

AFWP

**GENERAL LEASING TERMS AND CONDITIONS FOR WAGONS USED
FOR INDUSTRIAL PURPOSES
Applicable from 1 January 2021**

Warning

For the exclusive use of AFWP members keepers

Between the following parties:

Represented by

Hereafter the "**LESSOR**",

And,

Represented by

Hereafter the "**LESSEE**",

Agree as follows:

PREAMBLE:

Liberalisation of the rail freight market due to major legislative changes at both European and national level forming the framework for this sector has led the players in the sector to review at different levels the provisions governing their business practices.

Consequently, the lessor has adhered to the General Contract of Use of wagons (GCU), in force since 01/07/2006, and attaches primary importance to compliance with its provisions.

It is therefore decisive for the lessor's commitment that the lessee only enters into contractual relations for the delivery of empty or loaded wagons for which he is responsible only with Railway Undertakings (RUs) also signatories to the GCU (General Contract of Use for wagons). A list of such undertakings is available on the GCU website (www.gcubureau.org). By signing this contract, the lessee expressly declares he has knowledge of and agrees with this prerequisite.

DEFINITIONS:

Contract: Set of General Terms and Conditions herein and appended special conditions.

Rolling Stock: The wagon or wagons forming the object of this contract.

The LESSEE explicitly declares knowledge of definitions contained in the GCU in force since the 1 January 2021, as follows:

Railway Undertaking (RU): Any public or private undertaking, licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only.

Infrastructure Manager (IM):

Any entity or undertaking in particular responsible for the establishment and maintenance of railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of infrastructure manager across all or part of a network may be entrusted to several different entities or companies.

WAGON KEEPER or KEEPER

Means the person or entity that, being the owner of a wagon or having the right to use it, exploits the wagon as a means of transport and is registered as keeper of the wagon in the competent official vehicle register, or, if the wagon is not registered in the competent official vehicle register or such a register is not existing, the person or entity that has declared to the GCU Bureau to be keeper of the wagon.

Based on the above premises, the parties agree as follows:

ARTICLE 1 - OBJECT

1.1 The lessor shall provide the lessee with the wagon or wagons specified in the present contract, hereafter "Rolling Stock", according to the conditions and appended Special Conditions.

1. 2.The lessor shall guarantee that the "Rolling Stock":

↳ is, registered in a vehicle register, authorised and technically maintained, in accordance with the European legislation in force,

↳ is in good state of repair and tightness when supplied, and suitable for the transport of the product or

products stipulated in the Special Conditions and compliant with existing regulatory provisions governing transport;

➤meets the characteristics defined in the Special Conditions annexed to the present contract or stipulated in separate correspondence.

1.3 The lessor and lessee agree to comply with obligations arising from the registration of Rolling Stock and all other national and international regulatory provisions and conventions related to the placing into revenue service and operation of the Rolling stock.

ARTICLE 2 – DELIVERY OF ROLLING STOCK

2.1 Rolling Stock shall be delivered to the lessee at the time and place decided by the parties, in accordance with provisions stipulated in the Special Conditions.

2.2 Any supply of rolling stock shall be accompanied by a contradictory delivery report in duplicate and signed by authorised representatives of each party, and including the following items:

- Date of the report.
- Identity, capacity, tare weight and maximum load of the leased rolling stock;
- State of the rolling stock and, where relevant, reservations expressed by the lessee;
- Acknowledgement by the lessee that the rolling stock is suitable for the prescribed transport.

2.3 Subject to the lessor meeting his obligations under article 1 and, in the absence of a report as specified above, the use of the rolling stock by the lessee implies acceptance of the rolling stock which shall be deemed to have been received in good state and suitable for the prescribed transport.

2.4 Should circumstances prevent a contradictory report being drawn up at the time of delivery, the lessee hereby undertakes to:

- In case of damage during transport for delivery, making the Rolling Stock unfit for normal operation, to draw up, under his responsibility, a written report of all the reservations held which shall be submitted to the Railway Undertaking (RU) handing over the Rolling Stock;
- Submit a written letter to the lessor, within fifteen days from the date of reception of the Rolling Stock (by registered post, electronic message, fax, etc.), informing the lessor of the date of reception and any reservations.

2.5 The lessor reserves the right to replace damaged rolling stock with alternative rolling stock which shall be delivered to the lessee in accordance with contractually agreed conditions.

2.6 The lessor is obliged to deliver the rolling stock on the agreed date. In the event of delay, he can only be exonerated from his responsibility by providing proof of the occurrence of a circumstance out of his control– presenting or not the legal characteristics of force majeure or fortuitous event – prevented him from fulfilling his obligations, or due to intervention by a third party, subject to the third party be clearly identified.

