



Gesellschaft für Vermietung und Verwaltung von Eisenbahnwaggons

General Terms and Conditions for Rail Wagon Leasing In Public Transport As at: October 2006

§ 1 General

1. The following General Terms and Conditions are an integral part of the freight wagon leasing by the lessor. They apply for business people and companies.
2. By accepting these General Terms and Conditions without objection, the lessee agrees to the exclusive validity thereof for the lease and possible further business.
3. Other General Terms and Conditions of the lessee do not apply even if they are transmitted to the lessor in confirmation letters or otherwise.
4. To be effective, any oral subsidiary agreements as well as the exclusion of and amendments and/or supplements to these General Terms and Conditions require the express written approval of the lessor. The same shall apply to any waiver of this written form requirement.

§ 2 Term of lease, Termination

1. The lease shall commence on the day on which the wagons are dispatched or provided by the lessor.
2. The lease shall terminate on the day of the return according to the agreement (§ 12) but not before the agreed lease has expired. If the return is required by the lessor by passing the wagons on to a third party or by provision for this purpose, the lease shall end on the day preceding the dispatch or provision.
3. The lease always shall be terminated by notice in writing. The contractual period of notice shall be 14 days for a term of the lease of up to three months, one month at the end of the month for a term of the lease from three months to one year and three months at the end of the calendar month for a term of the lease of more than one year.
4. If the lease is not terminated, the lease shall be renewed by the term of the lease that has last been agreed.

§ 3 Rental

The obligation to pay rent shall take effect on the day of dispatch (according to the acceptance stamp or the computer printout on the wagon bill/bill of lading) of the relevant wagon from its station of origin or on the day of dispatch from another station agreed or on the day of its provision there and shall end when the term of the lease expires according to § 2, in case of delayed return, however, not before the day of arrival at the station of origin/another station agreed as specified in the agreement (§ 12). The rent does not include VAT, withholding tax, customs duties or other direct or indirect taxes and charges (e.g. possible lease fees specified by the authorities). Any such costs arising from the lease shall be borne by the lessee. If the lessor receives less than the agreed rental due to withholding tax or similar costs, the lessee undertakes to pay the relevant difference. The rental and the maintenance and repair planning have been determined on the basis of a maximum mileage of 31,069 miles (50,000 km) per calendar year. If the actual annual mileage exceeds this value, the keeper has to be notified of this.

The lessor has to provide the lessee with information on the actual mileage per wagon in an appropriate form when the wagon is returned but at least once a year.

§ 4 Freight

Any freight arising during the term of the lease and from the provision and return and other fees/costs/damage arising in relation with the transport and parking of the wagons shall be borne by the lessee.

§ 5 Suitability and condition

1. The lessor shall dispatch the wagons in a good working order and in accordance with the agreement. The lessee shall immediately receive a written report on it.
2. The lessee has to check the condition of the wagons according to the report, the cleanliness of the tank and the suitability of the wagons for his purpose.
3. The lessee has to notify the lessor in writing of any deviations, especially from the report, within one week of receipt of the wagons and within one week of the receipt of the report at the latest. Otherwise, the wagon is to be deemed duly delivered. In case of justified defects accepted by the lessor, the lessor may provide a replacement wagon.
4. The lessor also has to be notified in writing of defects occurring during the term of the lease within one week of discovery.

§ 6 Maintenance and repair

1. The rent shall include the reliable maintenance of the wagons according to Article 7 of the AVV and Appendix 9 and 10 to the AVV including periodic or mileage-related or other inspections required.
2. The lessee has to provide the wagons to the lessor at his cost on the maintenance dates announced and written on the wagon and for any other inspections required according to section 1 in a good working order and suitable for inspection, especially completely emptied and cleaned. If any wagons have been used for products whose residues cause damage to the tanks or parts thereof, especially acids and alkaline solutions, the tanks shall be neutralised before they are returned. Pressurised gas tanks shall be returned with expanded and degassed tanks.
3. The costs of cleaning measures, especially for neutralisation, expansion and/or degassing, shall be borne by the lessee.
4. If and while any wagons are examined on a rotational basis or repaired, no matter for what reason, or inspected as required by the authorities or otherwise temporarily withdrawn from service, especially by order of a railway company that signed the AVV, during the term of the lease, the lessee is not entitled to receive an exemption or discount from the rent, unless the temporary non-usability was caused by the lessor.
5. The keeper determines the workshops where repairs and/or inspections are carried out.



