

# General Terms and Conditions for the Leasing of Freight Wagons of the Rail Cargo Logistics GmbH

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## Preamble

Subject to the written individual contractual conditions agreed between the Lessee and RAIL CARGO LOGISTICS GMBH (hereinafter: RCL-MAC) the present General Terms and Conditions for the Leasing of Freight Wagons (hereinafter: General Conditions) apply exclusively to the leasing of freight wagons; insofar as legally permissible, they shall take precedence over all other non-contractual written documents.

The leasing of freight wagons is subject to the unconditional acceptance by the Lessee of the General Conditions.

## 1. Term of the lease, termination

- 1.1 The leasing agreement shall begin and end as stipulated in the individual contract.
- 1.2 In the case of a leasing agreement without limit of time, unless it is otherwise specified in the individual contract, ordinary termination in written form (registered letter) at the end of any calendar months, subject to compliance with a notice period of 1 (one) month, is possible.
- 1.3 Irrespective thereof, there exists the right to termination for good cause (extraordinary termination). RCL-MAC is entitled to terminate the leasing agreement in whole or in part in the following cases:
  - a. where exceptional circumstances exist, which justify premature termination (e.g. on the termination of the main leasing contract between RCL-MAC and its respective contractual partner).
  - b. in the case of non-payment of the rental charges or other costs by the Lessee.
  - c. after a formal demand for payment by registered letter has remained without response, in the case of:
    - default in insurance policies or insurance cover, which is insufficient,
    - a serious breach of contract by the Lessee (e.g. in the case of use of the wagons in a manner contrary to the contract).

In these cases RCL-MAC is entitled to require the following from the Lessee:

- a. immediate return of the wagon,
- b. the payment of all rental charges due and not yet settled and other costs,
- c. the payment of any transportation, cleaning and repair costs and
- d. the payment of a flat-rate compensation for termination in the amount of 25% of the rental charges, which, had the leasing agreement continued until the end of its term or in the case of leasing agreements without limit of time until the expiry of a future 3 (three) months, would have continued to be payable.

## 2. Condition of the wagon, notices of defects

- 2.1 The wagon supplied to the Lessee
  - a. is entered in the vehicle register,
  - b. is in possession of a technical permit in accordance with the regulations in force and
  - c. at the time of provision is in a condition in accordance with the contract and suitable for the transportation of the goods specified in the individual contract.
- 2.2 The Lessee undertakes to comply with his duties in accordance with the technical permit and all the contractual and other national and international regulations on the commissioning and operation of the wagon, as well as the provisions valid at any given time, which are applicable to his relationship to railway undertakings and infrastructure operators.
- 2.3 During the term of the lease it is the responsibility of the Lessee to satisfy himself of the faultless condition of the wagon (if necessary also the cleanliness and leak-proof condition of the containers) and as to the suitability of the same for the planned use.
- 2.4 The Lessee is obliged to send a written memorandum to RCL-MAC within 7 (seven) working days of receipt of the wagon, notifying RCL-MAC of the time of receipt of the wagon and any defects. Otherwise the wagon shall be deemed to have been taken over in faultless condition and as suitable

for the envisaged transportation purpose. In the case of defects for which justified notification has been received in good time, RCL- MAC is entitled to remedy the defect or to provide a replacement wagon. There is in any case no duty on RCL-MAC to provide a replacement wagon.

- 2.5 in the event of the takeover of the wagon by the Lessee from a railway undertaking (hereinafter: RU) the Lessee is obliged to notify this RU and also RCL-MAC without delay in writing, if the wagon is not in a proper operational condition as a consequence of damage during transport.

