

General Terms and Conditions ("GTC") of Rail Cargo Wagon - Austria GmbH

"RCW" hereinafter,
for leasing of goods wagons
As of 01/01/2013

Art. 1

Scope and amendment of the GTC

- 1.1 These GTC are an integral component of any lease contract concluded with RCW and also apply to all future letting between the contracting parties as well as to any additional services.
- 1.2 These GTC can only be amended by a written agreement between the contracting parties.
- 1.3 GTC of the contract partner do not become part of the contract even if RCW does not expressly object to them. By concluding a contract with RCW, the contract partner waives the application of its own GTC, especially its protective clause excluding other GTC. Business conditions of any type that conflict with the present GTC, even if only partially, are entirely without validity.
- 1.4 RCW will notify the contract partner of any amendments to these GTC. Such amendments will be considered agreed upon if the contract partner does not object to them in writing within four weeks.

Art. 2

Basics of use of goods wagons

- 2.1 The goods wagons may only be used for the purposes provided for in the lease contract.
- 2.2 The goods wagons must be used with care and in accordance with statutory provisions and recognised standards of technology. Particular note must be taken of hazardous materials regulations and loading regulations. The leaser undertakes to familiarise itself with the contents of all documents provided before beginning operation of the leased goods wagon.
- 2.3 Any intended use of the goods wagon for hazardous materials must be expressly noted when the contract is concluded. Violation of this obligation entitles RCW to terminate the lease contract without notice and to claim a supplementary charge pursuant to Points 71.1 and 82 of the currently valid version of the Austrian Goods Tariff (Österreichisches Gütertarif, ÖGT). More extensive claims remain unaffected.
- 2.4 Technical, safety-related, or structural changes to the goods wagon, including installations, as well as changes to labels thereof are only permissible with RCW's written consent. If such a change is required by statutory provisions or an official order, such consent may not be refused.
- 2.5 Subletting the goods wagon or passing it on to an unauthorised third party free of charge are only permissible with RCW's written consent. Temporary transfer of the goods wagon as part of a connected loaded transport chain and subsequent empty return travel of the goods wagon is not considered subletting within the context of wagon use agreements pursuant to CUV, AVV, or similar legal bases.
- 2.6 The leaser will notify RCW of damages to the goods wagon or accidents without delay by contacting the office given in the contract.
- 2.7 RCW is entitled to view the contractual goods wagons at any time during normal business hours and to inspect them after agreeing on a date in advance.
- 2.8 The leaser must choose rail companies that work with the "Allgemeiner Vertrag für die Verwendung von Güterwagen – AVV." If it does not do so, the leaser shall be held responsible for all commercial, technical, legal, and financial damages that this omission may bring with it. In case of neglect of the use provision of the EVU, RCW reserves the right to have its wagons parked until review and possible correction of this infringement. In this case, the leaser will also be liable for all damages, whether commercial or legal or financial, resulting from this infringement.
- 2.9 At RCW's request and in accordance with the methods RCW stipulates, the leaser must provide RCW with information about the movements of the goods wagons at the leaser's disposal. The leaser must also supply information that RCW requests for statistical data collection. In the absence of any other agreement, the leaser must notify RCW on a monthly basis of the mileage of goods wagons leased or conveyed to the leaser.

Art. 3

Charges and billing

- 3.1 The leaser's obligation to pay the stipulated charge begins on the day of hand-over of the goods wagon to him and end on the day of return of the goods wagon to RCW, but not before the end of the stipulated contract duration. The day of hand-over and the day of return are counted as full calendar days.
- 3.2 RCW will send the respective invoices to the leaser's address as given in the contract.
- 3.3 The payment date shall be 30 days from the invoice date. Any supplementary charges stipulated shall fall due at the same time as the first lease payment.
- 3.4 If payments are not made in time, RCW is entitled to charge interest on arrears for the outstanding amount at the statutory rate of 8% above the base rate announced by the Austrian National Bank (reference interest rate for calculating interest on arrears in business pursuant to § 1333 para 2 ABGB) starting from the end of the payment period pursuant to Point 3.3. The base interest rate that applies on the final calendar day of a half-year shall be applicable to the following half-year.
- 3.5 If the goods wagons are returned late, RCW may charge a fee for each additional calendar day. This fee shall be equal to twice the fee per calendar day set down in the lease contract.
- 3.6 All prices are understood to be in Euros exclusive of any payable taxes.