Failing proof to the contrary, the lessor shall be bound to compensate the lessee with an amount to be calculated according to conditions in Appendix 6 of the GCU.

ARTICLE 3 - USE

3.1 The lessee hereby agrees that for the duration of the contract he shall employ the Rolling Stock reasonably and in accordance with the prescribed conditions.

The lessee in particular agrees to comply with the condition in the preamble not to enter into transport contracts or engage in business with Railway Undertakings (RUs) other than those members to the General Contract of Use (GCU).

Failing this the lessee hereby expressly undertakes to ensure that the relevant Railway Undertaking (RU) acknowledges precedence of and agrees that provisions of the General Contract of Use (GCU), version in force since 1 January 2021 and all subsequent versions shall prevail over all other contractual clauses.

3.2 The lessee also expressly undertakes, under his sole and exclusive responsibility, to ensure that in all cases:

3.2.1. The rolling stock is only used for goods it is authorised to transport, listed exhaustively in the Special Conditions;

3.2.2. Not to modify any part of the Rolling Stock and not to remove markings denoting ownership of the rolling stock and not to modify the inscriptions;

3.2.3. Not to exceed the load limits, to respect the loading and unloading conditions specific to the rented rolling stock and the transported product,

3.2.4 Meet at all times the tariff and regulatory requirements applicable and in accordance with the contractual relationship with the Railway Undertakings (RU) and Infrastructure Managers (IM) in question, to settle all charges, taxes or fines imposed on the Rolling Stock due to these requirements, regardless of the actual party legally responsible for payment of the latter;

3.2.5 Not to sub-let or loan the rolling stock to any third party for any reason or under any condition, except with express prior and written agreement from the lessor;

3.2.6. To notify the lessor by the quickest means possible, with written confirmation in each case, of any problem or damage to the rolling stock, any apparent or hidden defect which would be revealed during operation of the rolling stock and might jeopardize the maintenance in good condition of the rolling stock, transported products or railway safety.

3.3.1 In application of article 15 of the GCU, Railway Undertakings (RU) are bound to:

- Provide the keeper with all the information necessary for operation and maintenance of the wagons.
- Provide the keepers of the wagons they use with information from their operating and data recording systems on mileage covered by the wagons.

Consequently, the lessee must ensure and if necessary take all the necessary measures, so that the Railway Undertaking (RU) is able to provide the lessor with the information referred to above.

ARTICLE 4 - MAINTENANCE

4.1. The lessee shall ensure that Rolling Stock is submitted to the periodic checks required on the one hand by existing regulations, conventions and practices, and on the other hand by legislation and maintenance programmes approved and implemented by the lessor. (Annual maintenance plans to be communicated in the month of December of the preceding year).

Rolling Stock shall be submitted within the regulatory deadlines in accordance with an agreed programme and in a specialised workshop selected by the lessor.

- 4.2 The lessee shall carry out or subcontract work such as degasification, cleaning and neutralisation of the rolling stock during the period of operation. Each time such work is carried out in a specialised workshop, the lessee shall immediately notify the lessor.
- 4.3. Should any troubleshooting or defect appear on the rolling stock or in its equipment, as described in article 3.2.6., the lessee undertakes to notify the lessor immediately in writing (registered post, fax or electronic message, etc.) in order any appropriate course of action in agreement with the lessor.
- 4.4. All other maintenance work shall be carried out at the sole initiative of the lessor; the lessee committing to present the Rolling Stock for execution of these operations at an agreed time and to the place specified by the lessor.

For the abovementioned work, provisions in articles 2 above and 5.5 below shall be normally applied for the drafting of a contradictory report when the Rolling Stock enter the workshop specified by the lessor and on return, when it is made available to the lessee, at the place designated by the latter.

- 4.5. Maintenance costs will be borne as follows:

4.5.1. By the lessor, for work associated with normal wear and maintenance of rolling stock, work arising from regulations and normal business practice, and from existing laws;

4.5.2. By the lessee, for all other maintenance work, namely degasification, cleaning, neutralisation and removal of the product when the Rolling Stock is sent in for repairs, for revision or returned to the lessor.

ARTICLE 5 - RETURN

- 5.1. The lease ends on the date agreed upon by the parties subject to the following conditions:
- 5.2. The rolling stock must be returned entirely empty and free of any outstanding payments to a location to be determined by the lessor in its original state at the time of initial deployment, except for normal wear from use.
- 5.3. The lessee shall return the rolling stock on the agreed date. The lessee shall be liable for any delay unless able to provide proof of force majeure or that the delay was due to a third party accepting liability or legally proven to be liable, or due to default on the part of the lessor.

