

**General Terms and Conditions of Business (“GTC”) of Rail Cargo Austria AG (“RCA”), for the leasing of freight wagons by RCA to the lessee (“Tenant”)**

Stand 01.08.2019

**1. Scope and amendment of the GTC**

- 1.1. These GTC form an integral component of every lease contract concluded between RCA as lessor and the Tenant and also apply to all future relations under leasing contracts between the parties to the contract and to any ancillary services.
- 1.2. The present GTC may be amended only by written agreement between the parties to the contract.
- 1.3. The GTC of the Tenant only apply if RCA has expressly acknowledged them in writing. By concluding a contract with RCA the Tenant waives its right to apply its own GTC, in particular the protection clause. General terms and conditions of business, which conflict, even in part with the present GTC, are ineffective in their entirety.
- 1.4. RCA shall notify the Tenant of any amendments to these GTC by transmission of a written copy of the GTC. These amendments shall be deemed to have been agreed, unless the Tenant repudiates them in writing within four weeks.

**2. Principles of wagon use**

- 2.1. Use of the freight wagons is authorised solely for the purposes provided for in the lease contract.
- 2.2. The freight wagons shall be used as agreed and with care, in accordance with the statutory provisions and the accepted rules of engineering. Provisions regarding hazardous goods and loading provisions must in particular be complied with. The Tenant shall be obliged to take note of the entire contents of any documents handed over prior to commissioning of the leased freight wagons.
- 2.3. The intended use of the freight wagons for hazardous goods must be expressly stated on the conclusion of the contract. Any breach of this obligation shall entitle RCA to termination without notice of the lease contract and to the assertion of an ancillary charge.
- 2.4. Technical, safety-related or structural modifications to the freight wagons, including installations and amendments to addresses on these are authorised only with the written agreement of RCA.
- 2.5. Subleasing of the freight wagons and the unremunerated transfer to unauthorised third parties shall be permitted only with the written agreement of RCA. The temporary transfer of the freight wagons in the course of an associated transport service/run and the subsequent return of the empty freight wagon is not subleasing under the terms of wagon use contracts pursuant to CUV, GCU or similar statutory principles.
- 2.6. In the event of damage to the freight wagons and accidents the Tenant shall notify RCA without delay by contacting the contact person specified in the contract.
- 2.7. RCA is entitled to inspect the freight wagons, which are the object of a contract, at any time during usual business hours and to examine them subsequent to prior appointment.
- 2.8. The Tenant is obliged to select the railway undertakings, which work with the General Contract of Use for wagons (GCU). If this should not be the case, the Tenant shall be deemed liable for all commercial, technical, legal and financial damage, which this omission may entail. In the event of an omission of the rules for use by the RU, RCA reserves the right to have their wagons immobilised until inspection and possible remedying of this breach. In this case the Tenant shall also be liable for all damages, which may arise from this breach in either commercial or legal or financial terms.
- 2.9. At the request of RCA and pursuant to the terms specified by RCA the Tenant must notify RCA about the movements of the freight wagons, which are at its disposal and must supply the data required by RCA for statistical data collection. In default of any other agreement, the Tenant must notify RCA each month of the vehicle kilometrage of the freight wagons rented by it or allocated to it.

### **3. Remuneration and invoicing**

- 3.1. The obligation of the Tenant to pay the agreed remuneration begins on the date of handover to it of the freight wagons and ends on the date of return of the freight wagons to RCA. In this process the date of handover and the date of return count as full calendar days.
- 3.2. RCA shall send the respective invoices to the address specified in the contract by the Tenant.
- 3.3. Terms of payment of 30 days from invoice date are deemed to have been agreed. Any agreed ancillary charges shall be due with the first rental payment.
- 3.4. If payments are not made in due time, RCA shall be entitled to charge interest on arrears in the statutory amount on the open amount from the end of the payment deadline.
- 3.5. In the case of late return of the freight wagons RCA may charge remuneration for every additional calendar day. The amount of this remuneration shall be twice the remuneration specified per calendar day in the lease contract.
- 3.6. All prices are in Euros exclusive of statutory Value Added Tax.

