

Pre-owned instruments and software

May I use the software purchased with a pre-owned instrument? The original manufacturers told me this violates the license agreements and the software must not be sold.

Most laboratory instrument vendors (e.g. Waters, Sciex, ThermoFisherScientific) have software end-user license agreements (EULA) which prohibit the reselling of software licenses. So, is it possible to legally buy a pre-owned instrument and to keep the software or do I violate the license agreement in this case and can be sued by the original manufacturer?

The answer for Europe and Switzerland is simple: No, these terms clearly violate European and Swiss law and are completely invalid. This has been confirmed by a number of court decisions e.g. by the federal court (BGH) in Germany, the European court in Luxemburg and a Swiss court in Zug. A detailed explanation of the topic is also available under <https://de.wikipedia.org/wiki/Gebraucht-Software> (unfortunately the page is only available in German). There is also a press release by the Court of Justice of the European Union from 2012 which is based on the EU directive 2009/24/EC on the legal protection of computer programs from 23 April 2009.

To clarify, this is different to the legal situation in the United States. There, as long as only a license to use the software is sold and not the software itself (which is usually the case), the programmer or manufacturer may prohibit further reselling,

even if you paid for the license to use the software. This is the reason why these clauses can be found in all EULA documents of the major instrument manufacturers. These are all US based companies and these EULA's follow US laws.

Generally the situation in EU and Switzerland can be summarized as follows: If a software programmer or manufacturer sells a software license, the exclusive right of distribution of a copy of a computer program covered by such a licence is exhausted on its first sale. In case of an instrument control or data analysis software such as Mass-Lynx, Analyst or Excalibur this would be the original sale of the new instrument. If the instrument is sold, the new buyer receives the full right to use the software licensed by the seller, provided that the seller does not keep a copy for himself. However, in analytical instrumentation, an acquisition software license without the instrument required for the data acquisition is rather useless. The situation is therefore analogous to a book. You might sell the book, yet you are not allowed to copy it and keep the copy.

Thus, if you purchase a pre-owned instrument from us, you cannot only be sure that the system is in perfect working condition and MS Vision will continue to support you in the future in all service related issues, but you can also be assured that the usage of the software on the system is perfectly legal under European and Swiss legislation and you receive the full rights to use it for data acquisition and analysis.