Failing such evidence the lessee shall be bound to compensate the lessor with an amount to be calculated according to conditions in Appendix 6 of the GCU
- 5.4. Should the lessee be unable to return the rolling stock for reasons for which he is liable, the lessee shall be bound to pay compensation to the lessor equal to the residual value of the Rolling Stock, calculated in accordance with the conditions provided for in Appendix 5 of the General Contract of Use (GCU).
- 5.5. An inventory shall be made when the wagon is returned.

5.5.1. The inventory shall be made in duplicate, and each copy signed by the qualified representatives of the two parties including the following particulars:

- Date of drafting;
- Identity of rolling stock;
- State of rolling stock, and where appropriate, reservations expressed by the lessor.

5.5.2. In case events prevent the drafting of an inventory, namely if Rolling Stock is returned directly to the Railway Undertaking (RU) or is returned into the hands of the subsequent lessee, any reservations expressed by the lessor must be sent in writing to the lessee within 15 consecutive days from the date of the actual return (via registered mail, fax, electronic message...).

After this period of 15 consecutive days has lapsed, it shall be deemed that the rolling stock was returned in good condition.

5.5.3. The lessor hereby undertakes to voice any reservations it may have to the Railway Undertaking (RU) returning rolling stock, if the said rolling stock is not fit for normal operation because of damage caused by transport.

5.6. All cleaning, degasifying, neutralisation and destruction of product which may be required at the time of the return shall be borne by the lessee.

ARTICLE 6 – COST OF TRANSPORT

The cost of transport arising from deployment and return of the Rolling Stock as well as any other expenses incurred in the course of the contract are to be borne by the lessee, as are any taxes to be paid in conjunction with the transport and parking of the rolling stock.

ARTICLE 7 – COST OF LEASE

The cost of rental shall be specified in the Special Conditions.

ARTICLE 8 – PAYMENT OF LEASE

8.1 Rent for the lease shall be payable as of the date of deployment of the Rolling Stock.

In case of differed deployment at the lessee's request, the rent shall be due from the date at which the Rolling Stock was initially scheduled to be deployed, subject to any waiver in the Special Conditions.

Should the inventory reveal the need for immediate remedial work, rent shall accrue only from the date on which the repair work has been completed.

8.2 Rent shall accrue throughout the period of work stipulated in article 5.6 until establishment of an inventory, as provided in article 5.5.

8.3 Rent shall accrue throughout the period of work being carried out in workshops as described in article 4, paragraphs 4.1 and 4.4.

8.4 Rent shall accrue throughout the period during which the wagon is immobilised because of damage.

8.5 Rent shall not be due if the lessee can provide evidence that the wagon is immobilised for reasons exempting liability provided for in article 10.1.2, or due to loss, defects or damage for which the Railway Undertaking (RU) and/or Infrastructure Manager (IM) admit liability according to article 10.1.3.1 or have been legally proven liable.

ARTICLE 9 –INTEREST ON DELAYED PAYMENT - TAXES

9.1 Interest accruing on delayed payment: In application of Directive 2011/7/UE dated 16 February 2011, “*on combating late payment in commercial transactions*”, the interest rate on delayed payments is equal to the reference rate which is that applied by the European Central Bank to its most recent refinancing operations in force on the first day of the six month period of the calendar year during which interest for late payment began to accrue, plus eight percentage points.

Interest shall accrue from the day following the final date for payment, specified in the Special Conditions until full reimbursement of the principal.

9.2 – Taxes:

All amounts to be paid by the lessee to the lessor arising from contractual obligations include additional levies and taxes legally or not legally due by the lessee, unless expressly due by the lessor.

ARTICLE 10 - LIABILITY

10.1 DAMAGE TO ROLLING STOCK

10.1.1 The lessee shall repair all loss, defects or damage to the rented Rolling Stock, except in cases provided for in articles 10.1.2 and 10.1.3 below:

10.1.2 The lessee may not be exempt from this liability unless evidence is provided that the loss, defects or damage are due to:

- A hidden defect in the rolling stock;
- Force majeure,
- A fault on the part of the lessor, his servant or agent;
- A clearly identified third party;
- War.

10.1.3 In case of losses, defects or damage to the rented Rolling Stock when the latter is on a railway line:

10.1.3.1 And if a Railway Undertaking (RU) and/or an Infrastructure Manager (IM) accept liability, the lessee is freed of the obligation to pay compensation.