### **4. Request for a quotation and supply of the leased freight wagons**

- 4.1. The Tenant shall request the required quantity from RCA in writing.
- 4.2. The date and time and handover location for the freight wagons, which are the object of a contract, shall be mutually agreed in writing. The fact that a request is made does not guarantee any auto-matic availability of wagons. RCA provides wagons solely in terms of their availability with due regard to existing delivery dates.
- 4.3. If it is impossible to fulfil requests received by RCA by virtue of a shortage of wagons, requests arriving too late or for other reasons, RCA shall notify the Tenant as soon as the reasons for the obstacle are known.
- 4.4. In the case of the cancellation of an order or a reduction in the number of wagons leased prior to handover, the Tenant shall be in-voiced a sum in compensation in the amount of half the agreed re-muneration for leasing.
- 4.5. In all cases the costs of transporting and/or for preparing the empty material or possible other fees shall be borne by the Tenant.
- 4.6. In the case of the cancellation of an order or a reduction in the number of wagons subsequent to lease and prior to handover, RCA is entitled to invoice the agreed rental charges up to the end of the agreed term of the contract.

### **5. Handover and return of freight wagons**

- 5.1. RCA hands over the freight wagons in a condition fit for the use provided for in the contract. Unless special requirements are specified in the contract relating to the leasing with respect to the level of cleanliness, the freight wagons shall be handed over in the condition, in which they were subsequent to unloading by the last recipient.
- 5.2. On handover RCA and the Tenant prepare a handover certificate, in which the Tenant acknowledges that the wagons are in due and proper form. In all cases the Tenant is obliged to ensure for itself the condition of the wagons and that they are fit for its purpose. With the acceptance of the wagons by the Tenant the wagons are deemed to be accepted as described in the handover certificate.
- 5.3. Freight wagons, which are already in the possession of the Tenant on conclusion of the contract shall be accepted by the Tenant as in due and proper form.
- 5.4. The Tenant is entitled to refuse to accept defective or obviously unsuitable freight wagons. RCA must be notified without delay in writing of the rejection and the grounds for the rejection. RCA shall notify the Tenant of what further steps are to be taken. In the case of justified rejection, RCA has the option of providing a replacement wagon or of adjusting the rental charges. RCA has the right to have rejected freight wagons inspected at an authorised work-shop to verify whether the rejection was justified.
- 5.5. If the Tenant on its own initiative initiates the cleaning of the interior or exterior of the freight wagons, freight wagons concerned are deemed to have been accepted. RCA must be notified in writing of the work undertaken.

- 5.6. If no other written agreement has been reached with RCA prior to the start of the cleaning work, the Tenant shall bear all the associated costs (including transport and other ancillary costs).
- 5.7. On the return of the wagons RCA is entitled to demand the preparation and signature of an acceptance certificate. The form and contents of the acceptance certificate shall be notified to the Tenant by RCA.
- 5.8. All leased objects, including accessories, which prior to the conclusion of the lease contract were in the sole ownership of RCA, remain in the sole ownership of RCA. On the expiry of the agreed term of the lease the Tenant shall hand over to RCA the freight wagons at the agreed return location and at the agreed time for return, in all cases, however, within two months of the agreed term of the lease.
- 5.9. The Tenant shall notify RCA of the date of the intended return of the wagon material at least 30 (thirty) days prior to the expiry of the lease term agreed under the contract. If the return location has not been determined in advance, RCA shall notify the Tenant as quickly as possible of the address of the destination station, where the formalities for return of the empty wagon material are to take place.
- 5.10. The cost related to the transport to the return location shall be borne by the Tenant.
- 5.11. On return the wagons must be in the original condition, as specified in the handover certificate, completely emptied and cleaned in due and proper form. Loose components must be available in their entirety. On the return of the freight wagons to RCA any applicable damages and deficiencies on the said wagons shall be noted in the handover certificate.
- 5.12. Subsequent to the use of the wagons for hazardous goods the Tenant must, at the Tenant's costs, have the wagons decontaminated in accordance with the regulations by a firm authorised for this purpose and must provide written evidence of this.
- 5.13. For freight wagons, which are not in a due and proper condition in accordance with points 5.9 and 5.10 of these GTC, the Tenant must restore them to this state within a reasonable period. In the event that the stated period expires without successful result, the Tenant must within 14 days of a demand by RCA reimburse the cost for the restoration of the due and proper condition or, if such restoration is not possible or is not commercially feasible, must compensate the financial loss, however, to the maximum amount of the respective fair value (in accordance with Annex 5 of the GCU)

