



## **1 Provision, Length of long term hire**

- 1.1 The long term hire begins with the day of arrival (if necessary according to the wagon note) or, if agreed, after inspection of the wagons at the place of handover/destination specified by the lessee.
- 1.2 The long term hire ends with arrival at the place of return/destination or, if agreed, after inspection but not before the rental period has ended. The lessee will inform TRANSWAGGON in good time about the arrival of the wagons at the place of handover/destination.
- 1.3 The wagons are provided to the lessee free of all charges at the specified place of handover/destination. At the end of the rental period, the wagons must be returned to the place of return/destination in the country specified by TRANSWAGGON at the cost of the lessee.

## **2 Invoicing and Payment**

- 2.1 Accounts are collected monthly – taking the length of the long term hire determined in days and the agreed daily rental rate as a basis (**rent**). Any days of use lost not in the lessee's responsibility in the sense of Point 4.2 shall be deducted. The settlement for the lost days takes place the following month.
- 2.2 The rent must be settled for the first time of provision up to the time of the proper return of the wagons in accordance with Point 1, but not before the agreed rental period has elapsed.
- 2.3 Payment of the rent is due immediately after receipt of the invoice.

## **3 Right of Disposal of the lessee**

- 3.1 The wagons are provided solely to the lessee during the period of the long term hire.
- 3.2 The wagons may be used on any of the railways permitted within the European rail network. Sub-leasing to third parties is only allowed with the agreement of TRANSWAGGON.

Sending the wagons into crisis areas must be agreed in advance with TRANSWAGGON.

- 3.3 The lessee may use the wagons freely on the European rail network, as far as is technically possible and permitted in the agreed relations; provided that the Railway Undertaking (RU) is a member of the General Contract of Use (GCU) and is shown in the list of contracting parties of the GCU. Any other use is only possible with the express written authorisation of TRANSWAGGON.



- 3.4 For the length of the rental period, the lessee is entitled to attach advertising material to the wagons at his own cost. When returning the wagons, the advertising material must be removed properly at the cost of the lessee. The lessee must pay any charges, taxes or other expenses arising from the attachment of the advertising material.
- 3.5 TRANSWAGGON shall incur no disadvantage as a result of the lessee transferring the use and custody of the wagons to a RU which is not a full member of the UIC. The lessee must continually ensure that TRANSWAGGON is protected in the same way as if the wagons were used in conjunction with a RU which is a full member of the UIC.

TRANSWAGGON shall also incur no disadvantage should the lessee transfer the use and custody of the wagons to a RU which has not signed the GCU. The lessee must continually ensure that TRANSWAGGON is protected in the same way as if the wagons were used in conjunction with a RU which is a full signatory to the GCU.

TRANSWAGGON must be informed about the use of the wagons with this RU.

- 3.6 The lessee must take all official prescriptions into account during the use of the wagons.
- 3.7 The lessee must pay freight costs, charges, taxes and customs fees arising during the rental period from the use of the rented wagons.
- 3.8 TRANSWAGGON is entered in the GCU as the keeper (in accordance with Appendix 2 of the GCU) of the hired wagons. The GCU regulates the legal relationship between the RU and the keeper of the used wagons.

The lessee shall behave as the authorised disposer of the keeper towards the RU using it in the sense of the GCU for the following cases:

- a) The dispatching in the use of the wagons for loaded and empty runs.
- b) The receipt of information about the actual operational performance of the wagons in accordance with Article 15, paragraph 2 GCU.

The lessee shall clarify to the RU that any other statements regarding the GCU from the RU should be directed to TRANSWAGGON as the keeper of the wagons. Irrespective of this, the lessee shall immediately forward all statements and information from the RU concerning the keeper of the wagons to TRANSWAGGON. The lessee has to guarantee that TRANSWAGGON receives information about the actual performance of the wagons.

The lessee is, in no way, authorised without prior authorisation from TRANSWAGGON to agree any deviations from the conditions of the GCU with the RU.



The lessee assumes liability against TRANSWAGGON for compliance with the conditions of the GCU by the RU and releases TRANSWAGGON from any disadvantages arising from non-compliance. If necessary, the lessee shall make supplementing contractual agreements with the RU to ensure compliance with the conditions of the GCU by the RU.

The lessee is jointly and severably liable along with the RU for any claims from the keeper for compensation or other payments from the relationship of the GCU, as far as the RU has not settled these within 12 months of the date of occurrence or it has not been possible to determine within 12 months which RU is responsible for the damage to the wagons.

TRANSWAGGON can demand information from the lessee at any time about which RU has used the wagons. TRANSWAGGON can refuse to hand the wagons over to certain RU, whether they are members of the GCU or not.

