

1 Provision, duration of long-term hire

- 1.1. The long-term hire period shall begin on the day of arrival (if applicable according to the consignment note stamp) or, if agreed, after inspection of the wagon at the handover point/destination specified by the lessee.
- 1.2. The long-term hire period shall end upon arrival at the return point/destination or, if agreed, after inspection, but not before expiry of the rental period. The lessee will inform TRANSWAGGON in good time of the arrival of the wagon at the handover point/destination.
- 1.3. The wagons are provided to the lessee free of charge at the prescribed handover point/destination. At the end of the rental relationship, the wagons shall be returned, at the lessee's expense and carriage paid to the return point/destination in the country specified by TRANSWAGGON.

2 Invoicing and payment

- 2.1. Accounts Settlement shall be made on a monthly basis, based on the duration of the rental period determined on a daily basis and the agreed daily rental fee (user fee). Any days lost through no fault of the lessee shall be deducted in accordance with Section 4.2. The lost days shall be invoiced in the following month at the latest.
- 2.2. The usage fee shall be calculated for the period from the initial provision of the wagons until the wagons have been returned in accordance with Section 1, but not before expiry of the agreed long-term hire period.
- 2.3. Rental fee is due upon immediately after receipt of the invoice.
- 2.4. Should other costs from the rental relationship arise during the rental relationship or after its end, which TRANSWAGGON does not have to bear according to the contract, these will be charged to the lessee after discovery. The corresponding invoices are due immediately upon receipt.

In case of delayed payments TRANSWAGGON reserves the right to charge default interest to the lessee without further notice. The interest rate applicable in EU countries is the rate specified by the respective legislator in accordance with Directive 2011/7/EU or national implementation of the Directive. In countries outside the EU, an interest rate of 0,75 % per calendar month or part thereof shall apply from the due date of the invoice amount. The law of the registered office of the respective TRANSWAGGON company is decisive for determining the interest rate.

3 Right of disposal of the lessee

- 3.1 The wagons shall be at the sole disposal of the lessee during the long-term hire period. The wagons may be used on European rail networks approved by the infrastructure managers. Subletting to third parties and using the wagons in crisis areas is only possible with the prior written consent of TRANSWAGGON.
- 3.2 The lessee's right of disposal is restricted within the framework of the planned inspection periods or the maintenance work of the wagons necessary for running. In agreement with TRANSWAGGON, wagons can be delivered to the workshop specified by TRANSWAGGON two months before the expiry of the inspection period. The wagons must be sent for inspection no later than one month before the end of the inspection period. TRANSWAGGON will request the wagons in good time with deadline inspections and mileage-dependent maintenance measures.

If the lessee does not meet the obligations to return the wagons for the aforementioned reasons or does so only with delay, they shall be liable to TRANSWAGGON for any consequences and costs incurred as a result.

- 3.3 As a rule, the wagons may **not** be used to transport **hazardous goods** in accordance with Annex C to COTIF 1999 (RID). In individual cases only, TRANSWAGGON reserves the right to issue exceptional written authorisation after providing information in writing on the goods (material number, packaging group, transport category) and quantities loaded.

**General Terms and Conditions
for the long-term hire of private freight wagons of TRANSWAGGON
without a change of wagon keeper (GTC Long-term hire)**



