

1 General

- 1.1 TRANSWAGGON provides private freight wagons to carry out national and international transport.
- 1.2 Completion, contents and fulfilment of contracts as well as any unagreed use are subject solely to the following General Terms and Conditions for the use of private freight wagons of TRANSWAGGON (*GC Use*). Customer terms and conditions have no validity, even if TRANSWAGGON has not expressly contradicted.
- 1.3 The customer shall use the wagon on national or international rail transport or shall commission TRANSWAGGON to carry out this transportation. He acknowledges the regulations and conditions (General Terms and Conditions) of the relevant Railway Undertaking (RU), which shall be used for the transport.

The customer must uphold the regulations and conditions of the Railway Undertaking which are used to carry out the contract either by the customer or on behalf of the customer. Any consequences and costs which may result for TRANSWAGGON if these are not upheld will be borne by the customer.

- 1.4 Any agreements deviating from these *GC Use* are required in writing.

2 Offer

- 2.1 Written quotations by TRANSWAGGON can only be accepted during a time period of 30 days, starting on the day the quotation is sent, using a corresponding written wagon order. Conduct implying an intent is equal to this.
- 2.2 Quotations and agreements, even on a flat rate basis, are based on TRANSWAGGON's current prices, conditions of carriage, operational assumptions, transport pairs, conditions for provision and exchange rates of the RUs concerned at the time the quotation is made as well as the assumption that the routes at the basis of the calculation are open to traffic. If this basis for the calculations changes, TRANSWAGGON is authorized to adjust its offers and agreements to the new situation by making a declaration to the customer. Additional costs, which arise through the use of deviating transport routes, either due to a regulation or subsequent instructions from the customer, must be paid by the customer.
- 2.3 Quotations by TRANSWAGGON only include the services stated expressly within. Performing services in addition to or which differ from the offer and also the payment of additional charges or incidental costs are invoiced separately plus advance commission of 3 %.

3 Services

- 3.1 TRANSWAGGON shall use its wagons to carry out transportation for customers or, optionally, shall provide the wagons to the customer to use for a determined length of time or for a defined transport route.
- 3.2 Should TRANSWAGGON use its wagons to carry out transportation for its customers, then TRANSWAGGON shall charge an all-in rate. This all-in rate only includes the services described in the quotation.
- 3.3 If TRANSWAGGON provides the customer with a wagon for a determined length of time or for a defined transport route, they shall charge the customer a lump-sum. This lump sum is the charge for the use of the wagon from the day of handover from the RU to the customer until the day the wagon is returned to the RU. The customer performs all of the rights and obligations from freight contracts with the participating RU, and these relate exclusively to the customer.
- 3.4 Without express agreement, neither the lump sum for the use of wagon nor the all-in rate include any other costs, such as customs, taxes, import and export expenses, duty expenses, weighing costs, demurrage, side track fees, crane charges, transshipment fees, charges for out of gauge, heavy load supplements and other unforeseen costs resulting from particular circumstances. If these costs are charged to TRANSWAGGON, TRANSWAGGON will pass them on plus an advance commission of 3 %.

4 General conditions of use

- 4.1 The customer can use the wagon freely in the European rail network to the extent that this is technically possible and permitted by the infrastructure operator (IO) or the RU in the agreed relations. 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 listed in the list of GCU contracting parties. Any other use is only possible with the express written authorization of TRANSWAGGON.
- 4.2 Sub-leasing to third parties and use of the wagon in crisis regions is only allowed with prior written permission from TRANSWAGGON.
- 4.3 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).
- 4.4 TRANSWAGGON shall incur no disadvantage should the customer transfer the use and custody of the wagons to a RU which has not signed the GCU. The customer 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. Any consequences and costs which may result for TRANSWAGGON will be borne by

the customer. If these costs are charged to TRANSWAGGON, TRANSWAGGON will oncharge these costs plus advance commission of 3 %.

- 4.5 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 customer 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 customer 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 customer shall immediately forward all statements and information from the RU which it mistakenly receives concerning the keeper of the wagon to TRANSWAGGON.

- 4.6 The customer is, in no way, authorized without prior authorization from TRANSWAGGON to agree any deviations from the conditions of the GCU with the RU.

- 4.7 The customer 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 customer shall make supplementing contractual agreements with the RU to ensure compliance with the conditions of the GCU by the RU.

- 4.8 The customer 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.

- 4.9 TRANSWAGGON can demand information from the customer 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.

- 4.10 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.

- 4.11 **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 customers.

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.