### **3. Use of the wagon, duty to inform**

- 3.1 The Lessee may use the wagon only for the agreed purposes and in accordance with the applicable regulations. He undertakes to use the wagon during the term of the lease with the necessary care, to continue to comply with the information provided by RCL-MAC on the operation of the wagon and to report any damage during the term of the leasing contract to RCL-MAC. The Lessee is further obliged not to exceed the load limits and to comply with the regulations on loading and unloading the wagon and the transported goods.
- 3.2 Unless otherwise agreed in the individual contract, the Lessee may as a matter of principle operate the wagon across international boundaries. The use in areas of conflict, however, requires the prior agreement of RCL-MAC; the latter has the right to forbid any use of this kind at any time, if damage, loss or sequestration is to be feared.
- 3.3 The Lessee is obliged to conclude contracts of carriage exclusively with RU, which have signed the General Contract for the Use of Freight Wagons (hereinafter: GCU) or with which the provisions of the GCU have been bi-laterally agreed. Without the prior agreement of RCL-MAC the Lessee is on no account entitled to make any agreement with a RU, which deviates from the provisions of the GCU. If, for the carriage of goods the Lessee uses a RU; which does not satisfy this requirement, he must compensate RCL-MAC for any penalties whatsoever, which are thereby incurred and must put RCL-MAC in such a position as though the carriage had been operated by a RU, which is a signatory of the GCU.
- 3.4 The passing on of the wagon to third parties for use for their own purposes is permitted only with the prior written permission of RCL-MAC.
- 3.5 Unless otherwise regulated in the individual contract, the Lessee must supply RCL-MAC every month with information concerning the de facto kilometrage of the wagon. Furthermore, the Lessee must, on the request of RCL-MAC, provide information on the movements of the wagon and on his transportation, route and tariff instructions, together with the information required for statistical data capture.
- 3.6 RCL-MAC may at any time require information from the Lessee concerning which RU is using the wagon. as to which In justified cases RCL-MAC may prohibit the handing over of the wagon to specified RU, irrespective of whether these are affiliated to the GCU or not.
- 3.7 During the entirety of the term of the lease the Lessee undertakes to refrain from undertaking any modification of any kind whatsoever, even to an optional component of the wagon, to refrain from removing or altering any identification markings and inscriptions without the written permission of RCL-MAC, unless this is expressly mandated by a government agency; RCL-MAC must give notification of such governmental instructions without delay. If RCL-MAC has permitted the Lessee to attach his own inscriptions to the wagon, the Lessee must bear the costs for application and maintenance. On termination of the leasing agreement the wagon must be returned to its original condition at the cost of the Lessee.
- 3.8 RCL-MAC must give prompt notification of defects in identification markings and inscriptions on the wagon. Otherwise the Lessee shall be liable as regards RCL-MAC and third parties for all the consequences and costs thereby incurred. The Lessee is further obliged to notify RCL-MAC without delay in writing concerning every de facto loss, incident or damage or loss, incident or damage suspected in accordance with Article 20.1 GCU, which may be of a nature to impair the retention of the normal condition of the wagon itself or of the goods carried. The Lessee is liable for all direct or indirect damage, which is incurred through omitting to report such information.
- 3.9 In the case of an occurrence of damage to or a de facto loss or loss suspected in accordance with Article 20.1 GCU of the wagon the Lessee is moreover obliged to take in good time all the measures (in particular joint assessment of damage by all the parties involved), in order to protect the rights of RCL-MAC against third parties and to limit the damage to the wagon.

### **4. Maintenance, repair, cleaning**

- 4.1 The Lessee is obliged to tolerate maintenance procedures (maintenance tasks), which are deemed necessary or are prescribed by regulation by the responsible authority and to cooperate to the required extent in their implementation. The Lessee is obliged in particular to deliver the wagon in good time in an operationally reliable and verifiable condition, in particular completely emptied and cleaned to the required extent internally and externally to a repair workshop nominated by RCL-MAC or the keeper for the maintenance check required or according to schedule and for all other

necessary inspections and to return again. If RCL-MAC, the keeper of the authority nominated by the latter stipulates dates and times deviating from the scheduled maintenance appointments, the Lessee must comply with these. If the Lessee fails to present the wagon in good time for inspection/repair, the Lessee shall be liable to RCL-MAC or the keeper for direct and indirect damages in full. In the event that during the course of the inspection/repair defects are ascertained, which should have been remedied during ongoing operation at the cost of the Lessee, the Lessee must bear the costs of the work to remedy the defect.

- 4.2 During the term of the leases the Lessee is obliged to allow the necessary maintenance work (repairs/ essential renovations) on the wagon on his own responsibility and at his own costs, in order to preserve the operational reliability of the wagon. Repair work must be carried out in accordance with Annex 10 of the GCU.
- 4.3 During the period of the maintenance or repair of a wagon the Lessee has no claim to waiver or reduction of the rental charges or to the provision of a replacement wagon.
- 4.4 RCL-MAC or their authorised representatives have the unconditional right to subject the wagon to inspection at any time during the term of the lease.
- 4.5 During the term of the lease the Lessee shall himself ensure the required internal and external cleaning, degassing and neutralising work and the waste disposal of product residues and shall bear the costs for this. Cleaning operations must be carried out by appropriately qualified, suitable persons and must comply with the agreed degree of cleanliness.
- 4.6 If the neutralising or decompression and degassing is required for maintenance or repair procedures or for an inspection by the railway authorities or the type or quantity of load residues make it necessary to clean the wagon, the Lessee must bear the costs thus incurred.

