every customer, which identifies him as the new, legal owner of the software license. A notarial attestation cannot offer this legal compliance because it cannot replace the original document necessary for this specific license transfer. Therefore, a notarial attestation, in our opinion, is worthless. Let us mention again that software licenses cannot be acquired in good faith; you need more than just an invoice.

There are various cases when original documents are not available. When selling parts of a contract, for example, we will not fall back on a notarial attestation, but instead organise the sale in cooperation with the licensor.

What do I need to know about usage restrictions?

The prohibition of reproduction as a rule does not seem to be applicable because the loading of the software into the memory already is a reproduction. §69d section 1 of the copyright act allows the reproduction for the intended usage. The prohibition of safety copies as a rule is probably inefficient in accordance with §69d section 2. Even decompilation in order to produce an interoperability seems to be possible in accordance with §69e. For

answers to individual questions, please contact a specialized solicitor.

What do I need to know about the GTC?

As soon as individual parts of the GTC are discussed in the purchase negotiations, they may turn into an individual agreement. This probably also applies when the alterations are legally ineffective and – which is even more important – when they were only discussed without really altering the GTC.

What does "first sale doctrine" mean?

First Sale Doctrine

§ 69c no. 3 p. 2 of the German Copyright Act: „Where a copy of a computer program is put into circulation by way of sale in the territory of the European Communities or of another Contracting State of the Convention Concerning the European Economic Area with the consent of the right holder, the distribution right in respect of that copy shall be terminated, with the exception of the rental right.“

Explanation:

Regarding the resale of used software, users are often insecure. Users fear most of all injunction or compensation claims from the manufacturer. According to German copyright law, the manufacturer abandons his right to control or restrict the transfer of the respective sold program copy with the first sale of his products. This means that he in no way is entitled to prohibit the further distribution of a once sold program copy. If the manufacturer's right in the software terminates with the first sale, the second purchaser may become legal owner, and the manufacturer has no copyright injunction or compensation claims against the customer. The first sale doctrine is compelling law which cannot be waved contractually. This means: Contrary license agreements of the manufacturer become invalid at the time of termination.

We differentiate between national and international termination:

National means that if the software was put into circulation, for example in Germany, it may be sold to a new owner within Germany, because according to German law, the purchaser cannot be prosecuted by the licensor.

International means that if the software was put into circulation, for example in Germany, it may be sold to Europe (see above), e. g. the Netherlands, because according to European law, the purchaser cannot be prosecuted by the licensor. Licenses may be transferred within a company from one branch office to the other, as long as the "parent company" holding owns more than 51% of the shares. I do not know the applicable laws because this fact is beyond dispute and no longer discussed.

But what about non-EU-countries? If an office branch acquires the licenses in Europe and transfers them internally, we do not see any restrictions on the SAP-sector. If the licenses are purchased directly, one could check if the licensor could appeal to the national law in order to prohibit the use. An international termination, however, is rather the exception (see Switzerland) and may lead to restrictions for the individual.

There are further issues, like "data medium available?" und "Download supply", in the SAP-sector; however, they can be neglected.

Further questions?

- Phone:
+49 (0)
241 963
1700
- info@susensoftware
- [Online contact form](#)