

## General Terms and Conditions of Hire

of  
On Rail Gesellschaft für Eisenbahnausrüstung und Zubehör mbH (hereinafter referred to as  
the “Lessor”)

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## 1 General Information (GTCs, GCU , ECM, OMR)

1. The following General Terms and Conditions of Hire (GTCs) form an important and integral part of the Hire Agreement for freight wagons from On Rail GmbH (hereinafter referred to as: the "Lessor") to entrepreneurs as defined in section 14 of the German Civil Code (BGB), legal entities under private and public law or separate funds constituted as a public-law entity (hereinafter referred to as the "Hirer"). They apply to all future Hire Agreements, even if no specific reference is made to this.
2. By acknowledging or accepting these General Terms and Conditions of Hire without objection, the Hirer agrees to their exclusive validity for the Hire Agreement and all subsequent business. Any terms and conditions or other agreements that deviate from these GTCs are only valid if we have expressly acknowledged them in writing. Neither our silence nor the acceptance of payment of the agreed rent shall be deemed as such an acknowledgement.
3. In the event of any contradictions between the Hire Agreement and these GTCs, the individually negotiated terms of the Hire Agreement shall prevail. This also applies to special arrangements or subsequent agreements related to customers or wagons. The provisions of the GCU (multilateral General Contract of Use for Freight Wagons) that govern the relationship between the keeper and the railway undertaking (RU) apply (to the extent that the Hirer is also a railway undertaking) only subsidiary to the Hire Agreement and the GTCs (cf. section 2.3 GCU) and only insofar as they are not amended or excluded by these GTCs or individual agreements.
4. The Lessor reserves the right to amend these GTCs during the course of the business relationship. The Lessor will notify the Hirer of any changes. The Hirer can object to changes in writing within four (4) weeks of notice; otherwise they shall be deemed as accepted by the Hirer.
5. The hired items comprise freight wagons of the type(s) defined in the quotation/Hire Agreement for use in international freight transport. With the exception of rolling stock exclusively authorised to operate on connecting tracks, they are certified according to international regulations and registered in a national vehicle register (NVR).
6. The Lessor is generally also the keeper and Entity in Charge of Maintenance (ECM) of the wagons, provided the Lessor has not hired the wagons itself. As such, the Lessor is responsible for ensuring that the wagons conform to generally accepted engineering standards and the technical specifications of the freight wagons. The TSI provisions, the eligibility criteria and the current GCU provisions are the standards used to determine this.
7. The Hirer shall receive operating, maintenance and repair documentation (OMR) as a document or file that indicates how the hired wagons may/must be used, operated, inspected, maintained and repaired. The documentation also includes wagon-specific requirements.

## 2 Entry into Force, Term of Hire and Termination

1. The Hire Agreement and thus the obligation to pay enters into force on the day of
  - actual acceptance or
  - dispatch or
  - provisioning of the wagons,
 whichever comes first (hereinafter referred to as the "date of handover").
2. It ends
  - upon expiry of the agreed term of hire or notice period or

- the transfer to a third party at the request of the Lessor or
  - the return as per 13,
- whichever comes first (hereinafter referred to as the "date of return").
3. The date of handover and return always counts as one full rental day. The rental of the respective wagon(s) is always calculated based on full calendar days, even if they are only partially used.
  4. For terminations with due notice under Hire Agreements of indefinite duration, the notice period is three (3) months to the end of the calendar month for both parties in deviation from section 580a (3) BGB. This also applies if the Hire Agreement begins during the course of a month. Limited Hire Agreements end upon expiry of the term. The parties will agree on an extension at least three (3) months before expiry of the term of the Hire Agreement. As such, if the Hire Agreement continues by mutual agreement after expiry of the actual term of hire, then it shall be extended for an indefinite period unless otherwise agreed. Section 545 BGB is waived. Continued use of the hired items by the Hirer does not constitute an extension of the Hire Agreement.
  5. This in no way affects the right of extraordinary notice of termination for either party. The Lessor may give extraordinary notice of termination for an important reason within the Hirer's sphere of influence, in particular if the Hirer
    - fails to meet payment obligations of any kind amounting to more than one month's rent, or is in default of more than one month's rent;
    - breaches any of the following contractual obligations (identified as such in these GTCs), i.e. if the Hirer
      - does not fulfil or does not fulfil on time its obligation to maintain the hired wagons as per 6 (1) of these GTCs or
      - its (cooperation) obligations as per 6 (7) and (10) of these GTCs with regard to inspections (general inspection and/or inspections in accordance with Appendix 9 of the GCU) or
      - fails to notify the Lessor immediately in writing of any defects in the wagons that occur during the term of hire as per 7 (5) of these GTCs or fails to comply with its obligation to observe the load limit of the hired wagons as per 7 (6) of these GTCs;
    - breaches any other (as referred to above and designated as such in these GTCs) contractual obligation, in spite of having received a written warning from the Lessor;
    - is the subject of an attachment order, particularly an attachment order pertaining to the hired wagons
    - accepted bills of exchange or cheques are not honoured
    - does not use or maintain the wagons in accordance with the contractual (e.g. GTCs, GCU), legal (see 7 (1)) or technical provisions (e.g. OMR, DIN and EN standards) or otherwise in compliance with regulations or
    - insolvency proceedings are initiated in respect of the Hirer's assets or insolvency proceedings are rejected due to lack of assets.
  6. The Hirer can give notice of extraordinary termination for a specific wagon if the Lessor is at fault for failing to or failing to successfully carry out work to remedy defects in spite of receiving a reminder and a deadline for doing so and a wagon cannot be used as intended for longer than three (3) months as a result or due to other reasons for which the Lessor is responsible as per 8 (2). 5 (2) sentence 3 applies accordingly.