## **5. Return of the wagon**

- 5.1 The Lessee must return the wagon at the agreed time to the agreed location unsolicited. In the event of late return, the rental charges for the period up until the arrival of the wagon at the place of destination shall be payable. The assertion of higher compensation for use and/or further damages attributable to the Lessee remains reserved to RCL-MAC.
- 5.2 The wagon must be returned at the Lessee's costs to the location specified by RCL-MAC completely empty and in the condition in which it was provided (subject to the usual wear and tear). The obligation of the Lessee to clean the wagon depends on the respective individual contract.
- 5.3 Within 7 (seven) working days of completing the inspection of the wagon RCL-MAC is obliged to send to the Lessee a written notification, which specifies the time of receipt of the wagon and any defects. Otherwise the wagon is deemed to have been returned in faultless condition. The Lessee is thereupon obliged to send a written response to RCL-MAC within 7 (seven) working days of this notification. Otherwise the defects ascertained on the part of RCL-MAC shall be deemed to have been acknowledged.
- 5.4 If it transpires on receipt of the wagon by RCL-MAC that the wagon must be cleaned, repaired or inspected by virtue of statutory provisions, the Lessee shall be obliged to continue to pay for the period required for implementation of this work the amount equivalent to the rental charges and to compensate any other damage.

## **6. Assumption of risk and liability**

- 6.1 The Lessee bears the risk for the wagon from the commencement of the term of the lease until the return of the wagon in proper form. This includes in particular the risks of force majeure, any form of loss and vandalism.
- 6.2 The Lessee is liable to the full extent from the commencement of the term of the lease until the return of the wagon in proper form for loss of and damage to the wagon and for damages in consequence of later return of the wagon, which he or a third party authorised by him has caused during this period. (downtime) The customer's obligation to compensate RCL-MAC for damage encompasses the costs of the complete reinstatement of the wagon, the transportation and the costs of idle time, the compensation for the depreciation in value and loss of effectivity (equivalent to the rental charges agreed under the contract) up to the time when the wagon has been fully reinstated. For a wagon, which is deemed to have been lost in accordance with Article 20. 1 GCU, the obligation to pay rental charges shall end at the time when the wagon is returned as agreed under the contract.
- 6.3 The Lessee is further liable for all damages, which are caused by improper use or use contrary to regulations of the wagon by him or by a third party authorised by him and indemnifies and holds harmless RCL-MAC against all claims by third parties. In particular the Lessee also indemnifies and holds harmless RCL-MAC against all claims by the keeper, which arise from the fact that the RU authorised by the Lessee was not affiliated to the GCU.
- 6.4 The Lessee releases RCL-MAC from all claims, which where applicable are asserted against them in relation to any tax, Customs duty or other obligations.

- 6.5 Claims for compensation in damages of any kind whatsoever against RCL-MAC, in particular in the case of damage, which has been incurred through late provision, malfunction or financial loss of the wagon (e.g. by virtue of maintenance measures), are excluded, unless there are mandatory statutory provisions to the contrary. RCL-MAC shall not on any account be liable for slight negligence or lost profit.
- 6.6 The customer confirms that he complies with the Minimum Wage Act (MiLoG) in Germany through his company or his subcontractors and indemnifies and holds harmless RCL-MAC against all claims and liabilities resulting from non-compliance with the Minimum Wage Act.

## **7. Insurance**

- 7.1 It is recorded that the RCL-MAC wagons are not insured against any kind of risk whatsoever. It lies therefore at the discretion of the Lessee, in this regard, to ensure appropriate insurance cover.
- 7.2 The Lessee shall ensure that he has obtained a public liability insurance policy customary in the market for the term of the lease. RCL-MAC can at any time require the original copy of the insurance certificate. The Lessee is obliged to notify RCL-MAC without delay concerning any amendment in or the discontinuation of the insurance cover.

## **8. Rental charges, costs**

- 8.1 The rental charges shall be due from the commencement of the term of the lease until the conclusion of the inspection carried out on the return in proper form of the wagon. If the wagon is returned at the request of RCL-MAC for the purpose of immediate transfer to a third party or to prepare it for such a transfer, the duty to pay rental charges shall cease on the date of the despatch or the provision and/or with the takeover of the wagon by the third party.
- 8.2 Unless otherwise regulated in the individual contract, the rental charges are billed monthly in advance and are due within 14 (fourteen) days from receipt of invoice. All payments without deductions must be received by RCL-MAC within this deadline.
- 8.3 In the event of arrears of payment on the lapse of the agreed payment deadline RCL-MAC is entitled to demand default interest from the customer under application of the statutory default interest rate in accordance with § 456 UGB and all further penalties, which have been incurred by virtue of this delay.
- 8.4 The rental charges and all other payment obligations by the Lessee arising from the leasing agreement are exclusive of the statutory Value Added Tax, Customs duty or other direct or indirect taxes applicable at any given time (e.g. leasing contract fees imposed by government). Should RCL-MAC have advanced such costs, they shall be compensated by the Lessee.
- 8.5 Subject to provisions in individual contracts, which deviate therefrom, an annual kilometrage (empty and loaded journeys)
- 8.6 for a maximum of 40,000 km shall be taken into account in calculating the rental charge. If this kilometrage is exceeded, RCL-MAC may demand an adjustment of the agreed rental charges to take account of the increased use. A reduction in the rental charges on account of use lower than 40,000 km per wagon/year is excluded.
- 8.7 In the case of demonstrable increases in costs, in particular in the case of such costs as are incurred by the implementation of statutory or governmental measures, which require adjustments to or retrofitting of the wagon with an effect on cost, or in the case of costs, which are related to the operation and maintenance of the wagon, RCL-MAC may demand an equivalent adjustment to the agreed rental charges with effect from the first occurrence of the increase in costs.
- 8.8 All transportation costs and all other costs and fees (demurrage, freight, marshalling charges, relocation costs, etc.), which must be paid in connection with the transportation and parking of the wagon, shall be borne by the Lessee.