as of January 1, 2019

- 3.4 The lessee may freely use the wagon on the European railway network, as far as technically possible and approved by the infrastructure manager or the RU (Railway undertaking). TRANSWAGGON assumes that the RU using the wagon has acceded to the General Contract of Use (GCU) for the entire duration of use and is included in the list of contracting parties to the GCU.
- 3.5 If the lessee hands over the wagon for use to an RU that has not acceded to the GCU or is no longer included in the list of RUs that have acceded to the GCU at the time of use, TRANSWAGGON shall not suffer any disadvantages as a result thereof. The lessee shall always place TRANSWAGGON in the same position as if the carriage had been carried out by an RU that has acceded to the GCU.
- 3.6 The lessee shall be entitled to affix advertising addresses to the wagon at his own expense for the duration of the rental relationship, subject to TRANSWAGGON's written consent. When returning the wagons, the advertising addresses shall be professionally removed at the expense of the lessee. Any fees, taxes or other charges arising from the affixing of advertising addresses shall be borne by the lessee. The lessee must indicate the affixing of the advertising addresses before the execution of the work, stating the workshop carrying out the work and the details of the work. TRANSWAGGON reserves the right to prohibit the affixing of advertising addresses if there are objective reasons against doing so.
- 3.7 The lessee must observe all official regulations when using the wagons.
- 3.8 Freight charges, fees, taxes, in particular national withholding taxes, and customs duties during the rental period incurred in connection with the use of the rented wagons shall not reduce the rental rate payable or shall be borne exclusively by the lessee.
- 3.9 TRANSWAGGON has joined the GCU as keeper (in accordance with Annex 2 of the GCU) of the hired wagons. The GCU regulates the legal relationship between the RU and the keeper of the wagons used.

The lessee shall act as the authorised third party of the keeper towards the RU when scheduling and supplying the wagon for loaded and empty runs.

The lessee shall clarify to the RU that in all other cases declarations in connection with the GCU shall be addressed directly by the RU to TRANSWAGGON as wagon keeper. Irrespective of this, the lessee shall immediately forward to TRANSWAGGON all declarations and information of the RU which the lessee has received in error and which concern the keeper of the wagon.

The lessee is liable to TRANSWAGGON for compliance with the provisions of the GCU by the RU and indemnifies TRANSWAGGON against any disadvantages resulting from non-compliance. If necessary, the lessee shall enter into supplementary contractual agreements with the RU in order to ensure compliance with the provisions 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, the wagon keeper must name an Entity in Charge of Maintenance (ECM) and have this certified in future.
- 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 European Railway Agency (ERA) register. Restrictions of use cannot result from this for the lessee.

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 consent 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 by the keeper for compensation or other payments arising from the GCU, if the RU has not settled these within 12 months of the due date or if it cannot be established within 12 months which RU is responsible for the damage to the wagon.

- 3.14 TRANSWAGGON may at any time demand information from the lessee as to which RU has used the wagon and may prohibit the handover of the wagon to certain RUs, irrespective of whether they have acceded to the GCU or not.

4 Rental for maintenance and repairs at the expense of TRANSWAGGON

- 4.1 TRANSWAGGON shall bear the costs of ongoing maintenance, repair and the regularly scheduled (main) inspection of the wagons, including any empty freight charges incurred.
- 4.2 If a wagon is repaired or inspected at the instigation of the responsible authorities or temporarily withdrawn from circulation during the term of its rental period, and if the lessee is not at fault for this, the lessee shall be entitled to a reduction in the usage fee for this period. The obligation to pay the rental fee shall be interrupted from the 6th day of the repair period or the period of the restriction of use for the aforementioned reasons until it is made available to the lessee again.
- 4.3 TRANSWAGGON shall determine the workshops for carrying out repairs and inspections. However, the lessee is entitled to forward wagons that have to be repaired at the expense of the RU to a workshop approved by TRANSWAGGON without prior notification with TRANSWAGGON. In such cases, the lessee shall inform TRANSWAGGON immediately. This simplification rule does not apply if the RU has not acceded to the GCU.
- 4.4 If wagons fail due to maintenance and repair work, equivalent wagons shall be made available to the lessee as replacements, insofar as the free capacities permit.
- The lessee shall be provided with equivalent wagons as replacements, insofar as this is possible due to free capacities.
- 4.5 In such a case, the lessee only has a right of return exchange if the lessee has equipped the original wagon with special equipment with the consent of TRANSWAGGON and this is not present in the replacement wagon.
- 4.6 TRANSWAGGON pursues a policy of preventive maintenance and repair. The mileage of the wagons in kilometres (Km) and tonne-kilometres (ToKm) is an important indicator for preventive measures. For the wagons in the long-term hire contracts, the lessee will regularly submit to TRANSWAGGON the ToKm and Km to the individual wagons on a monthly basis in the following month. Should the lessee fail to comply with this obligation, the lessee shall be liable for all consequences and costs associated with this failure.
- 4.7 The maintenance planning and the rental fee shall be based on a maximum mileage of 60.000 km per freight wagon per contract year. Should the lessee foresee that the maximum limit will be exceeded, the lessee must report this in writing in advance.
- 4.8 If the annual mileage in the course of the rental contract unexpectedly exceeds the annual maximum mileage or the mileage indicated by the lessee, TRANSWAGGON reserves the right to adjust the rental fee accordingly and to charge the lessee the associated additional costs for maintenance and any depreciation of the wagon. A minimum calculation rate of 1,85 Euros per calendar day per 10.000 additional km or part thereof shall be assumed.
- 4.9 TRANSWAGGON reserves the right to include the resulting proven additional costs in the rental fee in the event that subsequent measures from specifications on the part of the RU or the authorities and associations for the establishment of a safe railway operation lead to unplanned cost increases in maintenance.
- 4.10 TRANSWAGGON is obliged in accordance with international standards to convert the wagons to noise-reducing braking technology. In order to maintain unrestricted operational capability, the conversion must be completed by the end of 2020. The resulting additional costs (essentially the wear on the wheelset) influence the pricing of the wagons. TRANSWAGGON includes a cost allocation rate for this in the pricing.

