



## General Terms and Conditions

### Preamble

#### Validity of our Conditions and General Terms. The respective German text shall prevail

1. All our services are based exclusively on these General Terms and Conditions. These are therefore also valid for all future business relations even though they have not been again explicitly agreed upon. These terms and conditions are considered as agreed upon at the latest upon acceptance of our services.
  2. All conditions of our customers which defer from these General Terms and Conditions or may amend them are not part of the contract, even so if we don't contradict them explicitly or if the customer declare to place the order on the basis of his own conditions only.
  3. Changes and/or amendments of these General Terms and Conditions are subject to our explicit written confirmation before becoming part of the contract. This is also valid for an agreement regarding the non-observance of the written form.
- In the event that we have agreed to amendments to our General Terms and Conditions or accepted the conditions of our customer, all those regulations of our General Terms and Conditions remain valid, which are not differently stated by the amendments or the conditions of our customer, so that our General Terms and Conditions remain valid in all cases which are not explicitly defined in a different way. In the event that special conditions have been agreed upon for some particular orders our General Terms and Conditions are secondarily and complementarily valid.

#### §1 Duration of Contract, Notice of Termination

1. The lease contract comes into force on the beginning date stated in the contract or on the day on which the wagon is dispatched (see § 2, art. 1) or on the day of the reservation of the wagon in absence of dispatch instructions.
2. The lease contract ceases on the day on which the wagon is returned but not prior to the expiry date of the contract
3. The contract is to be terminated by written notice on expiry of the lease period agreed upon, at the earliest.
4. Even though the operating time of the contract begins within a calendar month, notice of termination in accordance with art. 3 may only be given to the end of any month. In the event that the notice of termination is not observed in due time, the contract will be automatically renewed for the duration of the leasing period last agreed upon, however, by one year at the longest, except where otherwise stipulated.

#### § 2 Computation and payment

1. The rental shall be charged as from the dispatch date of the wagon according to the waybill's date stamp of the dispatching station or from the date the wagon is made available and shall end with the expiry date of the lease period in accordance with § 1 and § 8 and, in the event of a delayed return, not before the arrival date at the returning station as evidenced by the waybill's date stamp.
2. The rental does not include value added tax (VAT), deduction at source (withholding tax), customs duty or any other direct or indirect taxes and duties (for instance any possible officially declared rental taxes). All such costs which may occur within the scope of the lease contract are for the account of the hirer. In so far as the lessor receives a lower rental as agreed upon due to a deduction at source or similar costs the hirer commits himself to pay the difference to the lessor. The rental fee is based upon a max. kilometric performance of 50,000 km per year. Should the real yearly kilometric performance of the wagons exceed this value the keeper must be informed. The keeper reserves the right to carry out an exceptional adjustment of the rental in case of high repair and maintenance costs, decrease in value due to a higher kilometric performance of the wagons.
3. The rental is billed quarterly in advance. In case of an indefinite lease period the rental is billed monthly in advance.
4. The rental is due in the middle of each quarter, in case of a monthly invoicing the rental is due in the middle of each month.
5. Only undisputed or legally valid claims can be set off against our own claims.

#### § 3 Suitability, Working Condition and Operation of the wagon

1. The lessor shall dispatch the wagon in proper working condition.
2. It shall be the hirer's responsibility to convince himself of the proper operational condition of the wagon – in particular the internal cleanliness of the tank and to ascertain that the wagon is suitable for the purpose for which it is intended. Any possible defects shall be reported by the hirer to the lessor within one week from receiving the wagon. If no information or claim has been sent within this period of one week the lessor shall be entitled to consider that the wagon has been delivered or made available in good condition. In the event of a justified notification of defect the lessor may provide a replacement wagon.
3. Every wagon is approved by a competent national authority and is in accordance with the international regulations.
4. The hirer is bound to observe especially the regulations for transportation of hazardous goods by road and railway (GGVSE - Gefahrgutverordnung Straße und Eisenbahn), the regulations for the international railway transportation of hazardous goods (RID) as well as the regulations of the General Contract of Use for Wagons (GCU) in their respective valid versions, also as far as they concern the lessor who has entered the GCU and therefore is the keeper of the wagons in terms of the GCU. In particular the hirer assumes the liability of the lessor under article 27.1 of the GCU and also releases the lessor from any legal liability due to the utilisation of the wagons. The hirer is responsible towards the lessor for the observance of the GCU regulations by the user Railway Undertaking (RU) and releases the lessor from any disadvantages which may follow from the inobservance of these regulations. If necessary the hirer will conclude additional agreements with the user RU in order to make sure that the GCU regulations will be observed by the RU. The hirer has to take care particularly that in the period between the official inspections the wagons meet with the instructions of these regulations with regard to construction, equipment and markings as well as with the complementary regulations communicated to him by the lessor. He has to inform the lessor immediately in writing about any eventual deviation. The hirer is bound to be constantly informed about any other official regulation concerning the operation of the wagon hired and to fulfil them.
5. The wagons shall under no circumstances be heated from below. Especially in the winter period the discharge devices and the heating installation must be liquid free.
6. No changes or modification shall be effected on the wagon, its identifications and its markings without the written permission of the lessor, unless explicitly ordered by a railway administration. In the latter case the lessor shall be notified immediately.
7. In the event of the hirer failing to notify faults with the identification and addresses of the wagon, he shall be held liable by the lessor and any third party for all consequences and costs arising from such failure.
8. In so far as the lessor permits the hirer to attach own addresses to the wagon, the hirer shall bear the costs for attaching such addresses and detachment of same after the termination of the lease contract.
9. The hirer is bound to inform the lessor about the kilometric performance carried out by the wagons he has hired and all other data which the RUs have to furnish to the keeper as per the GCU.



