



Gesellschaft für Vermietung und Verwaltung von Eisenbahnwaggons

On Rail Gesellschaft für Vermietung und Verwaltung von Eisenbahnwaggons mbH
General Terms and Conditions for Rail Wagon Rental in Public Transport
Dated as of June 2020

§ 1 General Regulations

1. The following General Terms and Conditions are an integral part of the freight wagon renting by the lessor. They apply to business people and companies.
2. Deviating Terms and Conditions of the lessee do not apply even if they are transmitted to the lessor in confirmation letters or otherwise.
3. 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.
4. The lessor has joined the „General Contract of Use for Wagons (GCU)“, which specifies the mutual rights and obligations of the lessor as Wagon Keeper and the Railway Undertaking (hereinafter referred to as RU) carrying out the transport of the wagon. When hereinafter referred to GCU, the currently valid version shall be applicable. The relevant version is available on the Internet at www.gcubureau.org

§ 2 Tenancy

1. The lessor provides the lessee with the freight wagons (hereinafter referred to as „wagons“) further specified in the rental contract according to the rental amount and rental period agreed upon in the rental contract.
2. Properties of the wagon(s) not specified in the rental contract do not establish a reason to withdraw from the contract.
3. Further details are specified in the applicable rental contract.
4. As long as the rental is not terminated, the rental shall be prolonged by the term of the rental that has last been agreed, not longer, however, than twelve months.
5. A tacit prolongation of an effectively terminated rental contract shall be ruled out.

§ 3 Rental

1. 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 rental 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).
2. The rental does not include VAT, withholding tax, customs duties or other direct or indirect taxes and charges (e.g. possible rental fees specified by the authorities). Any such costs arising from the rental 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.
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 (in written form or in universal file format, e.g. Microsoft Excel).

3. If the lessee uses the wagon in a customs territory outside the EU, the required customs treatment has to be co-ordinated with the lessor
The lessor shall provide the lessee – if possible – with suitable documents. The lessee shall present all import and export documents unsolicited. All import duties, fees or costs arising from the above-mentioned obligations of the lessee, shall be borne exclusively by the lessee.

§ 4 Freight

Any freight arising during the term of the rental and from the provision and return and other fees and costs arising in relation with the transport and parking of the wagons, as for instance marshalling or procurement of customs documentation, 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 their 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.
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 tank wagons as well as other cases of full-service contracts according to Article 7 of the GCU and Appendix 9 and 10 to the GCU including periodic or otherwise required inspections. It does, however, not include kilometric or mileage-dependent inspections, as far as kilometric or mileage performance agreed upon in the rental contract is exceeded.
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. Wagons with 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. In the case of freight wagons but not of tank wagons, the lessee has to bear all costs arising from ongoing maintenance/repair (e.g. replacement of brake blocks, lubrication, etc.), as well as from reliable maintenance of the wagons according to Article 7 of GCU and Appendix 9 and 10 of GCU including periodic or otherwise obligatory inspections of all freight wagons except tank wagons. This does not apply to full-service contracts.



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§ 7 Operating regulations

1. The lessee shall comply with current versions of any relevant operating and legal regulations, especially with
 - *Gefahrgutverordnung Straße, Eisenbahn und Binnenschifffahrt* (GGVSEB) [Regulation on Carriage of Dangerous Goods by Road, Rail and Inland Navigation]
 - *Ordnung für die Internationale Eisenbahnbeförderung gefährlicher Güter* (RID) [Regulations concerning the International Carriage of Dangerous Goods by Rail] and
 - *Allgemeiner Verwendungsvertrag von Güterwagen* (AVV) [General Contract of Use for Wagons (GCU)],as amended, also if they affect the lessor as the keeper. The lessee has to ensure in particular that the wagons also comply with the design, equipment and labelling specifications of these regulations between the inspection dates. The lessee has to notify the lessor as the keeper immediately in writing of deviations therefrom.
2. The lessee has to keep constantly 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 labelling 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 labelling of the wagons, they 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 or painted over or covered.
6. If the lessee wants to apply their own labels, they shall bear any costs arising therefrom and from the subsequent removal and reapplication of the original labels. The application of labels has to be carried out exclusively by the lessor or according to their instructions.
7. Tank wagons shall by no means be heated from outside. Drain devices and heating facilities shall be kept free.

