



Terms and Conditions for the temporary restricted
usage of the ATHLYZERcoach software
(Version released 08th December 2022)

Preamble

ATHLYZERcoach is a software developed by the Athlyzer GmbH for the production of video-based analyses. Therefore, ATHLYZERcoach enables the user to create analysis schemes following the individual needs, using those schemes and presenting the results of the analytic process. This feature as well as other features can be created locally in the ATHLYZERapp and transferred to other devices via ATHLYZERcloud.

The use of the software is offered in different packages with different ranges of functions. Details can be found in the respectively valid price and functionality overview.

The Athlyzer GmbH (hereafter referred to as "lessor") leases the aforementioned software products to its contracting partners (hereafter referred to as "lessee").

§ 1 Contractual Object

1. Object of this agreement is the remunerated right of use – called "Abo" – for ATHLYZERcoach for a limited period of time according to the respectively valid price and functionality overview.
2. As documentation, the lessor presents an online user instruction at <https://help.athlyzer.com>, which enables the user to check explanations about the functionality of the software while in use.
3. The installation of the software is not owed.
4. The condition of the software and its functionality is described on www.athlyzer.com. The statements made there are to be regarded as performance specifications, but not as warranty. A warranty is only granted if it is explicitly named as such.
5. The software will be updated and adjusted (see also §4) to fix potential errors and at the producer's own discretion.

§ 2 Term

1. The leasing relationship starts the day of the activation (see also § 3 number 2) and has a fixed term of 12 or 24 months. This contract can be cancelled in written form four weeks prior to the end of the fixed term the latest. Otherwise, the contract is extended for an indefinite period of time and can be cancelled in written form with one month's notice.
2. This does not affect the right to issue a termination for good cause. Good cause shall be in particular, if
 - a. the lessee violates the rights of the lessor to a considerable amount by letting an unauthorized person use the software OR
 - b. the lessee has not paid, in case of a yearly paying scheme: four weeks after the due date, despite two overdue notices via email or is in arrears with the payment of the rent fee for two successive due dates in case of a monthly paying scheme or is in arrears with a considerable amount or is in arrears with the fees of two month for a period of time, which is longer than two successive due dates, OR
 - c. the lessee grants more than one person to use an account OR
 - d. the lessee uses data, pictures or other content within the software for which he does not own the necessary rights.
3. Following the termination of the leasing relationship, the lessee is obliged to uninstall the software on all devices used and agrees to delete all leftovers of and from the software permanently. Upon written request from the lessor, the lessee has to prove to the lessor, that he carried out the aforementioned duties.

§ 3 Remuneration

- a. For the provision of the software, the lessee pays the agreed remuneration (rent).
- b. In case of payment with credit card or Paypal, the activation of the software is carried out immediately upon the conclusion of the contract and in case of direct debit upon direct debit order.
- c. If the term has been extended for an indefinite period of time according to § 2 no. 1 cl. 3 with a monthly cancellation period, the lessee is obliged to pay the current monthly remuneration for each month in advance. This does not apply, if a different agreement has been made with the lessee, e.g. about an extension for one year with the annual remuneration being paid in advance.

4 Delivery

- a. The software is available online at the website www.athlyzer.com. The lessee can register independently or is provided with login data consisting of an user-name and password, which will be send to the email address provided in the registration form. The renter may alter the password after his first login.
- b. The installation of the software (for MAC, Windows, Android or iOS) is performed by the lessee.
- c. The access to the software used is restricted.

§ 5 Rights of Use

- a. The lessee is entitled to simple usage of the software.
- b. It is not allowed to use the software by more than one person via one account.
- c. The ATHLYZERcoach software is allowed to be installed on the number of devices indicated in the respectively valid price and functionality overview.
- d. The lessee is only allowed to upload or use data, pictures and other content in ATHLYZERcoach for which he owns the necessary rights.
- e. The lessor reserves the right to anonymously use and evaluate the statistics created with ATHLYZERcoach as he sees fit.
- f. The lessee (e.g., a coach) is allowed to make uploaded data available to others (e.g., athletes and / or other coaches), if they are registered as additional users at ATHLYZER.
- g. All additional users registered at ATHLYZER by the lessee are allowed to share the data made available to them by the lessee among each other (self-contained system).
- h. Moreover, those additional users are allowed to share the data made available to them by the lessee with others outside of the self-contained system (e.g., posts on Facebook or Instagram), if the lessee has generally or particularly declared towards ATHLYZER to release this data. In doing so, it is the responsibility of the lessee and the additional users to adhere to all data protection regulations. In this respect, ATHLYZER does not assume any liability.

§ 6 Warranty

- a. The software is provided to the lessee for contractual use in appropriate condition.
- b. Potential errors are fixed through updates, whereby the lessor has no obligation to bug fix and also reserves the right to discard the support of this software at the end of 2023.
- c. The lessor is not obligated to adjust the software to changed conditions in usage and technical and functional developments, as for example changes in IT environment, especially changes in hardware or operating system, changes in functionality of competing products or create compatibility with new data formats.



§ 7 Liability

- a. The lessor takes customary diligence. In determining if the lessor is culpable, it has to be taken into account that software never can be completely error-free
- b. The liability in case of slight negligence is limited in sum to the amount of the foreseeable damage, which can typically be expected.
- c. The lessor is not liable for any loss of data or software, as the damage is based on the lessee not having performed necessary backups through which he could have secured retrieval of data with justifiable efforts.

§ 8 Additional Online Data Storage

- a. In case of additional online data storage being ordered, the entirety of these Terms & Conditions apply correspondingly.
- b. Additional online data storage can only be ordered for a month. It is renewed automatically for another month, if it is not cancelled in written form 14 days prior to the end of the fixed term the latest.

§ 9 Written Form Clause

- a. There are no verbal or written collateral agreements
- b. Changes and amendments to this contract need to be in written form to become effective. This also applies to changes of this very clause.

§ 10 Applicable Law / Place of Jurisdiction

- a. The contractual relationship shall be subject to German law.
- b. If the client is a merchant, a legal person under public law, or a separate estate under public law, Frankfurt am Main will be the exclusive jurisdiction for all claims which are the result of this contract.
- c. The same applies to persons who have no general place of jurisdiction in Germany or who have changed their residence to somewhere outside of Germany after the execution of the purchase or whose domicile or place of residence is not known at the time the lawsuit is commenced.

§ 11 Severability Clause

- a. If individual provisions of this contract, either in whole or in part, are or will become invalid, or in case of a contractual gap, the validity of the remaining regulations shall not be affected.
- b. Both parties to this agreement will replace the invalid provision by a legally admissible provision that most closely reflects its content and its economical intent.

§ 12 Data Protection Notice

The lessor explicitly advises the lessee to the following:

- a. In order to use the software from anywhere at any time, the lessee is given the opportunity to upload videos and other data from the individual device to a self-contained cloud system and to download the videos and data from the cloud system to other own and foreign devices..
- b. Due to the respective selection of the lessor, only European, mostly even German servers are used for the cloud system.
- c. If however data is downloaded from the self-contained cloud system and made available to third parties, this sets up the possibility that this data is made available to a random and unlimited amount of third parties through any servers without further supervision.
- d. Therefore, the lessee has to take over the particular responsibility to respectively decide, to whom he makes available the data he has uploaded within the scope of the Terms & Conditions.