7. The risk of use lies solely with the Hirer, as does the risk that the Hirer may not be able to use the wagon for any reason for which the Lessor is not responsible as per 8 (2). This also applies to accidents and force majeure, but not to defects or prior damage as per 7 (2). It does not give the Hirer the right to prematurely terminate the Hire Agreement in part or in full, nor does it release the Hirer from the Hire Agreement in part or in full. The Lessor is only responsible for the general usability and deployability of the wagons as per 1 (5), but not for the suitability of the wagons for specific transport purposes or goods.

### 3 Rent, Calculation, Payment, Collateral

1. The rent is exclusive of VAT, customs duties or other direct or indirect taxes and levies along with any contract fees in the applicable statutory amount when due that the Hirer is responsible for paying. The rent is invoiced in the first half of the respective month and payable on the last day of the respective month. In the case of quarterly billing, rent is invoiced in the first half of the first month of the respective quarter for that quarter and is due by the middle of the second month of the quarter. Payment is not deemed to have been effected until it is credited to one of the Lessor's business accounts. The Lessor is not under obligation to accept cheques and/or bills of exchange for the sake of fulfilment.
2. Invoices shall be issued as arranged in the Hire Agreement, otherwise at the Lessor's discretion, in paper or electronic form that complies with the statutory requirements and sent to the invoice recipient designated by the Hirer by post or email or retrieved by the recipient.
3. The agreed rent is calculated prior to the conclusion of the Hire Agreement on the basis of Lessor's estimate of annual mileage and the mileage-based maintenance and repair schedule. Unless otherwise agreed in writing, the rent is based on an annual mileage of 50,000 km. The Hirer undertakes to inform the Lessor in writing (contractual obligation) of the actual annual mileage in the previous year at the end of the first quarter of each calendar year at the latest without being asked to do so. If the Hire Agreement is terminated during the year, then the actual mileage must be reported within one month of the end of the Hire Agreement. At the Lessor's request, the Hirer shall undertake to confirm in writing the mileage reported by the RU. It is also considered to be a report if the mileage is published in a central rolling stock reference database (e.g. RSRD<sup>2</sup>) that the Lessor can access.
4. The Hirer is required to furnish the equivalent of three (3) months' rent in cash (contractual obligation) as a deposit to cover all financial obligations – irrespective of their legal grounds – including future financial obligations, in connection with this Hire Agreement, its execution and its termination and the entire business relationship prior to taking acceptance of the wagon. The deposit without interest shall be transferred to a separate account belonging to the Lessor. Alternatively, the Hirer may furnish an indefinite performance guarantee or security from any licensed bank in the European Union or take out a credit insurance policy. The guarantee or security must be directly and indefinitely enforceable, issued upon first request of and in accordance with a sample provided by the Lessor and waive the defences of voidability, set-off (within the limits of 15 (2)), unexhausted remedies and bailment. The statute of limitations for claims arising from the security provided shall commence at the earliest when a claim is made in writing and shall end at the earliest three (3) months after expiry of the limitation period for the secured claims.

The cash security shall be repaid or the security/guarantee deed must be surrendered if it is established after termination of the Hire Agreement that no further claims can be asserted by the Lessor. This is assumed to be twelve (12) months after the Hire Agreement ends at the latest, unless claims filed by then have not yet been settled.

5. The costs in respect of obtaining and perpetuating the guarantee (e.g. guarantee interest) are payable by the Hirer. If, during the term of hire, the deposit is used in part or in full, it shall be topped up voluntarily by the Hirer (contractual obligation) without delay. The Hirer is not permitted to offset the deposit repayment claim against liabilities vis-à-vis the Lessor. The Lessor may also subsequently demand a deposit during the term of the Hire Agreement.
6. All payment obligations other than rent are due immediately upon receipt of invoice and must be paid within fourteen (14) days. This payment term also applies to rent in the event of late invoicing (no. 1). No cash discount is granted.

### 4 Freight, Passing of Risk

1. All freight charges and other charges and costs incurred in connection with the transportation and storage of the wagon during the term of hire and when the Hire Agreement enters into force and terminates (not just in the event of late returns or non-contract-compliant returns) shall be paid by the Hirer. This also applies to all transports to and from workshops for any reason with the exception of reasons for which the Lessor is responsible as per 8 (2) or defects and prior damages as per 7 (2). The Hirer is also responsible for travel costs for mobile repairs that save freight charges to/from the workshop.
2. The Hirer's passing of risk includes, in particular, all cases of accident, loss, force majeure, vandalism or third-party causes, provided they are not the result of normal wear and tear/defects to the hired items as per 7 (2) or the fault of the Lessor as per 8 (2). It extends from the date of handover to the date of return of the respective wagon including transports.

### 5 Suitability and Condition, Defects, Acceptance upon Handover and Return

1. The hired wagons are subjected to a formal acceptance procedure involving both parties at the time of handover and return. A wagon-specific acceptance report is to be prepared as per the Lessor's specifications and signed by both parties. The acceptance report shall detail any defects, objections and other observations with regard to the number and condition of the wagons. The date of acceptance shall, if possible, be jointly determined. Otherwise, the Lessor shall request the Hirer's presence, usually at the place of dispatch, providing at least one week's notice. It is in the Hirer's interest to ensure defect-free handover, because the Hirer assumes the risk of deterioration during the term of hire (cf. 4 (2)).
2. The Hirer may reject the acceptance procedure for a specific wagon if the wagon has defects/damage that impair its operational safety or usability. The same applies to the Lessor upon return. If there are so many wagons that are not ready for acceptance that the total number of wagons is no longer of interest for the handover/return, then acceptance of all wagons can be refused. The Lessor/Hirer must provide evidence of this; the Lessor may exercise the powers outlined in no. 5.

