

---

## **1 Provision, length of long-term hire**

- 1.1. The long term hire begins with the day of arrival (if necessary according to the wagon note) or, if agreed, after inspection of the wagons at the place of handover/destination specified by the lessee.
- 1.2. The long term hire ends with arrival at the place of return/destination or, if agreed, after inspection but not before the rental period has ended. The lessee will inform TRANSWAGGON in good time about the arrival of the wagons at the place of handover/destination.
- 1.3. The wagons are provided to the lessee free of all charges at the specified place of handover/destination. At the end of the rental period, the wagons must be returned to the place of return/destination in the country specified by TRANSWAGGON at the cost of the lessee.

## **2 Invoicing and Payment**

- 2.1. Accounts are collected monthly taking the length of the long term hire determined in days and the agreed daily rental rate as a basis (rent). Any days of use lost not in the lessee's responsibility in the sense of Point 4.2 shall be deducted. Settlement for lost days is in the following month at the latest.
- 2.2. The rent must be settled for the first time of provision up to the time of the proper return of the wagons in accordance with Point 1, but not before the agreed rental period has elapsed.
- 2.3. Payment of the rent is due upon receipt of the invoice.
- 2.4. If other costs from the rental relationship are incurred during the rental relationship or after it ends which TRANSWAGGON does not have to bear according to the contract, these are oncharged to the lessee after these have been ascertained. The corresponding invoices are due immediately upon receipt.
- 2.5. In the event of delayed payments, TRANSWAGGON reserves the right, without any further announcement to the lessee, to charge default interest to the lessee. The interest rate used is that prescribed in Directive 2000/35/EC or national implementation of the directive by the respective legislator. The law of the registered office of the respective TRANSWAGGON company applies when determining the interest rate.

## **3 Right of Disposal of the lessee**

- 3.1 The wagons are provided solely to the lessee during the period of the long term hire.

---

The wagons may be used on any of the railways permitted by the infrastructure operators (IO) within the European rail network.

Sub-leasing to third parties and use of the wagon in crisis regions is only allowed with prior written permission from TRANSWAGGON.

- 3.2 The lessee's right of disposal is restricted as part of the planned inspection periods for the wagons. Wagons can be delivered to the workshop prescribed by TRANSWAGGON two months prior to the end of the inspection period, in agreement with TRANSWAGGON. The wagons have to be added to the inspection at the latest one month prior to the end of the inspection period. TRANSWAGGON will request the wagons requiring inspection in good time.

If the lessee does not uphold his obligations to take the wagons out of service for inspection, or if he delays in doing so, he is liable to TRANSWAGGON for any consequences and costs that may result.

- 3.3 As a rule, the wagon may not be used to transport hazardous goods within the meaning of Annex C to Cotif 1999 (RID). In individual cases only, TRANSWAGGON reserves the right to provide exceptional written permission after written delivery of information on the goods and quantities loaded (material number/package group/transport category).

- 3.4 The lessee can freely use the wagons in the European rail network to the extent that this is technically possible and permitted by the IO or the RU (Railway Undertaking) using the wagons. In so doing, TRANSWAGGON requires that the RU using the wagon has joined the General Contract for Use (GCU) for the entire duration of use, and is shown in the list of GCU contracting parties.

- 3.5 If the lessee transfers the wagons to an RU for use, and if this RU does not participate in the GCU or is no longer included in the list of the RUs which participate in the GCU on the date of use, this may not result in any disadvantages for TRANSWAGGON. The lessee must always ensure that TRANSWAGGON is in the same position as if the wagon were used in conjunction with a RU which is a full member of the GCU.

- 3.6 After written authorization from TRANSWAGGON, the lessee is authorized, for the duration of the long-term hire, to attach advertising material to the wagon at its expense. When returning the wagons, the advertising material must be removed properly at the cost of the lessee. The lessee must pay any charges, taxes or other expenses arising from the attachment of the advertising material. The lessee must provide notice of the attachment of advertising material prior to the work being performed, and must state the workshop performing the work and the detailed work. If there are objective reasons to prevent the attachment of advertising material, TRANSWAGGON reserves the right to prohibit these.

- 3.7 The lessee must take all official prescriptions into account during the use of the wagons.

- 
- 3.8 The lessee must pay freight costs, charges, taxes and customs fees arising during the rental period from the use of the rented wagons.
- 3.9 TRANSWAGGON is entered in the GCU as the keeper (in accordance with Appendix 2 of the GCU) for the hired wagons. The GCU regulates the legal relationship between the RU using the wagon and the keeper of the used wagon.

The lessee takes on the role of an authorized third party when dealing with the RU using the wagon regarding the planning for and availability for use of the wagon for loads and empty runs.

The lessee shall clarify to the RU that any statements regarding the GCU from the RU should be directed to TRANSWAGGON as the keeper of the wagon. Irrespective of this, the lessee shall immediately forward all statements and information from the RU which it mistakenly receives concerning the keeper of the wagon to TRANSWAGGON.