## **9. Data Protection**

- 9.1 RCL-MAC stores personal data relating to the customer and contact details as well as personal data relating to the function and responsibilities of the customer's employees in its CRM system to the extent this is necessary for the performance of the respective contract (Art. 6 Abs. 1 lit. b GDPR) as well as to safeguard the legitimate interests of the controller (Art. 6 Abs. 1 lit. f GDPR). Such personal data will also be used within the Rail Cargo Group (RCL-MAC and companies affiliated to it within the meaning of § 189a Z 8 UGB) and if required, may also be disclosed to any subcontractor used by RCL-MAC and/or the Rail Cargo Group in connection with these purposes.
- 9.2 The customer is obliged to inform its employees about the disclosure of this information (contact details, function and responsibilities) to RCL-MAC and Rail Cargo Group (RCL-MAC and companies affiliated to it within the meaning of § 189a Z 8 UGB).
- 9.3 RCL-MAC keeps personal data relating to the customer as long as this is required to achieve the respective purpose, or as long as there are any contractual or legal obligations or justified interests to

retain such data (e.g. to perform the ordered services, to comply with legal obligations to retain certain personal data, or to establish any legal claims).

- 9.4 Subject to applicable law the customer is entitled to the following rights in relation to personal data:
1. Right of access to personal data (Art. 15 GDPR)
  2. Right to rectification (Art. 16 GDPR)
  3. Right to erasure (Art. 17 GDPR)
  4. Right to restriction of processing or the right to object to the processing (Art. 18 GDPR)
  5. Right to data portability (Art. 20 GDPR)
  6. Right to lodge a complaint with a supervisory authority (Art. 77 GDPR).

## **10. Final clauses**

- 10.1 The customer undertakes to comply with all foreign trade regulations of the countries concerned and the European Union; this applies in particular to the authorised import and export of goods including what are known as dual use goods (commodities, which can be used for both civil and military purposes). The customer must notify RCL-MAC in writing in good time regarding all instructions, prohibitions and restrictions with respect to the goods to be despatched. The customer indemnifies and holds harmless RCL-MAC for any damages arising from disregard of the foreign trade regulations. Furthermore it is the responsibility of the customer to check names and addresses against the anti-terror lists issued by various institutions. In the case of (transportation) services in countries against which there exist sanctions or trade restrictions, the customer must issue a declaration provided by RCL-MAC in connection with foreign trade regulations.
- 10.2 The Lessee is solely responsible for any necessary disclosure of the present leasing agreement and the procurement of the wagon as regards the administrative offices of the countries concerned.
- 10.3 The Lessee may set off only undisputed or legally enforceable claims.
- 10.4 The Lessee has no right of retention in the wagon.
- 10.5 Unless they have obtained the consent of the respective other party, the parties are not entitled to assign the rights and duties arising from this contract to third parties. None of the companies affiliated with RCL-MAC within the Group are deemed to be third parties within the meaning of this provision.
- 10.6 There exist no verbal collateral agreements, which extend the agreements under the contract. Agreements to amend or add to these provisions shall be valid, only when they are incorporated in written form and signed by both parties.
- 10.7 In the event that one or more provisions of these GTC are or become invalid, ineffective, infeasible or unenforceable, such a defect shall not affect the remaining provisions of these GTC. Every defective provision shall be deemed to have been replaced by a valid, effective, feasible and enforceable provision, which comes closest in law to the commercial and legal consequences, which the parties anticipated from the defective provisions.
- 10.8 The applicable law is Austrian law to the exclusion of the rules of conflict of private international law. For any disputes in connection with the General Conditions the adjudication shall rest solely with the competent in rem Court in Vienna.
- 10.9 RCL-MAC reserves the capacity to amend the General Conditions at any time. In this case RCL-MAC undertakes to issue to the Lessee without delay the copy of the amended General Conditions. Unless an objection in writing is received within 1 (one) month from the Lessee, he shall be deemed to have accepted the new General Conditions. Consequently, these shall become an integral component of the leasing agreement currently in force.