3. In the event of an unexcused absence of one of the parties at the acceptance procedure or its failure to hire a third party to represent it despite receiving a proper and timely invitation or in the event of a refusal of signature, that party will receive a copy of the acceptance report prepared by the other party. In this case, the party that fails to attend the acceptance procedure is required to provide written notice of complaints regarding deviations from the content of the acceptance report within one week of receiving it. If no written notice is provided or if it is not provided on time, the acceptance report is deemed to have been acknowledged. This also applies if no acceptance procedure is carried out; in this case, the one-week period begins with handover/return of the wagons. If one of the parties was prevented from attending the acceptance procedure through no fault of its own, that party may request that the acceptance be repeated within this period.
4. In case of warrantable defects reported during handover of the wagons, the Lessor is entitled to provide a replacement wagon instead of remedying the defects to avert further claims. The Hirer shall accept performance deviations and other type-related deviations if the replacement wagons also satisfy the minimum requirements and the Hirer can be reasonably expected to accept such deviations in consideration of the contractually agreed purpose.
5. The return of the wagons is also subject to a formal acceptance procedure as per nos. 1-3 involving the Lessor or an authorised representative (12 (4)). It is rebuttably assumed that defects which are not reported during handover but are reported during return occurred during the term of hire and were caused by the Hirer or Hirer's vicarious agents. This does not exclude the Lessor's right to assert claims which are not specified in the handover acceptance report; however, the Lessor is obliged to furnish proof of this.
6. The costs incurred as a result of the wrongful failure of, refusal to take part in and/or unexcused failure to perform the acceptance procedure shall be borne by the party at fault for failing to ensure a successful acceptance procedure. For the remainder, each party shall bear its own costs incurred as part of the acceptance procedure.
7. The Lessor shall provide the wagons in a safe to operate condition which is generally suitable for the contractually agreed purpose. The Lessor provides no other warranties or guarantees. The onus is on the Hirer to inspect the condition of the wagons, their cleanliness, equipment and their suitability for their intended use during the acceptance procedure (cf. 2 (7)).

#### 6 Maintenance, Impact Damage, Overhauls

1. The Hirer is responsible for the maintenance of the hired freight wagons – with the exception of regularly scheduled general inspections – during the term of hire. Said maintenance must be performed at the Hirer's expense in accordance with the keeper's/ECM's guidelines (contractual obligation). Maintenance includes all measures needed to maintain the required technical state of the wagons. This includes inspections (no. 4), maintenance (no. 5) and repairs (no. 6).
2. Unless otherwise stipulated in the Hire Agreement, the provisions outlined therein shall apply. The remaining provisions of the GTCs remain unaffected hereof.
3. In both cases as per nos. 1 and 2, the Hirer shall bear the costs for the repair of so-called impact damage. Impact damage is understood to include all adverse changes in the condition of the wagon resulting from external influences that occur during the period of use. In addition to impact damage, which includes in particular all damage due to improper use (e.g. flats, operating wagons with the handbrake on) or operation (e.g. overloading, overrunning), accidents and derailments, vandalism (graffiti) as well as loss (theft), the Hirer is responsible for all atypical

detrimental changes in the condition of the wagons during the term of hire, unless these are related to wear and tear, defects or prior damage as defined in 7 (2). The Hirer must prove this, whereby the limitation set forth in Appendix 12 of the GCU is not decisive.

4. Inspection is the comparison of the actual condition with the target condition to determine to what extent maintenance and/or repair work is necessary. These inspections also include required inspections outside the regular mileage-related or time-dependent general inspections (overhauls or tank inspections). The Hirer undertakes to read the OMR instructions defined in 1 (7), to observe and follow them and only to use qualified loading and unloading personnel and workshops and to ensure they receive the appropriate instruction and training.
5. Maintenance includes suitable measures needed to maintain the required technical state and delay the depletion of existing wear supplies. It includes readjusting, lubricating, cleaning, preserving, refilling or replacing operating supplies or consumables and replacing wear parts (e.g. filters, seals, brake blocks, etc.). This must be completed as part of scheduled work, the minimum standard for which is specified by the Lessor/ECM with the OMR documentation (see 1 (7)) and which the Hirer can adjust in consultation with the Lessor. The Lessor/ECM may subsequently change its specifications if the Hirer's usage and specifications require this.
6. Repair refers to the rectification of damages and flaws in defective freight wagons in order to restore them to their required technical state and ensure that they can be used as intended. Assignment of responsibility as outlined in Appendix 12 of the GCU shall not apply in the relationship between the Lessor and the Hirer, even if the Hirer is also the RU.
7. The Hirer is required to provide the wagons to a workshop designated by the Lessor for general inspections (regularly scheduled overhauls) and tank inspections in a safe-to-operate and ready-to-inspect condition. In particular, the tanks shall be emptied and cleaned (if necessary, also depressurised and degassed) at the Hirer's expense. The Lessor will request the wagons due for inspection from the Hirer in due time (i.e. at least one (1) month in advance). If the Hirer does not fulfil its obligation to cooperate (contractual obligation) or does not fulfil this obligation in time despite being requested to do so in good time, then the Hirer shall be liable for all consequences (decommissioning) and costs arising as a result.
8. The Hirer is entitled to bring wagons that are to be repaired at its expense or the expense of an RU to one of the authorised workshops without notifying the Lessor in advance. If this is done at the expense of the keeper, then this is only permissible if it serves to restore operability and the limit outlined in the *de minimis* (bagatelle) clause in section 19 of the GCU is not exceeded. In this case, it is sufficient to subsequently inform the Lessor of the repair, whereby the work performed, the corresponding maintenance certificates and operating releases must be documented in writing and sent to the Lessor immediately for the vehicle history. The authorisation outlined in 8 (1) does not include interventions that interfere with the statics or structural design of the wagons.
9. The Lessor shall designate workshops where general inspections and repairs can be performed outside of section 8 taking into account the proximity of the workshop to the place of use, the available capacity and the technical suitability for the type of vehicle and the repair work to be performed. If defects/damages are discovered during the general inspection that should have been remedied at the Hirer's expense during ongoing operation as per 1 and 3, then the Hirer shall bear the costs for their rectification along with any proportionate ancillary/accompanying costs.