§ 8 Liability of the lessor

1. The liability of the lessor according to §536a, paragraph 1, sentence 1, BGB 1 [German Civil Code] (strict warranty liability) is excluded. A damage claim of the lessee for initial damages is only given if the lessor can be held liable for their existence or non-elimination. This is for example not the case if the lessor orders the rental wagon(s) for the lessee from a manufacturer. („rental straight from the drawing board).
2. The lessor shall assume liability within the framework of the legal liability regulations 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 upon conclusion of the contract; liability shall be limited to a maximum amount of € 5 million.

§ 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 rental if they and their vicarious agents are responsible for it. This shall especially apply to damage or impairment to the wagons caused by loaded goods.

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 GCU 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 GCU 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 GCU promptly and directly. A railway infrastructure operator does not count as a third party, but is a vicarious agent of the using/transporting railway company.
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 GGVSEB, RID, GCU 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 not responsible for the liability event.
6. If the lessee, their vicarious agent or a third party to whom the wagon was submitted, is responsible for the liability event, the rent shall be paid beyond the term of the rental 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 on the goods transported with it, 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 GCU or not.

§ 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 them for their own transports and for the purpose specified in the rental agreement.
2. The lessee has to ensure that the wagon is not used for the transport of such goods which it is not suitable for and which could in particular damage the wagon and/or its superstructures.
3. The dispatch of wagons abroad, their transfer to railway companies which have not joined the GCU or paid or unpaid handover to a third party is subject to the explicit consent of the lessor; it must be in writing in order to become effective. It must be emphasized that the lessee must not be an aim of sanctions and not break sanctions or applicable export restrictions passed by the European Union or one of its member states, the United Nations or the USA. The lessee must not use the wagon(s) to break sanction laws or violate applicable export restrictions of a sanctioning body. The same applies to any use in countries or territories which are subject to the above-mentioned restrictions as for instance Syria, South Sudan, Sudan, Venezuela, Cuba, Iran, North Korea or Crimea.



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4. The lessee shall not make use of revenues or profits derived from business with countries or territories subject to the above-mentioned restrictions to meet liabilities towards the lessor. This shall only apply if national or European regulations, in particular anti-boycott laws, are violated.
5. The lessee shall also guarantee that the obligations pursuant to § 10, Number 3 and 4 will be adhered to also in the case of subleasing of the wagon(s). The lessee shall as well guarantee that the wagon(s) will not be used in countries or territories subject to corresponding restrictions.
6. According to Article 9.3 and 14 of the GCU, 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 GCU with the railway company without the prior express approval of the lessor.
7. The lessee shall have no right of retention with regard to the wagons.
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 of the dispatching station 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 GCU have expired.

§ 11 Use of freight wagons/GCU regulations

1. Unless the lessee has not joined as a railway company itself the GCU, the GCU is considered agreed between lessor and lessee upon conclusion of the rental contract.
Unless the lessee is not a railway company by themselves, but submits the wagon to a railway company or other third party, the lessee always has to be treated with regard to the lessor as if the lessee had assumed the obligations of a railway company stipulated in the GCU. This applies in particular to the obligation to co-operate, inform and notify according to the GCU. This does not affect the obligation of the lessee to make sure that the railway companies chosen by the lessee fulfil their duties towards the lessor as wagon keeper according to the GCU. The same applies to such duties resulting from binding orders issued by regulatory bodies.
2. 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, GCU. In so far, the lessee is also entitled to relieve the railway company from its further obligation to provide information to the lessor. The lessee explicitly recognises the above-mentioned obligation to provide information to the lessor as their own obligation resulting from the rental contract

§ 12 Termination of rental agreement

1. Upon termination of the rental, 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-Reinheitsgrad [UIP/VPI Purity Code]), to the station of origin written on the wagon/another station agreed. The lessee shall inform the lessor in writing of the goods, liquids or gases shipped by them, if required by the lessor.
2. If any wagons have been used for products whose residues might have caused damage to the tanks or parts thereof, especially acids and alkaline solutions, the tanks shall be neutralised before they are returned. Pressurised gas tank wagons shall be returned with expanded and degassed tanks.
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.