5 Orders and provision

- 5.1 The order for a wagon must be placed with TRANSWAGGON and is only regarded as having been accepted once this has been confirmed in writing. The order must include all of the information required to transport or provide a suitable wagon.
- 5.2 Should TRANSWAGGON be unable to provide the wagon for the agreed date, the customer can cancel his order or make a new order agreed with TRANSWAGGON. Further reaching rights, particularly the right to compensation, are excluded.
- 5.3 If a wagon order is cancelled by the customer, TRANSWAGGON can demand compensation for the arising costs as well as the demurrage days in accordance with the demurrage regulation.

6 Use of Wagon by Customer

- 6.1 If TRANSWAGGON provides the customer with a wagon, the customer is obliged, after the wagon has been taken over by the RU, to ensure that the wagon is suitable for its purposes and is not showing any visible damage. The customer must notify any defects to TRANSWAGGON within 48 hours (not including Saturdays, Sundays and public holidays) using the form that TRANSWAGGON has developed for this purpose.

If the customer does not notify TRANSWAGGON of any defects within this period, then this is classed as confirmation of the proper condition of the wagon and the suitability for the transportation intended by the customer. In this case, TRANSWAGGON is entitled to charge the customer for demurrage and other costs of standstill, if these have arisen through the delay.

If the customer accepts the wagon for use despite defects being notified, TRANSWAGGON is not liable as a result of the defects notified.

If the customer demands that the wagon be replaced as a result of the defects notified, TRANSWAGGON will withdraw the defective wagon and replace it in good time with a non-defective wagon of an equivalent value. In this case, TRANSWAGGON is not liable for costs that arise for the customer directly or indirectly as a result of the downtime for the wagon.

- 6.2 If TRANSWAGGON has provided the wagon for a specific length of time or for a specific transport route, the customer must take into account all of the regulations by the IB, the RU and the responsible authorities as well as any instructions from TRANSWAGGON on the treatment of the wagon.

The customer is liable for all actions by the sender and his vicarious agents as well as for the information in the way bill, which have been based on information from the customer or made out by him.

- 6.3 If TRANSWAGGON has provided the customer with the wagon for a specific transport route, the customer undertakes to load and deliver the wagon without delay once it has been handed over by the RU; this applies accordingly to unloading at the point of destination and dispatch of the empty wagon according to TRANSWAGGON's instructions.
- 6.4 After the wagon has been dispatched, the customer must immediately provide TRANSWAGGON by fax or email with all information necessary for TRANSWAGGON to be able to supply the empty wagon in a proper condition at the destination. If this information is not sent or is sent after a delay, then the customer is liable for compensation, particularly from a loss of use, demurrage in accordance with current demurrage regulations and excess freight charges. At the end of use, the conditions of the participating RUs apply, also to the return of the wagon to the RU.
- 6.5 If the wagon is delivered to a destination station outside of the country in which TRANSWAGGON has its registered office, TRANSWAGGON can demand from the customer or its contracting partner that the empty wagon is delivered to a station to be named by TRANSWAGGON immediately after it has been unloaded.
- 6.6 The customer is not entitled to a right of retention of the wagon.
- 6.7 The customer must ensure the proper return of the wagon, without any residue of cargo or unit load devices in a swept-clean condition. The customer shall carry any subsequent additional costs arising for cleaning and the loss of use in accordance with the demurrage regulation.

7 Transport performed by TRANSWAGGON

- 7.1 If and as far as TRANSWAGGON carries out the transportation with its wagons itself, then the customer must issue the way bill, particularly with regards to information about tariffs, contracts with RUs and route regulations, in accordance with instructions issued by TRANSWAGGON. If way bills or appropriate directives are not available, the customer is obliged to request these immediately; otherwise he shall be liable for additional costs and other damage.
- 7.2 TRANSWAGGON can request that the customer uses way bills provided by TRANSWAGGON.

8 Damage to the wagon

- 8.1 The customer is liable for any damage and loss to the wagon which has been provided and taken in accordance with the contract until its return (Point 6.4). The decisive factor is the point of time, at which the customer or his representative received the actual power of disposal over the wagon.
- 8.2 To the extent permitted by law, the customer is also responsible for any faults of third parties which it uses, as well as their vicarious agents.
- 8.3 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 customer for the damage.