10. If and as long as wagons undergo regularly scheduled maintenance or, regardless of reason, are repaired, inspected by authorities or otherwise decommissioned during the term of hire, then the Hirer is not entitled to a waiver or reduction of the rent or the provision of replacement wagons for this period, unless the temporary inoperability or delay is demonstrably due to gross negligence on the part of the Lessor as per 8 (2) or any circumstance outlined in 7 (2). If the wagons are not subject to regular inspection in accordance with Appendix 9 of the GCU (e.g. in works transport), the Hirer must inspect the wagons periodically in accordance with the inspection criteria outlined in Appendix 9 of the GCU in order to maintain operational safety, depending on the conditions of use (contractual obligation). The duty to inform as per no. 8 above applies accordingly.
11. In the case of rolling stock approved exclusively for operation on connecting tracks, the Hirer shall be responsible for the regular inspection of the vehicles in accordance with the Ordinance on the Construction and Operation of Railways ((E)BOA) regulations that apply to the connecting tracks. In addition, the Hirer shall bear the responsibility and costs for the (general) inspections to be performed thereafter. The duty to inform as per 8 (2) applies accordingly.

#### **7 Hirer's Obligations (Use of Wagons, Maintenance and Repair, Burden of Proof in Cases of Deterioration)**

1. The Hirer is required to comply with all relevant legal requirements and operating regulations in the respectively valid versions, particularly the
  - national (e.g. Ordinance on the Transport of Dangerous Goods by Road, Rail and Inland Waterways (GGVSEB)) and international regulations on the transportation of hazardous materials (e.g. Regulation concerning the International Carriage of Dangerous Goods by Rail (RID))
  - provisions of the "General Contract of Use for Freight Wagons" (GCU) and its appendices within the scope of 1 (3)
  - maintenance and technical regulations (such as the International Union of Railways (UIC), DIN/EN standards and OMR)
 Beyond this, the Hirer also undertakes to remain informed of all other legal, official, trade association and technical regulations pertaining to the operation of such wagons and to observe them meticulously.
2. Upon contractual acceptance, the maintenance obligation and the obligation that Appendix 12 of the GCU assigns to the keeper shall pass to the Hirer, provided it is not the result of normal wear and tear within the scope of the wagon's use for the intended purpose (with the exception of wear parts as per 6 (5) sentence 2, e.g. brake pads) or of material or design flaws (defects) immediately reported by the Hirer or the defect was already documented in the handover acceptance report as prior damage or was reported within one (1) week after handover (see 5 (1-3)).
3. Modifications to the design, the wagon or labels/markings on the wagon are subject to Lessor's written consent. In the event of modifications and alterations to the wagons and their disassembly, the costs of which shall be borne by the Hirer, the Lessor may decide at its own discretion whether to restore the wagons to their original condition or leave them in their altered state, unless otherwise agreed.
4. Owner and manufacturer plates may not be removed. Any own lettering or logos applied to the wagon by the Hirer must be approved in advance by the Lessor and all costs associated with them and their subsequent removal and the reapplication of the original lettering shall be borne by the Hirer.

5. The Hirer shall take particular care to ensure that the wagons comply with construction, equipment and marking regulations in the period between the official inspections. Deviations and damages that occur during the term of hire must be reported to the Lessor in writing immediately after their discovery (contractual obligation), whereby the Hirer must prove compliance with the time limit for complaints.
6. The wagon load limit may under no circumstances be exceeded (contractual obligation).
7. The Hirer expressly agrees that the wagons it hires will be equipped by the Lessor with devices used for tracking (GPS), mileage recording or displaying overloads or other parameters that are important for the keeper. The Hirer further consents to the Lessor's analysis of data obtained through this equipment, provided the collection, storage and use of the data serve to ensure the security and safety of the rolling stock fleet and performance of the contract. The data belong to the Lessor. If the Lessor consents to the Hirer equipping the hired wagons with GPS tracking or mileage/data recording devices after determining in advance the suitability and permissibility of said devices, then the Hirer must provide the Lessor the data related to use and operation of the hired wagons (mileage/incidents, etc.) at a minimum. The collected data, with the exception of the aforementioned data related to use and operation, belong to the Hirer.
8. The Lessor is entitled to inspect the wagons at any time or to instruct a third party or the Hirer itself to inspect the wagons. The Hirer undertakes to facilitate the Lessor's inspection of the wagons in every way possible.
9. The Hirer shall indemnify upon first request the Lessor against all fines, warning and administrative fees, charges and other costs imposed by authorities or other bodies due to violations of traffic and statutory laws and all other legal regulations. The only instance in which the Hirer is not liable for this is if the circumstances causing the violation are due to gross negligence on the part of the Lessor as per 8 (2) or due to material or design flaws and defects as defined in no. 2, provided that the Hirer reported them immediately as per no. 5 and/or section 5 (1-3).
10. The Hirer bears the burden of proof that changes/deteriorations in the hired items
  - are initial defects/prior damage (unless they are specified in the handover acceptance report)
  - are due to design or material flaws
  - are the result of the wagon's use for the intended purpose (normal wear and tear)
  - did not occur during the Hirer's period of care and possession
  - are not due to causes in the Hirer's sphere of risk, obligation and responsibility
  - and – insofar as is relevant in the relationship with the Lessor pursuant to these GTCs or the Hire Agreement with regard to any obligation of the Hirer to provide compensation or accept liability – the Hirer is not at fault for the deterioration of the hired items