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§ 7 Operating regulations

1. The lessee shall comply with current versions of any relevant operating and legal regulations, especially with
 - the *Gefahrgutverordnung Straße und Eisenbahn* (GGVSE) [Regulation on Carriage of Dangerous Goods by Road and Rail]
 - *Ordnung für die Internationale Eisenbahnbeförderung gefährlicher Güter* (RID) [Regulations concerning the International Carriage of Dangerous Goods by Rail] and the “*Allgemeiner Verwendungsvertrag von Güterwagen* (AVV)” [General Agreement on the Use of Goods Wagons], as amended, alsoif they affect the lessor as the keeper. The lessee has especially to ensure that the wagons also comply with the design, equipment and labelling specifications of these regulations between the inspection dates. The lessee has immediately to notify the lessor as the keeper in writing of deviations therefrom.
2. The lessee has constantly to be informed of other regulations on the use of such wagons adopted by the authorities and strictly comply with them.
3. Any changes to the design or addresses require the written approval of the lessor. This shall also apply if such changes are required by a railway company.
4. If the lessee culpably fails to notify the lessor of defects of registration numbers and/or addresses of the wagons, he shall be liable to the lessor and third parties for any consequences and costs arising therefrom.
5. Any manufacturer's and ownership labels on the wagons must not be removed.
6. If the lessee wants to apply his own addresses, he shall bear any costs arising therefrom and from the subsequent removal and reapplication of the original addresses.
7. Tank wagons must not be operated from the (tank-) outside with heat. Outlet and heating facilities shall be kept free.

§ 8 Liability of the lessor

1. The liability of the lessor according to § 536 a, paragraph 1, sentence 1, BGB 1 [German Civil Code] (strict warranty liability) is excluded.
2. Unless otherwise provided by law, the lessor shall assume full liability for any damage resulting from any breach of contractual or non-contractual obligations caused by intent or gross negligence or from the lack of guaranteed quality or from any impediment to performance with regard to the conclusion of the agreement the lessor is responsible for.
3. The lessor shall only be liable for simple negligence (except for bodily injury) in case of delay of performance, impossibility of performance or the breach of essential contractual obligations.
The lessor shall only be liable for property and financial damage if the occurrence could be reasonably expected; liability shall be limited to a maximum amount of € 5 million.
4. The lessor shall assume full liability if his performance becomes impossible during delay, unless the damage would also have occurred if the performance had been provided in due time.

5. The liability for any other damage shall be excluded, if permitted by law; any liability according to the *Produkthaftungsgesetz* [Product Liability Act] and other legal regulations shall remain unaffected.

§ 9 Liability of the lessee

1. The lessee shall be liable for loss of and damage to the wagons or parts thereof that occurred during the term of the lease if he and his vicarious agents are responsible for it. This shall especially apply to damage or impairment to the wagons caused by cargo.
2. Together with the using railway company, the lessee shall be jointly and severally liable to the lessor for any claims for damages of the keeper and other payments under the terms of use agreement if the used railway company did not settle them within 12 months of maturity or the using railway company that is responsible for the damage to the wagon cannot be determined within 12 months. The lessor shall be notified of any impairment, loss and disappearance immediately after discovery. In this regard, Article 20.1 of the AVV shall apply. Furthermore, the lessee shall promptly provide to the lessor any information and documents required for making any claims against the using/transporting railway company, the railway infrastructure operator or other third parties; the lessee especially shall initiate the preparation of damage reports according to Appendix 4 of the AVV and support the lessor in enforcing the claims in other respects. If the wagons are in the custody of the railway company, the lessee shall cause the railway company to provide the lessor with the information according to Article 18 of the AVV promptly and directly.
3. If a loss or damage to the wagons occurs outside of the Federal Republic of Germany, the lessee shall be liable, no matter for what reason, i.e. also in case of force majeure and/or in the event of war.
4. The lessee shall indemnify the lessor against any claims of third parties that are made according to the provisions of the GGVSE, RID, AVV or any other legal basis if the lessee is responsible for the liability event.
5. Furthermore, the lessee shall indemnify the lessor against any liability arising from the use, especially legal liability, unless the lessor is responsible for the liability event.
6. If the lessee is responsible for the liability event and in the liability case according to the above section 3, the rent shall be paid beyond the term of the lease until the reconditioning for contractual use or the payment of damages has been made if the wagons could only be restored thereafter.
7. In any case of loss of or damage to a wagon, the lessee shall promptly inform the lessor of the goods transported with it by him, especially liquid or gases, if required by the lessor.
8. The lessee shall inform the lessor of all railway companies he used for the transport of the goods, if required by the lessor. The lessor may order the lessee not to have the wagon used by certain railway companies, no matter if they joined the AVV or not.