The lessee is responsible to TRANSWAGGON that the RU using the wagon will uphold the provisions of the GCU, and indemnifies TRANSWAGGON of all disadvantages resulting from these not being upheld. If necessary, the lessee shall make supplementing contractual agreements with the RU to ensure compliance with the conditions of the GCU by the RU.

- 3.10 According to Directive 2008/110/EC (to amend Directive 2004/49/EC) on railway safety in the Community, wagon keeper must name an Entity in Charge of Maintenance (ECM) and have this certified in future. For a transitional period, certification according to an MOU (Memorandum of Understanding - ERA) or an independent declaration by the ECM is sufficient for functional maintenance management.
- 3.11 **TRANSWAGGON AG, Zug, Switzerland** is the ECM for all of TRANSWAGGON's wagons. A certificate by the ECM regarding a functional maintenance management system is available and has been entered in the ERA register. This issue cannot restrict use for lessees.

If TRANSWAGGON does not receive the necessary information from the RU using the wagon that is required to properly perform its function as a keeper and ECM, TRANSWAGGON reserves the right to prohibit, in writing, use of the wagon by this RU.

- 3.12 The lessee is, in no way, authorized without prior authorization from TRANSWAGGON to agree any deviations from the conditions of the GCU with the RU.
- 3.13 The lessee is jointly and severally liable to TRANSWAGGON along with the RU for any claims from the keeper for compensation or other payments from the relationship of the GCU, as far as the RU has not settled these within 12 months of the date of occurrence or it has not been possible to determine within 12 months which RU is responsible for the damage to the wagon.

- 
- 3.14 TRANSWAGGON can demand information from the lessee at any time about which RU has used the wagon. It can refuse to hand the wagon over to certain RU, whether they are members of the GCU or not.

#### **4 Maintenance and repairs charged to TRANSWAGGON**

- 4.1 TRANSWAGGON shall bear the costs for ongoing maintenance, repairs and regularly provided (main) examination of the wagons including all freights of empty runs resulting from this.
- 4.2 If a wagon has to be repaired during the long-term hire, or if it has to be reviewed and temporarily removed from service due to instructions from the responsible authorities, and if this is not the lessee's fault, the lessee is entitled to a reduction in the usage fee for this period. The rental amount is stopped from the 6th day of repair or for the period of usage limitation for the aforementioned reasons until it is resupplied to the lessee.
- 4.3 TRANSWAGGON determines the workshops that perform repair work and reviews. However, the lessee is entitled to take wagons which must be repaired at the cost of the relevant RU to a workshop authorized by TRANSWAGGON (see: <https://portal.transwaggon.de>) without prior agreement from TRANSWAGGON. In the case of the independent use of workshop, the lessee will inform TRANSWAGGON immediately. This simplification regulation does not apply if the RU using the wagon is not a member of the GCU.
- 4.4 In the case of the non-usage of a wagon due to maintenance or repair works, a wagon of equal value will be provided as a replacement to the lessee, as far as capacity allows.
- 4.5 The lessee only has a right to exchange the wagon back if he has added special fittings to the original wagon with TRANSWAGGON's permission, and if this is not present in the replacement wagon.
- 4.6 TRANSWAGGON has a policy of preventative maintenance and repair. A key element of the preventative activities is the wagon's performance in kilometers (km) and ton kilometers (tokm). For wagons in long-term hire contracts, the lessee must regularly (monthly) inform TRANSWAGGON of the tokm and km of the individual wagons on the basis of transport relations. If the lessee does not uphold this undertaking, he is liable for all of the consequences and costs associated with this failing.
- 4.7 The maintenance planning and rent are calculated on the basis of an operational performance of a maximum of 60.000 km per freight wagon per contracted year. If this maximum limit will be exceeded, the lessee must inform TRANSWAGGON about this matter in writing.
- 4.8 If the annual operational performance unexpectedly exceeds the annual maximum operational performance or the operational performance stated by the lessee as

---

part of the annual rental agreement, TRANSWAGGON retains the right to adjust the rent accordingly and to invoice the lessee for the associated additional costs for maintenance and any reduction in the value of the wagon. A calculation rate of at least EUR 1,85 per calendar day for every 10.000 additional kilometers must be assumed.

- 4.9 If there are any subsequent activities from requirements by the RU using the wagon or the authorities and associations providing safe railway operations that lead to unplanned increases in maintenance costs, TRANSWAGGON reserves the right to include the resulting verified additional costs in the rent.

## **5 Damage/loss and violations of obligations within the lessee's sphere of responsibility**

- 5.1. The lessee is liable to TRANSWAGGON for any damage and loss caused to the wagons provided as part of this contract.
- 5.2. The lessee is also responsible for any fault of a third party, who he has allowed to use the equipment and their vicarious agents.
- 5.3. The lessee is jointly liable together with the RUs that use the wagons. If the RU using the wagon is liable (according to Article 22 of the GCU), TRANSWAGGON will initially make a claim against the RU responsible for liability. If no compensation is obtained from the RU within a period of 12 months, or the liable RU cannot be determined during this period, then a claim shall be made jointly against the lessee for the damage.