Art. 4

Request and delivery of leased wagon

- 4.1 The leaser shall request the desired quantity from RCW in written form.
- 4.2 The time and place of transfer of the contractual goods wagons will be determined by mutual agreement in writing. A request does not automatically guarantee availability. RCW provides wagons exclusively within the limits of availability and in consideration of existing delivery deadlines.
- 4.3 If RCW cannot fulfil a request due to a lack of wagons, late arrival of the request, or other reasons, RCW will notify the leaser of the reasons for the obstacle once it becomes aware of them.
- 4.4 If an order is cancelled or the number of wagons is reduced before hand-over, the leaser will be charged a compensatory fee equal to half the agreed lease fee.
- 4.5 In all cases, costs of conveyance and/or of preparation of empty goods or any other fees will be paid by the leaser.
- 4.6 In case of cancellation or reduction of the number of leased wagons after transfer, RCW is entitled to charge the agreed lease fee until the end of the agreed contract duration.

Art. 5

Handover and return of goods vehicles

- 5.1 RCW will hand over the goods wagons in a condition suitable for the contractually intended use. If the lease contract does not contain any special requirements concerning the degree of cleanliness, the goods wagons will be provided in the condition they remain in after unloading by the last recipient. When the wagons are handed over, RCW and the leaser will jointly prepare a hand-over certificate in which the leaser recognises the wagon to be in due form. The leaser is obligated in all cases to assure itself of the condition of the wagons and their suitability for its purposes. When the leaser accepts the wagons, the wagons shall be considered accepted as described in the hand-over certificate. Goods wagons that are already with the leaser at the time of conclusion of contract shall be considered accepted by the leaser in due form.
- 5.2 The leaser is entitled to refuse to accept defective or obviously unsuitable goods wagons. RCW must be notified of the rejection and the reason for it in writing without delay. RCW will inform the leaser how to proceed. If the rejection is justified, RCW may choose whether to provide a replacement wagon or adjust the lease fee. RCW has the right to have rejected goods wagons examined by a licensed workshop to determine whether the rejection is justified.
- 5.3 If the leaser has the interior or exterior of the goods wagons cleaned on its own initiative, the affected goods wagons shall be considered accepted. RCW must be notified in writing of the work done.

- 5.4 Unless agreed otherwise with RCW before the start of cleaning work, the leaser will pay all associated costs of cleaning (including transportation costs and other ancillary costs).
- 5.5 RCW is entitled to require preparation and signing of a return certificate when the wagon is returned. RCW will notify the customer of the form and content of this return certificate.
- 5.6 All lease objects, including accessories, that were in the sole ownership of RCW before conclusion of the lease contract remain the sole property of RCW. After the end of the agreed lease duration, the leaser will hand over the goods wagons to RCW at the agreed return location at the agreed return time, but at all events within two months of the end of the agreed lease term.
- 5.7 The leaser will notify RCW at least 30 (thirty) days before the end of the contractually agreed lease term of the date of intended return of the wagon material. If the return location was not stipulated in advance, RCW will notify the leaser as quickly as possible of the address of the destination railway station where the formalities for return of the empty wagon material will take place.
- 5.8 The leaser shall pay costs associated with transport to the return location.
- 5.9 At the time of return, the wagons must be in their original condition as recorded in the handover certificate, entirely empty, and properly cleaned. All loose parts must be present. Any damages or defects to the goods wagons will be noted in the handover certificate when the goods wagons are returned to RCW.
- 5.10 If the wagons have been used for hazardous materials, the leaser must have a commercially licensed company decontaminate them as required by regulations and must provide written proof hereof.
- 5.11 If goods wagons are not in proper condition pursuant to Points 5.9 and 5.10 at the time of return, the leaser must return them to this condition within a reasonable period. If the deadline passes without result, the leaser must reimburse RCW for the costs of returning the wagons to proper condition within 14 days of a request to such effect by RCW or, if it is not possible or economically reasonable to return the wagons to this condition, compensate the financial disadvantage up to a maximum of the respective fair value (pursuant to annex 5 of the AVV).