### § 4 Power of disposition

1. During the leasing period the wagon shall be at the sole disposal of the hirer and shall be used by the hirer only for his own transportation requirements and for the purposes stated in the lease contract.
2. The handover of a wagon to a RU which is not member of the GCU and subleasing to any third party shall only be permissible upon the lessor's express approval. Companies closely related to the hirer for legal or economical reasons are not considered as third parties.
3. In regard to the articles 9.3 and 14 of GCU the hirer acts for the lessor as person entitled to dispose of the wagon.
4. The use of privately owned wagons by the hirer is regularly carried out on the public railway system through a RU member of the GCU. The hirer engages the RU he is working with to observe the stipulations of the GCU and to provide the kilometric performance actually carried out by the wagons as per article 15.2 of the GCU. Should the hirer exceptionally have the wagons transported by a RU which is not member of the GCU and/or on private railway lines the hirer is bound to ensure that with regard to maintenance and liability, particularly as per annex 12 of GCU, the respective RU will position the lessor as if the GCU and all its annex were applicable in his favour. If the hirer does not, not in time or not completely fulfil this obligation he is responsible for all disadvantages incurring therefrom to the keeper. He has particularly to indemnify the lessor from third party claims according to the aforementioned legislation.
5. The lessor is entitled to forbid the handover of wagons to a RU.
6. The hirer is in no way entitled to agree upon variations from the terms of the GCU with the user RU without prior agreement of the lessor.
7. The hirer shall not have a lien on the wagon.

### § 5 Repair work

1. The lessor shall bear all costs for the regular maintenance as well as the regular inspections of the wagon in accordance with the official regulations.
2. In the event that a wagon, for any reason whatsoever, during the leasing period is repaired or otherwise temporarily taken out of circulation by order of a RU or any other authority, the hirer shall not have any claim towards the providing of a replacement wagon, unless it is the responsibility of the lessor that the wagon is rendered useless or that the time of immobilisation is prolonged through his own fault.
3. In the event of any repair work and inspection making it necessary to neutralize or to pressure-release respectively to degas residual tank contents, or because of the type and quantity of the residue, requiring a clean-out of the tank, the hirer shall bear all costs involved.
4. All repair work and inspections shall be carried out in workshops selected by the lessor. However, the hirer shall have the right to send any wagon to be repaired at his costs or at the costs of the forwarding RU to any workshop in consideration of article 19.5 of the GCU without prior consultation with the lessor.

### § 6 Freight charges

Any freight charges and other charges in connection with the transportation and laying-up of a wagon arising during the time this contract is in force, shall be borne by the hirer.