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

- 8.4 When the respective individual agreements are concluded, the customer assigns all of its claims against the participating RU and/or other third parties to TRANSWAGGON if and to the extent that these are caused by the damage to or loss of the wagon. TRANSWAGGON agrees to this transfer.
- 8.5 Sender and consignees and their representatives shall be considered as the assistants of the customer. The customer is liable for his vicarious agents.
- 8.6 The customer is liable for any damage arising within a private siding.
- 8.7 The customer must notify TRANSWAGGON within 24 hours of discovering the occurrence of any damage.
- 8.8 In the event of damage occurring, the customer is obliged to take all measures possible to ensure that the claim for compensation by TRANSWAGGON can be made against the RU and other third parties. The customer undertakes to do everything in his power to minimize damage.
- 8.9 In the case of any damage, which must be accepted by the customer in accordance with these conditions, he must reimburse TRANSWAGGON the costs for the complete repair of the wagon, the empty running costs due to the repairs and the loss of earnings arising during the repair time, which shall be calculated on the basis of the current demurrage regulation. If the wagon is completely written off, then the customer must reimburse TRANSWAGGON the full current value of the wagon in accordance with Appendix 5 of the GCU.
- 8.10 In cases of damage, the customer assumes liability for the protection of rights to the RU for its representatives as well.

9 Liability of TRANSWAGGON

- 9.1 If TRANSWAGGON provides the customer with wagons for a journey (Point 3.3), then the liability of TRANSWAGGON, as far as is legally possible, is limited to intentional and gross negligence.

TRANSWAGGON limits liability from this contractual relationship to twice the take-over rate or twice the lump-sum fee for wagon use and provision.

- 9.2 If TRANSWAGGON carries out the transportation for the customer for an all-in rate (Point 3.2), TRANSWAGGON is liable, subject to specific conditions for domestic transport, to its customers according to statutory requirements that are to be applied to companies in the international transport chain which are used to fulfill the contract.

These include, in particular, CIM, SMGS, the Hague Regulations and CMR. In all other cases, TRANSWAGGON is liable according to CIM.

TRANSWAGGON assigns its claims against the party causing the damage to the customer. The customer must primarily take recourse against the actual party causing the damage.

TRANSWAGGON is liable for domestic transportation in accordance with the valid liability regulations of the RU.

- 9.3 TRANSWAGGON is not liable for exceeding normal delivery times, even if this is caused by the wagons. Any liability for consequential damage is excluded.
- 9.4 For third party services, which TRANSWAGGON provided or arranged on the instructions of the customer, TRANSWAGGON is not liable. At the request of the customer, TRANSWAGGON shall transfer these claims against third parties to the customer.
- 9.5 If and as far as claims for compensation against TRANSWAGGON arise in accordance with the aforementioned regulations, the customer must notify TRANSWAGGON of this in writing within five days of finding the damage, but not later than four weeks after the damage occurred.

If TRANSWAGGON is not sent the claim for compensation in good time, then the claim for compensation by the customer becomes invalid. If TRANSWAGGON receives the damage notification at a time when it is no longer possible to keep their rights against a third party then the claim for compensation against TRANSWAGGON is limited.

- 9.6 TRANSWAGGON is not liable for any loss or depreciation of the transported goods.

10 Invoicing and Payment

- 10.1 If TRANSWAGGON carries out the transportation for the customer for an all-in rate (Point 3.2), the customer is obligated to immediately send the documents required for billing to TRANSWAGGON, in particular the original way bills or duplicates of the way bill.
- 10.2 TRANSWAGGON invoices must be paid without delay within ten days of the date of invoice. The invoiced amount must be paid to one of the bank accounts stated on the invoice. Offsetting is only possible with callable and undisputed counterclaims. Delayed payment occurs after the time period has elapsed even without notification.
- 10.3 In the event of delayed payments, TRANSWAGGON reserves the right, without any further announcement to the customer, to charge default interest to the customer. 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.

11 VAT

If the services of TRANSWAGGON are subject to value added tax (VAT), the VAT shall be calculated in addition to the agreed fee and stated separately in the invoice for the payer.

12 Collateral

To secure all outstanding bills, which are owed to TRANSWAGGON by the customer, they have a lien to all goods, transport documentation and funds, which have been voluntarily handed over in connection with a service in the sense of point 3.1, as far as these are the property of the customer.

13 Limitation

All claims against TRANSWAGGON, regardless of which legal grounds, are limited to six months, as long as legal regulations do not oblige a different time period. The limitation period begins with the knowledge of the beneficiary, but no later than the day the wagon has been returned by the user.

14 Place of Fulfilment and Jurisdiction

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

- 14.2 The law of the country applies where the TRANSWAGGON company which concluded the contract has its registered office.
- 14.3 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.

15 Partial invalidity

- 15.1 Should one or more of the provisions of the contract or the *GC Use* be or become invalid or unfeasible the contracting parties undertake to replace these with other valid or feasible provisions which most closely approximate these.
- 15.2 This does not affect any of the other provisions and these continue to be valid.
- 15.3 The above provisions also apply in the event that there is a loophole in the *GC Use* or in the contract. In such cases, the parties will supplement the contract or the *GC Use* with provisions which approximate, as closely as possible, the economic objective that the contracting parties pursued when concluding the contract.