Art. 6

Maintenance (inspections) and repairs to the wagons

- 6.1 RCW is responsible for licensing and approval under the corresponding statutory and regulatory provisions. RCW warrants proper and safe technical condition during the contract duration and therefore especially that the goods wagons will meet the relevant applicable UIC and TSI regulations and technical provisions of the AVV and the recognised standards of technology for the full contract duration. Otherwise, RCW shall be obligated to supply the respective number of replacement wagons or have the defects rectified at own cost and to indemnify and hold the leaser harmless in this respect.
- 6.2 The ECM responsibility rests with ÖBB-Technische Services GmbH, Grillgasse 48, 1110 Vienna. The guidelines for maintenance and repair will be provided by the ECM officer.
- 6.3 Planned maintenance (inspections) and officially mandated inspections will be carried out by and at the expense of RCW. For this purpose, the leaser will bring the goods wagons to a workshop named by RCW in a timely manner. Resulting costs of transport of empty goods wagons there and back and other associated costs or charges such as shunting costs or customs duties shall be paid by the leaser.
- 6.4 On occasions of works done as part of maintenance (inspection), RCW will pay to remedy wear and tear, while the leaser will pay to repair those damages that the leaser is liable for pursuant to Art. 7.
- 6.5 RCW is responsible for the complete documentation of all maintenance work carried out by the workshop.
- 6.6 Repairs to the goods wagons will be carried out by and at the expense of the leaser and comprise the remedying of defects due to normal wear and tear of the goods wagons, as well as repair of those damages for which the leaser is liable pursuant to Art. 7.
- 6.7 The leaser agrees to use only brand-name parts in accordance with annex./ xx of the goods wagon lease contract for repairs to the contractual goods wagons.
- 6.8 The workshops will be chosen in advance in consultation with the ECM officer.
- 6.9 If a wagon is withdrawn from service during the lease term due to maintenance, repair, or other work to remedy defects, the leaser will have no claim to waiver or reduction of the lease payment during this period or to provision of a replacement wagon. This does not apply, however, if a wagon is withdrawn from service due to a defect in the goods wagon for which RCW is demonstrably responsible.
- 6.10 If maintenance of one or more goods wagons is impossible or economically unreasonable during the standing lease relationship and these goods wagons must therefore be withdrawn from ser-

vice, the leaser must notify RCW without delay and return the affected goods wagons to a location specified by RCW without delay, subject to a contrary regulation made by mutual agreement. The lease payment will be reduced accordingly for the remaining lease term. This regulation does not exclude the leaser's liability pursuant to Art. 7.

- 6.11 RCW will provide the leaser with all documents necessary for proper operation, such as a copy of the initial registration, a type plan, a label plan, and a declaration of conformity, as well as any necessary documents like a user manual and technical specifications no later than the time of handover of the relevant goods wagons. These documents must be in German. RCW shall ensure that the leaser has the most up-to-date versions of these documents at its disposal for the entire contract duration.
- 6.12 Repairs must be recorded immediately after completion by the leaser and reported to RCW at the contractually stipulated address.