#### **8 Lessor's Liability**

1. Exemption from warranty liability  
The Lessor is exempted from (strict liability warranty) liability for initial material defects.
2. Limitation of fault-based liability  
The Hirer may only assert claims against the Lessor on the basis of fault in the event of
  - gross negligence on the part of the Lessor (deliberate and gross negligence)

- deliberate breach of material contractual obligations that would jeopardise contractual performance, in particular when it is impossible to comply with material contractual obligations and in cases of delays in performance (see 3)
  - defects the Lessor has fraudulently concealed or guaranteed do not exist
  - damages resulting from injury to life, limb or health
  - or personal injury and damage to personal property (under the German Product Liability Act)
3. Limitation of liability in the event of default  
The Lessor shall provide the wagons on the agreed dates. The Lessor is not liable for the delayed provisioning of wagons due to reasons for which it is not responsible. This includes transport delays, spare parts shortages and the overloading of workshops through no fault of the Lessor along with other cases of force majeure (strikes, wars, epidemics, pandemics, earthquakes, floods, etc.). Severable parts of the Lessor's performance shall be taken into consideration separately with regard to dates and deadlines. The Hirer is required to accept partial performance.
4. Limitation of the scope of damages  
In the event of a deliberate breach of material contractual obligations as per 2, liability in the event of minor to moderate negligence shall be limited to the reasonably foreseeable damage typical for such contracts.

#### 9 Hirer's Liability/Insuring the Wagons

1. The hirer and its vicarious agents (e.g. RUs, IMs, loaders/unloaders) undertake to use and transport the wagons with maximum caution and care and to avoid any actions that could result in overloading, damage or increased wear and tear (contractual obligation).
  2. The Hirer is liable for the loss of or damage to the wagons or parts thereof during the term of hire.
  3. The Hirer shall indemnify the Lessor from any claims arising from the use of the wagons, in particular legal liability (cf. 7 (1) and 10 (3)) and according to section 27.1 of the GCU (cf. 11 (5)). Any indemnification of the Lessor by the Hirer shall (partially) lapse to the extent that the liability incident is (also) attributable to intent or gross negligence on the part of employees or vicarious agents of the Lessor as per 8 (2) or circumstances as per 7 (2), for which the Hirer is obliged to provide evidence (7 (10)).
  4. In case of liability pursuant to the above provisions, rent payments shall continue – including beyond the term of the Hire Agreement – until contractually agreed use is finally restored or full payment of appropriate compensation has been effected. In cases of no. 3, sentence 2, the rent will be reduced in whole or part.
  5. In each case of loss or damage to a wagon or parts thereof, and otherwise at the request of the Lessor, the Hirer shall notify the Lessor immediately in writing of the goods, liquids or gases which were transported in the wagon (contractual obligation).
  6. In the event of accident, theft, fire or an operational incident (e.g. derailment) and similar incidents, the Hirer shall immediately inform the Lessor of this and take all the measures necessary to preserve evidence relating to the sequence of events leading up to the incident so that the Lessor can assert claims for damages. The Hirer also undertakes to refrain from acknowledging fault or agreeing to a settlement (cf. 11 (6)) relating to the Lessor's claims for damages (contractual obligations).
7. The Hirer shall take out comprehensive insurance for the wagons for the entire term of the Hire Agreement from a reputable insurance provider located in the European Union covering damage or destruction caused by loss, theft, fire, flood or accident, vandalism, accidental loss and all liability vis-à-vis third parties, and in respect of the transport risks (including delivery and return), and the Hirer's negligence. This (all-risk) liability insurance must provide coverage of at least €20 million for personal injury and €20 million for property damage/financial loss per claim, maximised twice per year (cf. 14 b General Railway Law (Allgemeines Eisenbahngesetz – AEG). It is important to ensure that the policy covers damage to rented property. In the case of comprehensive insurance, the indemnity limit is the new value of the wagon (i.e. the amount generally required to purchase new vehicles of the same number, type, quality and with the same equipment) (contractual obligation). In the case of wagons that are more than 10 years old at the start of the term of hire, the lump sum provided for in the Hire Agreement, or alternatively the replacement value in accordance with no. 8 below, is decisive for determining the compensation value.
  8. In the event of destruction or total loss/damage, this insured value shall be indemnified taking into account Appendix 5 to the GCU.
  9. For each wagon deemed lost pursuant section 20 GCU, the Hirer shall be obliged to send an immediate enquiry to the RU that last transported the wagon. The keeper's rights pursuant to section 20.4 of the GCU remain unaffected. The continued payment of rent for lost wagons is governed by 9 (4); the obligation to indemnify is governed by 9 (7 and 8). If the RU that last transported the wagon is responsible for the loss of the wagon, then the Lessor shall assign to the Hirer its claims for compensation against the RU under section 20.3 GCU, provided the Hirer has indemnified the Lessor. The above provisions also apply to the loss of wagon components and accessories.
  10. The Hirer is obliged to furnish the Lessor with written evidence of the insurance coverage to be maintained by the Hirer as per no. 7 at any time on request and otherwise regularly at least once a year by submitting a policy or confirmation of insurance. The Hirer undertakes to immediately notify the Lessor of any material changes (e.g. pertaining to insured risk, insurance coverage, deductibles, release from obligation to perform, contract cancellation, termination) (contractual obligation).
  11. The Hirer is liable regardless of fault
    - in cases of delayed return as outlined in section 287 BGB.
    - in cases of damage below or, in cases of greater damage, up to a share of the de minimis threshold set forth in section 19.3 GCU
    - for vandalism and graffiti.
 The Hirer is liable for its own fault as well as for the fault of third parties (e.g. vicarious agents), irrespective of whether the damaging act occurred in the course of performance or only on occasion, as well as for third parties and their operations (e.g. IM) which come into contact with the hired items at the Hirer's request.
  12. The Hirer is solely responsible for securing the load in relation to the Lessor and shall indemnify the Lessor in the event of recourse against all claims of third parties upon first request (contractual obligation).
  13. Insofar as these GTCs provide for lump-sum compensation for damages or expenses, the Hirer is entitled to prove that no damages/expenses were incurred at all or only to a lesser extent. The Lessor is entitled to prove specific, higher damages/expenses.