## **6. Maintenance Procedures (Inspections) and Remedial Maintenance on the freight wagon**

- 6.1. RCA is responsible for authorising and operating approval in accordance with statutory and governmental provisions. For the term of the contract RCA ensures the proper, operationally reliable technical condition and therefore also that during the entire term of the contract the freight wagons comply with UIC and TSI regulations and the GCU technical regulations and the recognised codes of engineering practice in force at any given time. Otherwise, RCA is obliged to supply the respective number of replacement wagons or to remedy the deficiency at its own costs and in this respect to indemnify and hold the Tenant harmless.
- 6.2. ÖBB-Technische Services GmbH, Grillgasse 48, 1110 Vienna is registered in the National Vehicle Register (NVR) as the ECM responsible authority for the RCA freight wagons. The guidelines for maintenance and remedial maintenance are specified by the ECM responsible authority.
- 6.3. Scheduled maintenance (overhauls) and inspections required by official bodies are performed by and at the cost of RCA. For this purpose the Tenant shall deliver the freight wagons in good time to a workshop designated by RCA. Costs arising in this regard for the delivery and removal of empty freight wagons to and from the maintenance workshop and associated costs or duties, such as shunting costs or Customs duties are borne by the Tenant.
- 6.4. At each service the cost of the work of repairing wear and tear is borne by RCA, the rectification of any damage, for which the Tenant is liable under Section 7, is borne by the Tenant.
- 6.5. Remedial maintenance (next in turn repairs) of the freight wagons is carried out by and at the cost of the Tenant and encompasses the remedying of deficiencies, which can be traced to normal wear and tear on the freight wagons; this applies also to the repair of any damage, for which the Tenant is liable under Section 7.
- 6.6. The choice of workshops is decided in advance in agreement with the ECM responsible authority.

- 6.7. If during the leasing term a wagon is withdrawn from service by virtue of maintenance, remedial maintenance or other work to repair deficiencies, during this period the Tenant has no claim to waiver, reduction of the rental rate or to the provision of a replacement wagon. This shall not apply, however, if a wagon is withdrawn from service by virtue of damage, in particular a deficiency in the freight wagon, which is demonstrably attributable to RCA.
- 6.8. If it becomes evident during the existing leasing agreement that the maintenance of one or more freight wagons is impossible or is not commercially feasible and for this reason the wagon(s) must be withdrawn from service, the Tenant must notify RCA without delay and must immediately return the freight wagons concerned, subject to any other regulation, which may have been mutually agreed, to a location designated by RCA. The rental shall be reduced accordingly for the remaining term of the lease. Liability under Section 7 is not excluded by this regulation.
- 6.9. RCA shall provide to the Tenant the German language version of all the documents required for regular operation, such as in particular a copy of the first registration document, a type plan, an address schedule and a declaration of conformity, together with all applicable documents such as operating manual and technical specifications, at the latest at the date and time of the handover of the respective freight wagons. During the entire term of the contract RCA must continue to ensure that the Tenant is provided with the most up-to-date versions of the documents.
- 6.10. Immediately on the completion of maintenance works, the relevant documentation must be sent by the Tenant to RCA at the address agreed in the contract.

## **7. Liability**

- 7.1. The Tenant assumes full liability for all damage to and deficiencies in the freight wagons, caused by it or by any third parties commissioned by it during the term of the contract or during the period, in which it has custody of the freight wagons prior to the start or subsequent to the end of the term of the contract. The Tenant shall also be liable, if the freight wagons show damage or deficiencies during the return to RCA, Any freight wagons, which are not returned, irrespective of compensation for loss, shall be invoiced to the Tenant at fair value in accordance with Annex 5 of the GCU.
- 7.2. The rectification of damage, for which the Tenant is liable, shall be performed exclusively in workshops designated by RCA. The costs thus incurred shall be borne by the Tenant.
- 7.3. The Tenant is liable for damage caused by the freight wagons, which has arisen by virtue of inappropriate use by it or by agents authorised by it, and indemnifies and holds RCA harmless with respect to all claims from third parties related to the use of the freight wagons.
- 7.4. Claims for compensation in damages of any kind whatsoever, in particular in the case of damage, which has been caused directly or indirectly by the malfunction or collapse of the leased freight wagons and any regression claims against RCA are excluded, unless otherwise provided by mandatory statutory provisions. The lessor's liability is limited to gross negligence and culpable intent.

## **8. Risk of accidental destruction**

The Tenant bears the risk for the freight wagons at the time of the handover of the said wagons until their return to RCA in accordance with Section 5. This shall include in particular the risks of force majeure, any form of loss, vandalism, sabotage and fire, as well as civil unrest and events of war. It lies within the discretion of the Tenant to take appropriate insurance measures.

## **9. Export control**

The Tenant certifies that the freight wagons and/or their accessories

- are not supplied for a military (end) use;
- are not or cannot be intended as military goods or as components of military goods; and/or
- are not used in breach of other legal provisions or supplied to another country, in particular where such a use or supply is forbidden by restrictive measures (e.g. sanctions) or weapon

embargos from the European Union or one of its Member States, a third-party state or the international community of nations.