Art. 7

Liability

- 7.1 The leaser is liable in full for all damages and defects to the goods wagons that it or a third party commissioned by it caused during the term of the contract or during the time in which it has the goods wagons in its custody before the start or after the end of the term of the contract. If the goods wagons display damages or defects upon return to RCW, the leaser shall also be liable. The leaser will be billed for unreturned goods wagons at the fair value (pursuant to annex 5 of the AVV), regardless of any compensation for downtime.
- 7.2 Damages for which the leaser is liable may only be repaired at workshops specified by RCW. Costs incurred as a result shall be paid by the leaser.
- 7.3 The leaser is liable for damages caused by the goods wagons due to improper or impermissible use by the leaser or its commissioned agents and shall indemnify and hold RCW harmless against all third party claims in relation to the use of the goods wagons.
- 7.4 Claims for damages of any kind, especially for damages directly or indirectly caused by the failure or malfunction of the leased goods wagon, as well as recourse claims against RCW are excluded unless compulsory statutory provisions require otherwise. RCW's liability is limited to gross negligence and intent.

Art. 8

Risk of accidental destruction

The leaser bears the risk for the goods wagons during the period from handover to him until return to RCW pursuant to Art. 5. This particularly includes the risks of force majeure, any form of misplacement, vandalism, sabotage, or fire, and civil unrest or war-like events. The leaser may make use of suitable insurance options at its discretion.

Art. 9

Confidentiality

- 9.1 The contracting parties undertake to maintain the confidentiality of non-obvious commercial or technical data and information disclosed, made accessible, or known through other means in the course of performing the contract.
- 9.2 The confidentiality obligation does not extend to information that a contracting party demonstrably receives legally from a third party or that was already generally known at the time of conclusion of contract or later becomes known without violation of this confidentiality obligation.
- 9.3 The confidentiality obligation shall continue to exist after the end of the contract duration unless the contracting parties agree otherwise in writing.

Art. 10

Contract duration and termination

- 10.1 The contract will be concluded for the period specified therein. A right to terminate during the agreed period must be provided for expressly in writing.
- 10.2 The parties' right to termination without notice for cause remains unaffected. This particularly includes severe or repeated violation of essential contract duties, opening of insolvency proceedings for one of the contracting parties, dismissal of an application to such effect due to insufficient assets to cover the costs of such proceedings, or introduction of restructuring proceedings. Passing on of the lease

object to a third party without RCW's permission also entitles RCW to extraordinary termination. If RCW's contract partner is at fault, it must provide RCW with full satisfaction within the meaning of § 1323 ABGB. If a third party asserts claims against RCW for any of the reasons stated above, RCW must indemnify and hold the contract partner harmless.

10.3 Notices of termination must be in writing.

Art. 11

Jurisdiction and governing law

- 11.1 As long as compulsory statutory provisions do not require otherwise, all disputes arising from the lease agreement or these GTC shall be subject to the exclusive local jurisdiction of the court of Vienna, Innere Stadt, with competence for commercial matters.
- 11.2 Lease agreements under these GTC are subject solely to the laws of the Republic of Austria to the exclusion of conflict of laws regulations of private international law.

Art. 12

Final stipulations

- 12.1 If one or more provisions of the lease agreement or the GTC are or become ineffective, invalid, and/or impracticable, this does not affect the effectiveness, validity, or practicability of the other provisions of the lease agreement or these GTC. The parties shall replace such a provision with an effective one that comes as close as possible to the legal and economic purpose of the original rule as quickly as possible.
- 12.2 Amendments and additions to the lease agreement and regulations that differ from these GTC must be in written form.
- 12.3 Declarations, announcements, etc. issued to RCW must be in written form and bear an original signature to be legally valid. Where these GTC require written form, it may not be replaced by electronic form within the meaning of the Signature Act (Signaturgesetz, BGBl I 1999/190).
- 12.4 The leaser is not entitled to transfer its rights and duties to third parties or assign its claims against RCW to third parties without the prior written permission of RCW.
- 12.5 The leaser may not offset its own claims against claims of RCW. Only amounts granted by a court ruling and debts that RCW has explicitly recognised in writing are excepted from this.
- 12.6 To secure all claims from the lease contract, the leaser assigns all claims against third parties that it will acquire or has already acquired by using the goods wagons to RCW. RCW will not register this assignment as long as it has no reason to assume that doing so is necessary to protect its rights. At RCW's request, the leaser must identify the third parties and notify them of this assignment of rights.