#### 10 Provisioning/Dispatch/Sub-Hire/ Operating Contractor

1. Although the wagons are at the sole disposal of the Hirer for the term of the Hire Agreement, they may only be used for Hirer's own transportation purposes and for the purpose specified in the Hire Agreement. The Hirer's right of disposal is restricted within the scope of the planned wagon overhauls (6 (7)).
2. The dispatch of wagons to another country outside of Europe, in crisis areas or paid or unpaid transfer of the wagons to third parties (sub-hire) is subject to the Lessor's express prior written consent. The Hirer's right of termination under section 554 (1) sentence 2 BGB is excluded. Furthermore, the Lessor shall only grant consent to sub-hire if it can be proven that the contractual obligations assumed here will be imposed at a minimum (including but not limited to the GCU and OMR) and the Lessor will be assigned claims from the sub-hire agreement (including but not limited to rent, deposit, insurance benefits). The Lessor must be notified in advance of the start and end of the sub-hire relationship, transport connections and a wagon number list of the sub-hired wagons.
3. The Hirer is deemed as an operating contractor within the meaning of section 1 of the Liability Act as long as it has not been released from the obligations arising from the Hire Agreement – including due to late return. The Hirer is liable under the same legal regulations that apply vis-à-vis the owner, even if the Lessor is not the owner.

#### 11 Use of the Freight Wagons/General Contract of Use (GCU)

1. The Hirer is a signatory to the General Contract of Use for Freight Wagons GCU). Its provisions shall also apply to this Lessor/Hirer relationship in addition and subordinate to the provisions in the Hire Agreement and these GTCs in their respectively valid versions, unless they have been excluded or modified (cf. 1 (3)).
2. The Hirer ensures that it or the railway undertaking (RU) which it uses complies with the terms of the GCU and its appendices with the necessary diligence and competence, that checks are implemented as specified in the GCU and its appendices and that the data and information – in particular information pertaining to the wagons' actual mileage – which are necessary for the wagon's operation and maintenance are furnished without delay (cf. 3 (3)).
3. In the cases of section 9.3 and 14 of the GCU, the Hirer shall act as the authorised representative vis-à-vis the RU. The Hirer shall make it clear to the RU that in all other cases declarations in connection with the GCU (e.g. in accordance with section 15) should be addressed from the RU directly to the Lessor as the wagon keeper. Irrespective of this, the Hirer shall pass on to the Lessor all declarations and information from the RU pertaining to the wagon's keeper without delay.
4. At the Lessor's request, the Hirer undertakes to specify all RUs which it has used for the carriage of the wagons. The Lessor may prohibit the use of the wagon by certain RUs for objective reasons, irrespective of whether they are signatories to the GCU or not.
5. Furthermore, the Hirer shall assume the liability incumbent on the keeper under section 27.1 of the GCU in conjunction with sections 7.2 and 7.3 of the GCU and shall be responsible for the RU's compliance with the provisions of the GCU. Any indemnification of the Lessor by the Hirer shall (partially) lapse to the extent that the liability incident is (also) attributable to intent or gross negligence on the part of employees or vicarious agents of the Lessor as per 8 (2) or circumstances as per 7 (2), for which the Hirer is obliged to provide evidence (7 (10)).

6. The Hirer is jointly and severally liable with the RU vis-à-vis the Lessor and/or keeper. The Lessor shall be notified of any impairments, unusual operational incidents or losses as soon as they transpire. The Hirer shall also immediately provide the Lessor with all information and documents which are necessary for the assertion of any claims against the RU(s), the Infrastructure Manager(s) or other third parties using the wagons and particularly to prepare damage reports pursuant to Appendix 4 of the GCU, and to otherwise support the Lessor in the assertion of claims. If the wagons are kept in the safe custody of a railway undertaking, the Hirer shall ensure that the railway undertaking provides the information pursuant to section 18 of the GCU directly and immediately to the Lessor. The Lessor may, at its discretion, make a claim against the Hirer and/or the RU or other third parties jointly and severally liable to it, although it is not obliged to enforce its claims first vis-à-vis the RU or other third parties. The Hirer and the Lessor shall support each other in asserting and enforcing their claims vis-à-vis the RU or third parties. The Hirer is liable to the Lessor under the Hire Agreement; the RU is liable to the keeper under the use agreement and the Hirer under the contract of carriage. As the Hirer has made the final arrangement and the RU is its chosen partner, it is primarily responsible for pursuing claims.
7. Wagons that must be repaired at the expense of the Hirer or the transporting RU may be taken to a workshop authorised by the Lessor without prior arrangement with the Lessor, provided section 19 of the GCU and 6 (8) of the GTCs are observed.
8. If the Hirer has the hired wagons transported by an RU that has not joined the GCU and/or has the wagons transported on non-public track infrastructures, then the Lessor shall be positioned as if the GCU and its appendices and the modifications provided for herein applied in its favour (contractual obligation).
9. If the Hirer does not satisfy this requirement in due time or in full, it shall be liable to Lessor for any resulting disadvantages. In particular, the Hirer shall upon first request indemnify the Lessor from claims of third parties within the limits of section 7 no. 9 sentence 1. The same applies in the event of a breach of its duty to notify or inform the Lessor, irrespective of whether this arises from the Hire Agreement, these GTCs, the GCU or statutory or official regulations.
10. The Hirer may use the wagon(s) freely on the European public rail network, to the extent that this is technically feasible and permissible and authorised by the IM or RU (cf. 1 (5)).
11. The use of the wagons for the carriage of dangerous goods in accordance with appendix C to COTIF (RID) is only permitted if this is expressly stipulated in the Hire Agreement or otherwise agreed in writing.