5 Rental for maintenance and repairs at the expense of the lessee

- 5.1 If it is expressly agreed in the rental contract that maintenance and repair shall be at the expense of the lessee, the following provisions shall apply.
- 5.2 The lessee shall bear the costs of ongoing maintenance and repair, including the resulting empty freight. TRANSWAGGON shall bear the costs of the regularly scheduled (main) inspection of the wagons, including the resulting empty freight.
- 5.3 The lessee's obligation to pay rent shall continue uninterrupted during repair or maintenance.
- 5.4 Repairs and inspections may only be carried out by workshops and mobile teams approved by TRANSWAGGON. Minor repairs carried out by agents of the lessee not approved by TRANSWAGGON may only be performed with the written consent of TRANSWAGGON and exclusively within the scope of this agreement. Repairs to which the RU is entitled pursuant to Art. 19.3 GCU may also be carried out by the RU without the consent of TRANSWAGGON if the RU has joined the GCU.
- 5.5 Replacement wagons during repair work may be temporarily provided by TRANSWAGGON for the contractually fixed flat-rate rental fee. Any empty freight charges incurred in connection with the provision and return of the goods shall be borne by the lessee. The rental fee of the originally rented wagon ends after the repair has been carried out on the day of arrival of the wagon at the return point/destination prescribed by TRANSWAGGON in accordance with Section 1.3.
- 5.6 TRANSWAGGON pursues a policy of preventive maintenance and repair. The mileage of the wagons in kilometres (Km) and tonne-kilometres (ToKm) is an important indicator for preventive measures. For the wagons in the long-term hire contracts, the lessee will regularly submit to TRANSWAGGON the ToKm and Km to the individual wagons on a monthly basis in the following month. Should the lessee fail to comply with this obligation, the lessee shall be liable for all consequences and costs associated with this failure.
- 5.7 The maintenance planning and the rental fee shall be based on a maximum mileage of 60.000 km per freight wagon per contract year. Should the lessee foresee that the maximum limit will be exceeded, the lessee must report this in writing in advance.
- 5.8 If the annual mileage in the course of the rental contract unexpectedly exceeds the annual maximum mileage or the mileage indicated by the lessee, TRANSWAGGON reserves the right to adjust the rent accordingly and to charge the lessee the associated additional costs for maintenance and any depreciation of the wagon. A minimum calculation rate of 1,85 Euros per calendar day per 10.000 additional km or part thereof shall be assumed.
- 5.9 TRANSWAGGON reserves the right to include the resulting proven additional costs in the rental fee in the event that subsequent measures from specifications on the part of the RU or the authorities and associations for the establishment of a safe railway operation lead to unplanned cost increases in maintenance.
- 5.10 TRANSWAGGON is required, in accordance with international standards, to convert the wagons to noise-reducing braking technology. In order to maintain unrestricted operational capability, the conversion must be completed by the end of 2020. The resulting additional costs (essentially the wear on the wheelset) influence the pricing of the wagons. TRANSWAGGON includes a cost allocation rate for this in the pricing.