### § 7 Damage, risk taking and loss

1. The hirer shall bear the risk not only for the wagon hired itself but also for its proper operation all over Europe. The hirer shall be liable for the loss of and damage to the wagon for whatever reason, from his dispatch or availability until his return in contractual proper condition, irrespective of any declaration by the lessor regarding the suitability of the wagon for any particular product. Moreover the hirer shall be liable for any damage caused to any third party by the wagon or its cargo.
2. In the event of loss of a wagon the hirer shall be obliged to provide the lessor with a replacement wagon of equal value or, at the lessor's option, to effect appropriate cash compensation. The hirer shall be under obligation to pay the rental fees until the end of the contract, but, however, in case of cash compensation, the hirer shall continue to pay the rental fees only if a replacement wagon has been available to him by the lessor.
3. In the event of damage the hirer shall refund to the lessor the costs for the complete restoration of the wagon. The rental fees shall be continued to be paid by the hirer also during the period the car is undergoing repairs and, as case may be, over and beyond the term of the contract.
4. The hirer shall only be free of liability for loss and damage to the wagon if he is not at fault himself and if he has informed the lessor without delay of the occurrence of such loss or damage and have furnished the lessor in good time with all necessary documentation (e.g. wagon damage report as per appendix 4 of the GCU) for the raising of its claims. If a third party or its vicarious agents in whose care the hirer has left the wagon, is to blame, the hirer shall be liable as if he was at fault. If the hirer has been called upon by the provisions of § 1 his payment will be refunded to him after payment from the third party. The provisions with regard to the payment of the rental fees in sections 2 and 3 of this paragraph shall not be affected by this.
5. The hirer is bound to mention to the lessor all the RU he has appointed in order to enable him to assert his claim for indemnity as per chapter V of the GCU. The hirer is jointly and severally liable with the user RU towards the lessor for the claims of the keeper for damages or any other payments from the GCU relationship as far as the user RU has not paid them within 12 months after maturity or if it is not possible to ascertain within 12 months after its occurrence which RU is responsible for the damage.

### § 8 Termination of Contract

1. The wagon shall be returned to the address selected by the lessor.
2. The wagon shall be returned in proper condition, completely discharged, cleaned and in the same state of cleanliness as when received.
3. Prior to return, the tank shall be neutralized if the wagon was used for the transportation of media the residue of which may likely cause damage to the tank, particularly with regard to acids. Prior to return, the tank of each pressure gas tank wagon shall be pressure released.
4. In the event of complaints after return, the lessor shall invite the hirer within one month for a joint inspection and determination of the damage. In the event of the hirer failing to comply with said invitation within one week, he shall accept the finding of the lessor or his representative as binding.
5. In the event that the wagon requires cleaning, maintenance or an official inspection by the railroad authorities, the rental obligation shall terminate at the completion of the work involved but not before the expiry date of the contract.
6. In the event that a wagon has to be taken out of service without the hirer's fault, the lease contract shall terminate at the end of the last day the wagon was at the hirer's disposal. Whenever a wagon must be scrapped, the lessor shall endeavour to provide a replacement wagon without, however, the hirer being entitled to claim a replacement wagon.

### § 9 Termination of rental obligation in special cases

1. If, in the event of a confiscation within inland territory, no replacement wagon has been provided by the lessor, the rental obligation shall terminate as of the date immediately preceding the day of withdrawal.
2. In the event that a wagon is lost, the rental obligation shall end one month after the last dispatch according to the waybill's date stamp of the dispatching station. A wagon shall be deemed lost in case the time limit laid down as per article 20.1 of the GCU has expired.
3. With regard to the above cases, it is the hirer's obligation to furnish the lessor without delay with all evidence proving the facts beyond any doubt, thus enabling the lessor to file his claims for damage.
4. In the event that the wagon got lost for reasons for which the hirer is responsible, all further claims on the part of the lessor towards the hirer shall remain unaffected.



### **§ 10 Liability and claim for damages**

1. Claims for damages and expenses of the hirer, for whatsoever legal justification, particularly due to violation of obligation duties and to torts, are excluded.
2. This does not apply in case of binding liability, e. g. according to the product liability law, in cases of intentional tort and gross negligence, of violation of life, body or health or of violation of essential contractual duties. The claim for damages in case of violation of essential contractual duties, however, is limited to the typical contractual foreseeable damages, as far as there are no intentional tort or gross negligence or liability for violation of life, body or health. A change of the burden of proof to the hirer's detriment is not bound up with the planned rules.

### **§ 11 Place of Performance, Jurisdiction and applicable Law**

1. The place of performance for all contracts concluded with us, and especially for the hirer's obligation to pay, shall be the lessor's headquarters.
2. As far as the hirer is a fully qualified merchant as per the German Commercial Code, a legal person under public law or public special business property, the jurisdiction for all disputes directly or indirectly resulting from the contract shall be the lessor's headquarters. However, the lessor shall also have the right to sue the hirer at his habitual jurisdiction.
3. The law of the Federal Republic of Germany is applicable to these General Terms and Conditions and to all legal relations between the lessor and the hirer without applying the UN sales law. In so far as the law of the Federal Republic of Germany refers to the law of another country or to international law, for instance the UN Convention of International Sales of Goods (CISG), this reference is expressly considered as ineffectual. The respective German text of the GTC shall prevail.

As of November 1st, 2006  
General Terms and Conditions for the Lease of Rail Tank Wagons