#### **4 Maintenance and Repairs on TWA's account**

- 4.1 TRANSWAGGON shall bear the costs for ongoing maintenance, repairs and regularly provided (main) examination of the wagons including all empty freights of empty runs resulting from this.
- 4.2 If a wagon is repaired or examined by railway companies or temporarily removed from transportation during the period of the longterm hire, irrespective of the reasons, the lessee has the right to a reduction of the rent for this period of time, meaning the rental amount is stopped from the 6th day of repair or for the period of usage limitation for the aforementioned reasons until it is resupplied to the lessee.
- 4.3 The workshops for carrying out repairs and examinations are specified by TRANSWAGGON. However, the lessee is entitled to take wagons which must be repaired at the cost of the relevant railway company to a workshop authorised by the European Railway Agency (ERA) or on an interim basis to a workshop authorised by the railway company without prior agreement from TRANSWAGGON. This simplification regulation does not apply if the RU using the equipment is not a member of the GCU. In the case of the independent use of workshop, the lessee will inform TRANSWAGGON immediately.
- 4.4 In the case of the non-usage of a wagon due to maintenance or repair works, a wagon of equal value will be provided as a replacement to the lessee, as far as capacity allows.
- 4.5 TRANSWAGGON operates a policy of preventative repairs and maintenance. One important indication for preventative measures is the operational performance of the wagon in ton kilometres (tokm). For wagons in long term hire contracts, the lessee must regularly (quarterly) inform TRANSWAGGON of the tokm and km of the individual wagons.



- 4.6 The maintenance planning and rent are calculated on the basis of an operational performance of a maximum of 80,000 km per freight wagon per contracted year. If this maximum limit is exceeded, the lessee must inform TRANSWAGGON about this matter in writing.

In these cases, TRANSWAGGON reserves the right to invoice all additional costs for maintenance and any additional reductions in value of the wagon as a result of this higher level of usage.

## **5 Damage and Loss within the area of the lessee's responsibility**

- 5.1 The lessee is liable for any damage and loss caused to the wagons provided as part of this contract.
- 5.2 The lessee is also responsible for any fault of a third party, who he has allowed to use the equipment and their assistants, as far as legally permitted.
- 5.3 As far as a liability of the RU (in acc. with Article 22 of the GCU) is stated, TRANSWAGGON shall initially claim against the RU. If no compensation is obtained from the RU within a period of 12 months, or the liable RU cannot be determined during this period, then a claim shall be made against the lessee.

In the case of damage, which occurs in the operation of the railway, the lessee is liable to obtain and provide TRANSWAGGON in good time with all documents (damage reports), which are required to assert rights against the railway company.

- 5.4 In the case of any damage, which must be accepted by the lessee in accordance with these conditions, he must reimburse TRANSWAGGON the costs for the complete repair and the freights of empty runs to and from the workshop.
- 5.5 In the case of damage caused by him, the lessee must pay the rent for the time period of repairs at the relevant level. However, this obligation to pay is limited to a maximum of three months from the submission of the repair report.
- 5.6 In the case of loss, the lessee is obliged to supply TRANSWAGGON in mutual understanding with a replacement wagon of equal value or to pay the appropriate amount of compensation in money. This compensation is calculated on the current value (in accordance with Appendix 5 GCU) of the wagon at the time the damage occurred.

## **6 Return of the Wagons**

- 6.1 The lessee must return the wagons in a proper condition, empty and with the same level of cleanliness as it was supplied to him.



- 6.2 In the case of complaints after the return, TRANSWAGGON must request the lessee to measure the damages with TRANSWAGGON within three weeks. If the lessee does not meet this request within one week, then the determinations of TRANSWAGGON or its representatives are binding for the lessee as well.
- 6.3 If wagons must be cleaned, repaired or examined by the RU after their return at the fault of the lessee, then the obligation to pay the rent ends when the work has ended, but is limited to three month from submission of the repair report, but not before the contract has expired. The corresponding costs are to be paid by the lessee.

## **7 Principles of Liability**

- 7.1 TRANSWAGGON is liable in accordance with the legal regulations of the country where TRANSWAGGON has its headquarters.
- 7.2 As far as legally possible, the liability is limited to premeditation and gross negligence.
- 7.3 Depending on the amount, TRANSWAGGON limits its liability from the rental relationship, particularly the liability on the principle of legal claims for abatement of rent, to a maximum of three month's rent of the relevant wagons.
- 7.4 TRANSWAGGON is not liable for any loss or reduction in value of the transported goods.
- 7.5 As far as the wagons are used by an UIC railway, the lessee shall take over the liability from TRANSWAGGON on the basis of Point 3.6.2 of the AEB (Allgemeine einheitliche Bedingungen für die Inbetriebnahme und Nutzung von P-Wagen [General standardised conditions for the commissioning and use of private wagons], UIC data sheet 433 V dated April 2001) and Point 27.1 of the GCU, if he is to blame.

## **8 Suitability and Condition of the Wagons, Operational Regulations**

- 8.1 TRANSWAGGON must dispatch the wagons in a proper condition. The lessee must be satisfied of the flawless condition of the wagons. The lessee must notify in writing any defects to TRANSWAGGON within a week of accepting the wagons.
- 8.2 Without written approval of TRANSWAGGON, changes may be made to neither the wagons itself nor the registration plates and labels, unless it has been expressly instructed to do so by a railway or authority. In the case of a relevant instruction, the lessee must immediately inform TRANSWAGGON.
- 8.3 If the lessee neglects to advise of any defects, particularly to the registration plates and labels of the wagons, then he is liable to TRANSWAGGON and any third parties for all resulting consequences and costs.



## **9 Place of Jurisdiction and Fulfilment**

- 9.1 The place of jurisdiction and fulfilment is TRANSWAGGON's headquarters.
- 9.2 The law of the country where TRANSWAGGON has its headquarters applies.