6 TRANSWAGGON Portal / TRANSWAGGON Freight Buddy (TFB) / Data protection

6.1 Services

TRANSWAGGON optionally provides the lessee with the location data available in their own scheduling system or, if equipped, also the GPS/sensor data of the wagons.

Access to the data is via a standardised interface or via access to TRANSWAGGON's own web portal. The portal services around the GPS data are marketed under the brand name TRANSWAGGON Freight Buddy (TFB) and support the lessee in the monitoring of running and location, shock and impact detection, sensor-supported load monitoring as well as in communication with TRANSWAGGON (damage reports, handover reports, etc.). The portal is accessible via PC or mobile devices.

The use of the TFB is subject to a fee.

6.2 Data protection

The special regulations on data protection at TRANSWAGGON are set out in the Terms of Use for the portal or on the TRANSWAGGON website.

6.3 Right to use the data of the portal and the TFB data

The portal and TFB data are kept in TRANSWAGGON's database and can be transmitted to the user or lessee of the wagons as status reports (daily reports or action-controlled reports).

The user/lessee of the wagons is granted the right to use this data. Any transfer to third parties outside the user/lessee's group requires the consent of TRANSWAGGON.

7 Damage/loss and breach of duty in the responsibility of the lessee

7.1 The lessee shall be liable to TRANSWAGGON for damage to and loss of the wagons provided in accordance with this contract.

7.2 The lessee is also responsible for the fault of third parties to whom the lessee makes the wagons available and their vicarious agents.

7.3 The If the RU is liable (in accordance with article 22 of the GCU), TRANSWAGGON will first make use of the RU responsible for the liability. If no compensation can be obtained from the RU within a period of 12 months or if the liable RU cannot be determined within this period, the lessee will be held jointly and severally liable for the damage.

In the event of damage occurring in railway operations, the lessee is obliged to procure and make available to TRANSWAGGON in good time all documents (damage report, etc.) necessary for asserting the rights against the RUs or the infrastructure manager.

7.4 In the event of damage for which the lessee is responsible in accordance with these conditions, the lessee shall reimburse TRANSWAGGON for the costs of the complete restoration, the empty freight to and from the workshop and all other costs incurred in connection with the damage.

7.5 In the event of damage for which the lessee is responsible, the lessee shall continue to pay the usage fee for the period of repair at the applicable rate. This obligation to continue payment is, however, limited to a maximum of three months from the date of the repair report of the workshop. Should repairs be delayed without TRANSWAGGON being directly or indirectly responsible for the delays, TRANSWAGGON reserves the right to extend the obligation to continue payment accordingly.

7.6 In the event of loss, the lessee is obliged to pay TRANSWAGGON corresponding damages in monetary terms. The monetary compensation shall be based on the current value (in accordance with Annex 5 GCU) of the wagon at the time of the occurrence of the damage.

7.7 Should TRANSWAGGON discover in the course of the long-term hire relationship that the lessee repeatedly and despite a written request by TRANSWAGGON to change his behaviour continues to improperly operate a wagon and thereby cause damage to the wagon which causes a permanent reduction in value, TRANSWAGGON reserves the right to terminate the rental contract for good cause and to demand the return of the wagons. TRANSWAGGON's rights arising from the contract, in particular payment for repair work, empty freight and remaining wagon rent, shall remain unaffected by the extraordinary termination in any case.

7.8 TRANSWAGGON shall, in addition to the pure invoicing of the costs of repairing violent damage caused by the customer, also charge a handling fee to cover the administrative costs of handling the damage.

8 Return of wagons

8.1 The lessee must return the wagons in a proper condition, undamaged, empty and with the same level of cleanliness as when they were provided.