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§ 10 Right of disposal of the lessee

1. The wagons shall be at the sole disposal of the lessee during the term of the lease, they may, however, only be used by him for his own transports and for the purpose specified in the lease.
2. The express approval of the lessor is required for sending them abroad, delivering them to railway companies that did not join the AVV or passing them on to third parties with or without payment; this approval must be in writing to be effective.
3. If the lessee has the leased private freight wagons transported by a railway company that did not join the AVV and/or on private tracks contrary to the provisions of § 10.2 in breach of the agreement, he shall ensure – notwithstanding §§ 6 and 9 of our “General Terms and Conditions for Rail Wagon Leasing” – that the shipping railway company gives the lessor the same rights and obligations with regard to maintenance and liability, especially according to Appendix 12 AVV, as if the AVV and the appendices thereof would be applicable in his favour.
If the lessee does not meet this obligation in due time or does not meet this obligation completely, he shall be responsible for the disadvantages arising therefrom for the lessor. Above all, he shall indemnify the lessor against any claims of third parties pursuant to the above-mentioned regulations.
The lessor may order the lessee not to deliver wagons to a certain railway company.
4. According to Article 9.3 and 14 of the AVV, the lessee shall act as the person having the right of disposal of the keeper towards the using railway company. The lessee must not agree changes of the provisions of the AVV with the railway company without the prior express approval of the lessor.
5. The lessee shall have no right of retention with regard to the wagons.

§ 11 Use of freight wagons

1. The lessee shall have the leased wagons regularly transported in the public railway system by a railway company that joined the AVV.
2. The lessee shall ensure that the railway companies used by him apply and comply with the terms of the AVV and the appendices thereof with due diligence in a reliable and professional manner, carry out the inspections specified in the AVV and the appendices thereof and promptly provide him with the data and information required for the operation and maintenance of the wagons, especially the actual mileage of the wagons.
3. The lessee shall promptly provide the lessor with the mileage of the wagons leased by him and with other data and information to be transmitted according to the AVV and the appendices thereof. The lessee as the person having the right of disposal of the lessor is authorised to receive information on the actual mileage of the wagon according to Article 15, paragraph 2, AVV.

§ 12 Termination of lease

1. Upon termination of the lease, the lessee shall return the wagons at his cost in good working order, as specified in the agreement and as they were provided, especially completely emptied and of the same degree of purity (according to the *UIP-/VPI-Reinheitsschlüssel* [UIP/VPIPurity Code]), to the station of origin written on the wagon/another station agreed. The lessee shall inform the lessor of the goods, liquids or gases shipped by him, if required by the lessor.
2. If any wagons have been used for products whose residues cause damage to the tanks or parts thereof, especially acids and alkaline solutions, the containers shall be neutralised before they are returned. Pressurised gas tank wagons shall be returned with expanded and degassed containers.
3. If any wagons have to be cleaned, repaired or inspected by governmental authorities after they have been returned, the obligation to pay rent shall end when the work has been completed but not before the expiry of the agreement.
4. If any wagons have to be taken out of service without the lessor or lessee being responsible for it, the agreement shall end after the day on which the wagons were last available to the lessee. If any wagons have to be taken out of service, the lessor will make effort to provide replacement wagons, the lessee, however, is not entitled to this.
5. In case of wagons that have disappeared, the obligation to pay rent shall end three months after they have been last dispatched. The acceptance stamp/computer printout on the wagon bill/bill of lading shall be applicable. The disappearance will be considered proven when the periods of Article 20.1 of the AVV have expired.

§ 13 Rent adjustment

1. In case of proved cost increases within the scope of goods wagon leasing, especially due to changes of the payments to be made by the lessor to meet statutory requirements, the lessor may demand an adjustment of the part of the agreed rent that is dependent on these costs.
2. The adjustment shall take effect not earlier than the 1st of the month following the month in which the lessor demanded it from the lessee in writing.

§ 14 Place of performance and jurisdiction

1. Place of performance and jurisdiction shall be the registered office of the lessor.
2. The lease shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

§ 15 Miscellaneous

If any of the provisions of these General Terms and Conditions is or becomes invalid, in whole or in part, or a gap to be completed is found, this shall not affect the validity and enforceability of the other provisions; instead, the parties shall agree a valid replacement provision that comes as close as possible to the economic effect of the invalid or insufficient provision.