In the case of damage which occurs when operating the railway, the lessee undertakes to obtain and provide TRANSWAGGON in good time with all documents (damage reports etc.), which are required to assert rights against the RU or the IO.

- 5.4. In the case of any damage, which must be accepted by the lessee in accordance with these General Terms and Conditions (*GC long-term hire*), he must reimburse TRANSWAGGON the costs for the complete repair and the freights of empty runs to and from the workshop and all of the other costs connected with the damage.
- 5.5. In the case of damage caused by him, the lessee must pay the rent for the time period of repairs at the relevant level. However, this obligation to pay is limited to a maximum of three months from the submission of the repair report by the workshop. If repairs are delayed without TRANSWAGGON being directly or indirectly responsible for the delays, TRANSWAGGON reserves the right to correspondingly extend the obligation to pay.
- 5.6. In the case of loss, the lessee is obliged to supply TRANSWAGGON in mutual understanding with an appropriate amount of compensation in money. This compensation is calculated on the present value (in accordance with Appendix 5 GCU) of the wagon at the time the damage occurred.

## **6 Return of wagons**

- 6.1 The lessee must return the wagons in a proper condition, undamaged, empty and with the same level of cleanliness as it was supplied to him.
- 6.2 As a rule, wagons are returned after the wagon has been inspected by a workshop or an external third party. Any findings ascertained during this process are binding for both contractual parties. The contractual parties can attend the acceptance, if necessary using random samples.
- 6.3 In contrast to Point 6.2, the lessee can agree a joint inspection together with TRANSWAGGON. If this is desired, the lessee must request this from TRANSWAGGON six weeks prior to the return of the wagon. The joint findings are then binding for the lessee and TRANSWAGGON. Both parties can appoint authorized representatives for the return. If the lessee or his authorized representative does not attend the joint inspection, TRANSWAGGON is authorized to perform this independently. Its findings are then binding for both parties.
- 6.4 If, after the inspection according to Point 6.2 or 6.3, wagons have to be cleaned, repaired or examined by the RU, the obligation to pay the rent ends when the work has ended, but is limited to three month from submission of the repair report, but not before the contract has expired. The corresponding costs are to be paid by the lessee.

## **7 Principles of liability**

- 7.1 TRANSWAGGON is liable according to the laws of the country in which the TRANSWAGGON company which concluded the contract has its registered office.
- 7.2 As far as legally possible, TRANSWAGGON's liability is limited to wilfulness and gross negligence.
- 7.3 Depending on the amount, TRANSWAGGON limits its liability from the rental relationship, particularly the liability on the principle of legal claims for abatement of rent, to a maximum of three month's rent of the relevant wagons.
- 7.4 TRANSWAGGON is not liable for any loss or depreciation of the transported goods.

## **8 Suitability and Condition of the Wagons, Operational Regulations**

- 8.1 TRANSWAGGON must dispatch the wagons in a proper condition. The lessee will convince himself that the wagons are in a proper condition. The lessee will inform TRANSWAGGON within one week of receiving the wagon of any defects in writing using the form that TRANSWAGGON has developed for this purpose.
- 8.2 No changes may be made to the wagon itself nor to its registration plates and labels without written permission from TRANSWAGGON, unless these have been

---

expressly ordered by the RU using the wagons or an authority. In the case of a relevant instruction, the lessee must immediately inform TRANSWAGGON in writing.

- 8.3 If the lessee neglects to advise of any defects, particularly to the registration plates and labels of the wagons, then he is liable to TRANSWAGGON and any third parties for all resulting consequences and costs.

## **9 Place of Fulfillment, Jurisdiction, Limitations**

9.1 The place of fulfillment and jurisdiction is the registered office of the TRANSWAGGON company which concluded the contract.

9.2 The law of the country applies where the TRANSWAGGON company which concluded the contract has its registered office.

9.3 Claims by one contractual party against the other are limited to a period of three years.

9.4 The original version of the General Terms and Conditions of TRANSWAGGON has been written in German and translated into the local language of each TRANSWAGGON office. In case of discrepancies between the versions, the original German text takes precedence, as far as this is permitted in the respective national legislation.

## **10 Partial invalidity**

10.1 Should one or more of the existing GC or provisions of the contract be or become invalid or unfeasible the contracting parties undertake to replace these with other valid or feasible conditions which most closely approximate these.

10.2 This does not affect any of the other provisions and these continue to be valid.

10.3 The above provisions also apply in the event that there is a loophole in the GC or in the contract. In such cases, the parties will supplement the contract or the conditions with provisions which approximate, as closely as possible, the economic objective that the contracting parties pursued when concluding the contract.