



General Terms and Conditions (GTC) of Capefoxx AG

§ 1 Scope of use

1. The following General Terms and Conditions („GTC“) apply exclusively; deviating or supplementing terms of the contractual partner will not apply to the contractual relationship unless Capefoxx AG has explicitly approved in writing that they apply. These GTC also apply to all future contracts of Capefoxx AG with the contractual partner.

§ 2 Services, conclusion of contract, written form requirement

1. Capefoxx AG distributes software licenses. The contractual obligation consists of the transfer of rights of use with regard to software programs. The scope of the rights of use is derived from the mandatory provisions of copyright law as well as the license terms of the copyright owner. The rights of use with regard to the software programs will be transferred in relation to the software versions indicated in the license terms.

2. An order form signed by the contractual partner qualifies as a binding offer of the contractual partner unless the contract is concluded by mutual signature immediately. Capefoxx AG may accept such an offer within four weeks upon receipt by countersignature.

3. The contractual obligation is exclusively described in the written order confirmation or the concluded contract, respectively.

4. All agreements by and between the parties as well as any subsequent supplementary or deviating agreements need to be in writing to be effective. This also applies to the reversal of this requirement of written form.

§ 3 Payment terms

1. Prices of Capefoxx AG are exclusive of the applicable statutory value-added tax.

2. All invoices of Capefoxx AG are due for payment within 10 days of the date of the invoice without deduction.

ADDRESS: CAPEFOXX AG | Mühlegasse 18 | 6340 Baar | Switzerland

CONTACT: Phone +41 41 763 60-00 | Fax +41 41 763 60-04 | info@capefoxx.com | www.capefoxx.com

MANAGEMENT BOARD: Thomas Bauer | **CHAIRMAN:** Thomas Huth

REGISTRATION: Commercial register of canton Zug, ID CHE-466.000.151 | **VAT ID:** CHE-466.000.151 MWST

BANK DETAILS EUR: UBS Switzerland AG, Zug | IBAN: CH96 0027 3273 1773 7660 V | BIC-SWIFT: UBSWCHZH80A

BANK DETAILS CHF: UBS Switzerland AG, Zug | IBAN: CH52 0027 3273 1773 7601 U | BIC-SWIFT: UBSWCHZH80A

3. In case of late payment, Capefoxx AG is entitled to request the payment of interests in the amount of 5%. The claiming of further damages, if any, remains reserved.

4. Capefoxx AG is entitled to refuse to perform all obligations owed under the contractual relationship or to only perform them against advance payment as long as the contractual partner is in default with regard to its payment obligations.

5. The contractual partner is only entitled to exert the rights of set-off or of retention if its counter claim is undisputed or has been decreed by a final court decision.

§ 4 Delivery, delivery dates

1. Delivery and performance dates are set out in the order confirmation of Capefoxx AG respectively the contract. If it has not been agreed otherwise, indicated dates are to be understood as „approximate dates“. Final dates will be announced by Capefoxx AG in a timely manner.

2. Capefoxx AG is entitled to perform partial deliveries.

3. All delivery obligations of Capefoxx AG are subject to receiving punctual delivery. In case of late delivery without default or in case of other obstacles which Capefoxx AG is not responsible for, such as strike, lock-out, war, epidemics or pandemics, import or export bans, energy and resource shortages as well as public sanctions, Capefoxx AG is entitled to adequately postpone the transfer of rights without any default.

4. In case that Capefoxx AG is under the obligation of advance performance, it may refuse performance without default if – after the conclusion of the agreement – circumstances become apparent that give cause to the conclusion that the contractual partner is not able to fulfill its contractual obligation, i.e., its payment obligation. In this case, Capefoxx AG is entitled to determine a deadline within which the contractual partner is required to pay versus delivery or provide a security. In case such deadline expires without success, Capefoxx AG may rescind the contract and claim reimbursement of the accrued damages or vain expenses. Damage claims of the contractual partner are excluded to the extent permitted by law.

§ 5 Exclusion of other services, system responsibility

1. Capefoxx AG exclusively distributes licenses. It does not provide installation, development, support or similar services.

2. The contractual partner is solely responsible for its hardware and software environment, any interfaces – if necessary – and the compatibility and the serviceability of the acquired software licenses in relation to its hardware and software environment.

§ 6 Right of Withdrawal

1. In case that the contractual partner or Capefoxx AG receives a legal notice from a person entitled to do so on behalf of the software manufacturer, or from an auditor authorized by the software manufacturer, within 12 months of the license transfer note having been submitted by Capefoxx AG to the manufacturer, stating that they are unwilling to acknowledge the license transfer, Capefoxx AG will review this note immediately.
2. Should Capefoxx AG consider the claim as unjustified, it will clarify the matter in relation to the software manufacturer at the expense of Capefoxx AG. If it turns out that the claim is justified, Capefoxx AG may replace the products by products the software manufacturer acknowledges, within one month after the confirmation of justification of the claim by Capefoxx AG. In case Capefoxx AG is unable to provide the contractual partner with such products within one month after the confirmation of justification of the claim by Capefoxx AG, the contractual partner is entitled to withdraw from the contract regarding the products within one month after information of Capefoxx AG and will be refunded with the full value of the corresponding products in the contract. Damage claims of the contractual partner are excluded to the extent permitted by law.
3. This § 6 only applies if the contractual partner uses the products in the EU, UK and/or in Switzerland.

§ 7 Indemnification

Capefoxx AG shall indemnify the contractual partner from claims of the software manufacturer in connection with the license transfer provided that the contractual partner (i) confirms that it used the products in the EU, UK or in Switzerland, only, (ii) immediately informs Capefoxx AG about the claims, (iii) does not acknowledge the claims (or make an economically comparable statement) with regard to the claims, (iv) leaves the legal defense to Capefoxx AG to the degree procedurally permissible and (v) supports Capefoxx AG with regard to the legal defense adequately and at its own expense.

§ 8 Liability

1. Capefoxx AG shall be liable without limitation for damages caused by willful conduct or gross negligence as well as within the scope of applicable mandatory product liability provisions or in accordance with applicable mandatory law.
2. Otherwise, in particular for damages caused by simple negligence on the part of Capefoxx AG and for damages caused by auxiliary persons (Hilfspersonen), any liability on the part of Capefoxx AG shall be excluded to the maximum extent permitted by applicable law.
3. The contractual partner is required to implement adequate safeguards to prevent and minimize damages. In this context, the contractual partner also is required to secure all of its data on a regular basis.

§ 9 Applicable law, Jurisdiction

1. Agreements between Capefoxx AG and the contractual partner and all legal relationships in connection therewith, irrespective of their legal nature, are exclusively governed by the substantive laws of Switzerland, with the express exclusion of any conflict of law provisions (private international law) and international law (in particular excluding the UN Convention on Contracts for the International Sale of Goods (Vienna Convention, CISG) of April 11, 1980).
2. Any dispute arising under agreements between Capefoxx AG and the contractual partner or with respect to any and all legal relationships in connection therewith or in the context thereof, each regardless of their legal nature, shall be submitted to the exclusive jurisdiction of the ordinary courts of Zug, Canton of Zug, Switzerland.