8.2 The return of the wagons shall always be carried out within the framework of an inspection of the wagon by a workshop or an external third party. The findings made are binding for both parties to the contract. The contracting parties may accompany the acceptance test on a random basis, if necessary.

8.3 Notwithstanding Section 8.2, the lessee may agree with TRANSWAGGON on a joint inspection. The lessee must request TRANSWAGGON to do this six weeks before returning the wagon. The joint findings are then binding for the lessee and TRANSWAGGON. Both parties may appoint a representative for the return. If the lessee or his authorised representative does not appear for the joint inspection, TRANSWAGGON is entitled to carry this out independently, whereby their findings are then binding for both parties.

8.4 If wagons have to be cleaned, repaired or inspected by the RU after inspection in accordance with Section 7.2 or 7.3, the obligation to pay the rental fee shall end upon completion of this work, however limited to three months from the date of the repair report, but not before the expiry of the contract. The associated costs shall be borne by the lessee.

9 Principles of liability

9.1 TRANSWAGGON shall be liable in accordance with the statutory regulations of the country in which the TRANSWAGGON company which concluded the contract has its registered office.

9.2 As far as legally possible, TRANSWAGGON's liability is limited to intent and gross negligence.

9.3 TRANSWAGGON's liability under the rental contract, in particular liability on the basis of statutory rent reduction claims, shall be limited in amount to a maximum of three monthly rents for the respective wagon.

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

10 Suitability and condition of the wagons, operating regulations

10.1 TRANSWAGGON shall dispatch the wagons in proper condition. The lessee shall make sure that the wagons are indeed in said condition. The lessee shall notify TRANSWAGGON of any defects in writing within one week of receipt of the wagons using the form provided by TRANSWAGGON for this purpose.

10.2 Without the written consent of TRANSWAGGON, no changes may be made either to the wagon itself or to its registration plates and addresses, unless they have been expressly ordered by a RU or an authority. In the event of a corresponding order, the lessee must immediately address a written notification to TRANSWAGGON.

10.3 If the lessee fails to notify TRANSWAGGON of any defects, in particular to the registration plates and addresses of the wagon, the lessee shall be liable to TRANSWAGGON and third parties for all consequences and costs arising therefrom.

11 Lessor's special right of termination

The lessor is entitled to extraordinary, complete or partial termination in the following cases:

- In the event of insolvency or the opening of insolvency proceedings against the lessee,
- Restructuring measures of the lessee's company with recourse to creditors,
- Delay in payment for more than two monthly rents, if reminders have been issued and payment has not been received within 2 weeks,
- If the lessee is responsible for the maintenance and does not comply with these obligations despite a written warning,
- In the event of improper use of the wagons contrary to the terms of the contract despite a written warning,
- Termination of an agreed and un-renewed bank guarantee despite a written request for extension.

12 Place of fulfilment, jurisdiction, statute of limitations, original text

- 12.1 The place of fulfilment and jurisdiction shall be the registered office of the TRANSWAGGON company which concluded the contract.
- 12.2 The law of the country shall apply in which the TRANSWAGGON company which concluded the contract has its registered office.
- 12.3 The claims of one contracting party against the other shall become statute barred within a period of 3 years.
- 12.4 The General Terms and Conditions for the long-term hire (GTC Long-term hire) of TRANSWAGGON are originally written in German and, if applicable, translated into the national languages of the individual local TRANSWAGGON offices. In the event of differences between the translated versions and the original German text, the original German text shall take precedence insofar as this is permissible under the respective national legislation.

13 Severability clause

- 13.1 If one or more provisions of the contract or of the GTC Long-term hire become void, ineffective or impracticable, the contracting parties undertake to replace these by other effective or practicable provisions which come as close as possible to these.
- 13.2 All other provisions shall not be affected and shall remain in full force and effect.
- 13.3 The foregoing provisions shall also apply in the event that the contract or the GTC Long-term hire should prove to be incomplete. In this case, the parties shall supplement the contract or the GTC Long-term hire with provisions which correspond as closely as possible to the economic objective pursued by the contracting parties in concluding the contract.