#### 12 Termination of the Hire Agreement

1. Upon termination of the Hire Agreement, the Hirer shall return the wagons at its own expense in a safe-to-operate and ready-to-use condition to a station specified by the Lessor. The wagons must be completely empty, fully cleaned and decontaminated if necessary, in the case of tank wagons, complete with all parts and in their original state of cleanliness (as per the UIP/VPI Cleanliness Code) as they were provided (on the date of handover by the Lessor).

When tank wagons are returned, they must be accompanied by written confirmation of cleaning and documentation of the freight that was transported prior to the wagon's return.

2. When the wagons are returned, they must be in the same condition they were in on the date of handover with the exception of signs of wear and tear as a result of normal use, i.e. use within the agreed, otherwise normal wear and within the scope of the agreed annual mileage. The wagons to be returned must meet all of the requirements of Appendix 9 of the GCU.
3. If it is necessary to take a wagon out of service during the term of hire for reasons which are neither the responsibility of the Lessor nor of the Hirer or without the Hirer being liable under these GTCs or the Hire Agreement, then the Hire Agreement for this wagon shall end after the day on which said wagon was last available to the Hirer. In such cases, when wagons must be taken out of service, the Lessor will make every effort to provide replacement wagons. However, the Lessor is expressly not obliged to provide a replacement wagon. In the event of total technical or financial loss for which the Hirer is responsible or liable or for which the Hirer has a duty of indemnity under these GTCs, the Hirer shall pay compensation for use in the amount of the rent until payment is made in full for damage to this vehicle (cf. 9 (4)).
4. In lieu of acceptance by the parties (5 (6)), the Lessor may also hire one of its authorised wagon workshops to determine the technical condition of the wagons. The workshop's determinations will then be considered binding for both parties as arbiter's findings.
5. Claims for compensation by the parties pursuant to section 548 BGB are subject to a statute of limitations of twelve (12) months from the date of return of the wagons as per 13 (1).

### 13 Return of Wagons

1. A wagon is deemed to have been returned when the Lessor collects and takes acceptance of it after prior notification of release as per no. 5; simply depositing the wagon at the specified point of return does not constitute return. The Lessor is obliged to accept the wagon unless it is entitled to refuse because the wagon does not meet the requirements of 12 (1-2). The Lessor must receive unrestricted ownership within the meaning of no. 3.
2. The Lessor is not required to keep safe objects which the Hirer leaves behind in the wagons when they are returned.
3. The wagon shall be returned to the Lessor in a fully operational, technically flawless, proper and clean condition (cf. 12 (1)), without any damages and free of any cargo, dirt or debris and, if applicable, with the stanchions up and the flaps closed.
4. The Hirer undertakes to inform the Lessor in advance in writing of its intention to return the wagons with a wagon list (notification of availability) and to agree on a date for the return. The Hirer's duty to exercise proper care does not end until the wagons have been accepted by the Lessor. The Lessor shall be afforded an opportunity to perform a technical inspection of the wagons in good time prior to handover and, in particular, in order to prepare measures as per 5.
5. If there are circumstances which may prevent the further use of the wagons or damages, then the Hirer undertakes to remedy these at its own expense before the end of the hire period (contractual obligation).
6. If it fails to do so, it is deemed that Hirer accepts without any additional period of grace being granted, the Lessor's immediate initiation of repairs at the Hirer's expense in

respect of any damage which is ascertained during the acceptance procedure. The Lessor is entitled to charge an administrative surcharge of 10% above the costs to be borne by the Hirer if it arranges for repairs. 12 (4) applies accordingly for the determination of damages.

7. If the wagons are dirty or damaged, the Hirer shall pay all costs of repair along with all related ancillary and subsequent costs, in particular costs of transport, travel, work and materials and cleaning expenses. 12 (4) applies accordingly for the determination of costs.
8. In the event of delayed return, the Hirer shall pay a usage fee in the amount of the rent plus a 10% delayed return surcharge beyond the agreed end of the term of hire until the wagons have been returned. If the Hirer returns the wagons with the Lessor's consent, whether there are any defects, damages or remaining loads that it must eliminate (in the sense of 5 above), then the Hirer must pay a usage fee in the amount of the rent beyond the agreed end of the term of hire until all of the defects, damages or remaining loads it is responsible for are eliminated, but for a maximum period of 45 calendar days following the end of the term of hire.
9. If wagons must be temporarily parked by the Lessor on its own or third-party tracks as a result of conduct by the Hirer in breach of the contract, flat-rate demurrage charges amounting to 25% of the agreed daily rent per calendar day and wagon shall be payable for parking and administration in addition to the rent, but for a maximum period of 45 calendar days following the end of the term of hire.
10. The Lessor's right to further damages due to delayed or improper returns or returns that are not in accordance with the regulations/regulations contract remains unaffected. The Lessor also reserves the right to claim higher own, third-party or default damages; the Hirer is permitted to prove specific, lower expenses than those calculated here as a lump sum or surcharge (cf. 9 (13)).
11. Together with the wagons, all documents (e.g. OMR) provided to the Hirer in the course of the Hire Agreement and/or any documents and data owed by the Hirer shall also be handed over or information shall be provided. If the Hirer deliberately fails to do so, a contract penalty in the amount of one month's rent shall be imposed.