## **10. Duty of non-disclosure**

- 10.1. The parties to the contract undertake a duty of non-disclosure concerning the commercial and technical data and information, which is not in the public domain and which has been disclosed, made accessible or has otherwise become known to them during the course of transacting the contract.
- 10.2. The duty of non-disclosure does not extend to that information, which a party to the contract has demonstrably and lawfully received from third parties or which was in the public domain at the time of conclusion of the contract, or which has subsequently become generally known, without any breach of this duty of nondisclosure.
- 10.3. Subsequent to the lapse of the term of the contract the duty of non-disclosure shall persist without limit of time, unless otherwise agreed in writing by the parties to the contract.

## **11. Term of contract and termination of contract**

- 11.1. The contract is concluded for a specific period of time, specified in the contract. A right to termination within the agreed notice period must be expressly provided in writing.
- 11.2. The right to the parties to termination without notice for good cause remains unaffected. This includes in particular the gross or repeated breach of material contractual duties, the opening of insolvency proceeds against one of the parties to the contract, the dismissal of a petition for insolvency proceeding by virtue of insufficient assets to cover costs or the obtaining of initiation of reorganization proceedings. Furthermore, the transfer of the leased object to a third party without the agreement of RCA entitles the latter to extraordinary termination of contract. If a default becomes a burden on the Tenant, RCA must make full amends within the meaning of § 1323 Austrian General Civil Code. If third parties assert claims against RCA arising from one of the aforementioned grounds, it must indemnify and hold the Tenant harmless.
- 11.3. Notice to terminate must always be given in writing.

## **12. Foreign trade restrictions**

The Tenant 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 Tenant must notify RCA in writing in good time regarding all instructions, prohibitions and restrictions with respect to the goods to be despatched. The Tenant indemnifies and holds harmless RCA for any damages arising from disregard of the foreign trade regulations. Furthermore it is the responsibility of the Tenant to check names and addresses against the anti-terrorism lists issued by various institutions. In the case of (transportation) services in countries against which there exist sanctions or trade restrictions, the Tenant must issue a declaration provided by RCA in connection with foreign trade regulations.

## **13. Data Protection**

- 13.1. RCA stores personal data relating to the Tenant and contact details as well as personal data relating to the function and responsibilities of the Tenant's employees in its CRM system to the extent this is necessary for the performance of the respective contract as well as to safeguard the legitimate interests of the controller. Such personal data will also be used within the Rail Cargo Group and, if required, may also be disclosed to any sub-contractor used by RCA and/or the Rail Cargo Group in connection with these purposes.

- 13.2. The Tenant is obliged to inform its employees about the disclosure of this information (contact details, function and responsibilities) to RCA.
- 13.3. The Tenant gives furthermore its consent that any personal data disclosed by it may be used by RCA and its affiliated companies for marketing purposes.
- 13.4. The Tenant may withdraw its consent for the use of its personal data for marketing purposes at any time via e-mail to [kommunikation@railcargo.com](mailto:kommunikation@railcargo.com).

#### **14. Court of jurisdiction and applicable law**

- 14.1. Unless there are mandatory statutory provisions to the contrary, the Vienna Inner City Court, with jurisdiction over commercial causes is the sole Court competent to deal with cases of this kind, in this geographical jurisdiction.
- 14.2. Lease contracts in accordance with these GTC are subject to the law of the Republic of Austria to the exclusion of the conflict rules of international private law.

#### **15. Final clauses**

- 15.1. Should one or more of the provisions of the lease contract or the GTC be or become ineffective, invalid and/or infeasible, this shall not affect the effectiveness, validity or feasibility of the remaining provisions of the lease contract or these GTC. Such a provision must be replaced as quickly as possible by an effective provision, which comes closest in law to the legal and commercial meaning of the original provision.
- 15.2. Amendments and additions to the lease contract and provisions, which deviate from these GTC, must be in writing.
- 15.3. In order to be valid, declarations, notifications etc. to RCA must be in written form with the original signature. Insofar as compliance with the written form is provided for in these GTC, this may not be replaced by the electronic form.
- 15.4. Unless it has obtained the prior written consent of RCA, the Tenant is not entitled to transfer its rights and duties to third parties or to assign its claims and liabilities as regards RCA to third parties.
- 15.5. The Tenant may not offset its own claims and liabilities against the claims and liabilities of RCA. Exceptions therefrom are amounts awarded by decision of the Court and debts acknowledged expressly and in writing by RCA.
- 15.6. In order to secure all claims arising from the lease contract, the Tenant assigns all claims against third parties, which it acquires or has already acquired, to RCA. RCA shall not make public this assignment, as long as it has no cause to assume that this is required for the safeguarding of its rights. At the request of RCA the Tenant must name the third parties and notify these parties of this assignment.