10.1.3.2 And if a Railway Undertaking (RU) and/or an Infrastructure Manager (IM) contest their liability, the lessor and the lessee jointly undertake all precautionary measures to find the responsible party or parties.

10.1.3.3 It should be noted that liability of the Railway Undertaking (RU) is governed by provisions in Chapter V of the General Contract of Use (GCU) and article 24 of the CIM (Uniform Rules Concerning the Contract for International Carriage of Goods by Rail).

10.1.4. Losses, defects and damage for which the lessee shall be liable to pay compensation according to the provisions in 10.1.1 below include material cost of repairs, cost of transport and immobilisation, and compensation for depreciation and loss of use.

10.1.5. If Rolling Stock is damaged during the leasing contract, the lessee undertakes to:

10.1.5.1 Inform the lessor in writing as soon as he has knowledge of the damage and within three days, excluding bank holidays.

10.1.5.2 Take all necessary measures in a timely fashion (e.g. inventory of damage) for the benefit of the lessor, to preserve his rights, and his right of redress against any third party, and to assist the lessor in order to allow him to launch required proceedings, where applicable.

If the liability of a third party is clearly established, the lessor shall claim compensation directly from that party for the damage suffered, all rights reserved against the lessee.

10.1.5.3 Take all necessary measures within his power to limit the damage to the Rolling Stock.

10.2 DAMAGE TO THIRD PARTIES

10.2.1 The lessee shall be liable for all damage to third parties caused by the rented Rolling Stock and goods being transported.

10.2.2 The lessee cannot be exempt from this liability unless evidence is provided establishing that the liability for damage is due to:

- A hidden defect in the rolling stock;
- Force majeure,
- A fault on the part of the lessor, his servant or agent;
- A clearly identified third party;
- War.

10.2.3 The lessee guarantees protection to the lessor against any action launched under the above.

10.3 DAMAGE TO GOODS

The lessee takes personal responsibility for the loss, defects or damage to goods being carried. The lessee shall take any appropriate action against the transporters or responsible third parties. The lessee therefore guarantees protection to the lessor against any action which may be undertaken against him due to the above, except in cases where the lessee can provide formal proof of a hidden defect in the Rolling Stock, liability of or negligence on the part of the lessor, or his servants or agents.

ARTICLE 11 – INSURANCE

Both parties undertake to enter into contracts of insurance offering a level of cover deemed suited to their respective responsibilities, as described in article X.

The lessee in particular shall take on an insurance suited to the proper coverage of all the risks, whatever they may be, that are not included in the standard insurance cover, security agreements or statutory waivers of defense. The lessee shall provide evidence that such measures have been taken on the first written request from the lessor.

ARTICLE 12 – DURATION OF CONTRACT

Duration of the contract and any terms for its renewal shall be stipulated in the Special Conditions.

ARTICLE 13 – SCOPE OF CONTRACT

The present contract represents the full scope of the agreement between the parties and cancels and replaces any other agreement, directly or indirectly related to the subject of the present contract, either oral or in writing.

ARTICLE 14 – CLAUSES DECLARED NULL AND VOID

The declaration of any clause of the present contract and appendices to be null and void or inapplicable for any reason and under any jurisdiction, whether or not by legal and final decision, shall not affect the validity of remaining clauses which shall remain in force and shall be applied as if the present agreement had been concluded without the aforementioned voided clause. Notwithstanding, if the voided clause affects the very substance or significantly modifies the initial purpose of the present contract, the latter shall be terminated ipso jure.

ARTICLE 15 - TERMINATION

In case of non performance by either party of any part of the present contract and failing any action being taken within a period of eight (8) calendar days after notice of this non performance has been served by registered post, the lease contract may be terminated by the serving party by registered letter and all rights reserved, and the Rolling Stock shall have to be returned empty and free of any outstanding amounts due, to a place to be specified by the lessor in its original state, subject to normal wear from use.

ARTICLE 16 – SETTLEMENT OF DISPUTES

The present contract shall be governed by French law, and expressly excludes application of rules of conflict of law inter alia, which would invoke any other provision other than in French law.

The essence of the present agreement is grounded in good faith and the will for mutual understanding of the parties, with a view to jointly apply the provisions agreed upon herein. The parties therefore undertake to resolve any dispute by virtue of amicable settlement.

Failing all possible mutual attempts to reach a final amicable settlement to any dispute arising from the performance of the present contract the parties agree to submit their dispute to the courts under the jurisdiction of the legal domicile of the lessor, even in the event of introduction of third parties or multiple defendants.

.....on in duplicate

Appendix: Special Conditions

The LESSOR

The LESSEE