### 14 Rent Adjustment

1. Rent adjustments are made on the basis of the consumer price index for Germany determined by the Federal Statistical Office (current base 2015 = 100). If the price index increases or decreases by 10% calculated from the date of handover of the wagons or since the last rent adjustment, the rent may be adjusted in the same proportion by written notice of change. The notice will result in an adjustment in the rent with effect from the beginning of the month after the next one following its receipt. However, the first request for adjustment can be made at the earliest three (3) years after the Hire Agreement is concluded. If the parties have agreed on an a different adjustment in the rent, e.g. graduated rent, then the price adjustment shall be made via this clause. Rent adjustment under this no. 2 shall no longer be considered. A request for adjustment that is not made or not made in due time does not constitute a waiver thereof.
2. Rent adjustments due to deviations from the agreed mileage are also possible as per 3 (3).

## 15 Right of Retention, Offsetting, Assignment, Third-Party Rights

1. Lessor's right of retention  
The Lessor is entitled to withhold any outstanding performances until the deposit and proof of insurance have been furnished in full (3 (4 and 5)) and (9 (7 and 10)), respectively, and any outstanding rent or other payments have been effected in full (3 (1 and 6)). In such cases, all agreed dates and deadlines shall extend accordingly; the Hirer is still under obligation to pay rent if it deliberately fails to fulfil its obligations.
2. Offsetting / Hirer's right of retention  
The Hirer may not offset outstanding payments from Lessor, unless the Hirer's entitlement to such payments is established as undisputed, due for decision or legally binding, due to gross breaches of contract or their exclusion would put the Hirer at an unreasonable disadvantage or impose an unreasonable hardship. The Hirer's right of retention is also limited to the aforementioned extent. However, the Lessor shall not be entitled to any rights of reduction, claims for enrichment and claims for damages or reimbursement of expenses due to non-performance as a result of an initial or subsequent defect in the hired items for which the Lessor is responsible due to intent or gross negligence.
3. Assignment of Hirer's claims against third parties  
As collateral in respect of all payment claims of the Lessor vis-à-vis the Hirer arising from this agreement, the Hirer hereby assigns to the Lessor all claims arising from agreements with its respective customers and sub-hirers if the wagons are used for the performance of such agreements. The Lessor hereby accepts the assignment. Assignment is limited to the amount of the outstanding claim plus 25%. Disclosure by the Lessor is only permissible if the Hirer fails to fulfil its contractual obligations, in particular the payment obligations, or fails to do so properly.
4. Assignment of claims against insurers  
The Hirer assigns as collateral all future claims and rights arising from insurance policies for damage, loss, theft, accident or destruction of the wagons (9 (7)) to the Lessor, who accepts the assignment. The Lessor may, at its discretion, inform the insurance provider of the assignment. Irrespective of this, the Hirer is and remains obliged to notify the insurance provider immediately of any damage/insurance incidents.

## 16 Legal Venue, Jurisdiction, Miscellaneous

1. The venue of jurisdiction and place of performance for all claims and disputes arising from and in connection with these GTCs is Mettmann (North-Rhine Westphalia, Germany). This shall also apply for legal action in connection with the deed, bill of exchange or cheque process. The prerequisite is that the Hirer is a person or entity as specified in 1 (1).
2. These GTCs are governed exclusively by German law. The application of UN sale of goods law (CISG) is excluded.
3. The Hire Agreement and these GTCs reflect the agreements between the parties completely and in full. Up to and at the time of the signing of the Hire Agreement, no verbal subsidiary agreements had been reached. Subsidiary agreements, supplements, modifications and – in all cases – terminations and cancellations, including the written form requirement and other legally binding, unilateral declarations pertaining to the Hire Agreement must be made in writing in order to be effective.

Furthermore, the parties mutually undertake to comply with the statutory written form or the written form agreed here or to ensure that it is observed after the fact; this applies in particular for possible individual verbal agreements made after conclusion of the contract.

4. The parties agree to keep the content of the Hire Agreement and its execution confidential. This also applies to information, data, codes and documents acquired in this process. These may only be used to execute the contract and may not be made accessible to or shared with third parties. The confidentiality obligation shall remain effective for five (5) years after the Hire Agreement ends.
5. Actions which deviate from the agreements do not change or cancel the agreed rights, nor do they give rise to new rights and duties. An action or the failure to act shall not be deemed as tolerance of a breach of an obligation.
6. Personal data obtained in conjunction with the contractual relationship will be stored by the Lessor for the purposes of data processing. Further information can be found in the privacy policy on the Lessor's website: <https://www.on-rail.com>
7. The Hirer is aware that the wagons may be the property (lease) or chattel (financing) of a third party. The Hirer recognises such third-party rights and the secondary rights resulting therefrom (e.g. right to inspect, right of transformation) (cf. 7 (4 and 8)).
8. The Hire Agreement and these GTCs do not give rise to any third party rights. Unless otherwise provided for therein or in mandatory statutory provisions, no party to the Hire Agreement is entitled to assign or otherwise transfer its rights from the Hire Agreement to third parties in whole or in part.
9. Should any provision of these GTCs be or become invalid, this shall have no effect on the validity of the remaining provisions.

## 17 List of Abbreviations:

GTCs (German: AVB):	General Terms and Conditions of Hire
GCU (German: AVV):	General Contract of Use for Freight Wagons
OMR (German: BWID):	Operation, Maintenance and Repair Documentation
ECM:	Entity in Charge of Maintenance
IM:	Infrastructure Manager
RU:	Railway Undertaking
GGVSEB:	Ordinance on the Transport of Dangerous Goods by Road, Rail and Inland Waterways (Gefahrgutverordnung Straße, Eisenbahn und Binnenschifffahrt)
RID:	Regulation concerning the International Carriage of Dangerous Goods by Rail
RSRD <sup>2</sup>	Rolling Stock Reference Database
TSI regulations	The Technical Specifications for Interoperability (TSI) are agreed requirements placed on rolling stock for cross-border traffic in the European Economic Area.
UIC, DIN/ EN standards:	Maintenance and technical standards