

**General Terms and Conditions
for the use of private freight wagons of TRANSWAGGON
(GTC Use)**

as of January 1, 2019

1 General information

- 1.1 TRANSWAGGON offers private freight wagons for the performance of national and international transports.
- 1.2 The conclusion, content and fulfilment of contracts as well as any non-agreed use are subject exclusively to the following General Terms and Conditions for the Use of Private Wagons of TRANSWAGGON (GTC Use). The customer's terms and conditions shall not apply, even if TRANSWAGGON does not expressly object to them.
- 1.3 The customer uses the wagons for national or international railway transport or commissions TRANSWAGGON to carry out the transport. They are aware of the regulations and conditions (GTC) of the respective Railway Undertakings (RU) which are utilised for the use of the wagons.

TRANSWAGGON expressly does not accept the general terms and conditions of the RU which reduce, exclude or otherwise change the rights of TRANSWAGGON as keeper of the wagons or the obligations of the RU as user to the detriment of TRANSWAGGON arising from the General Contract of Use (GCU). The customer is not entitled to conclude or accept contracts and general terms and conditions of the RU which are detrimental to TRANSWAGGON (see also Section 4.6. of these GTC Use); corresponding clauses shall therefore not apply to the legal relationships governed by these GTC.

The regulations and conditions of the RU which are used by the customer or on behalf of the customer during the execution of the contract must be observed by the customer. Any consequences and costs that TRANSWAGGON may incur in the event of non-compliance shall be borne by the customer.

- 1.4 Any agreements deviating from these GTC Use require the written form.

2 Offer

- 2.1 Written offers from TRANSWAGGON can only be accepted during a period of 30 days, which begins with the date the offer is sent, by means of a corresponding written wagon order. Conclusive action shall be treated in the same way.
- 2.2 Offers and agreements, including flat-rate ones, shall be based on the prices, conditions of carriage, operational requirements, traffic pairs, scheduling conditions and exchange rates of the RUs involved valid for TRANSWAGGON at the time of submission of the offer as well as on the condition that the routes on which the calculation is based are open to traffic. In case of a change of these calculation bases TRANSWAGGON is entitled to adjust offers and agreements to the new circumstances by declaration to the customer. Any additional costs arising from the use of different transport routes, either due to a regulation or a subsequent instruction by the customer, shall be borne by the customer.
- 2.3 Offers from TRANSWAGGON include only the expressly designated services. The performance of additional services or services deviating from the offer, as well as the payment of surcharges or ancillary costs, shall be charged separately plus an advance commission of 3 %.

3 Services

- 3.1 TRANSWAGGON uses its wagons to carry out transports for the customer or provides its wagons to the customer either for a certain period of time or for a certain transport route.
- 3.2 If TRANSWAGGON uses its wagons to carry out a transport for its customer, TRANSWAGGON shall charge the customer an all-in rate. The all-in rate only includes the services specified in the offer.

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- 3.3 If TRANSWAGGON provides the customer with a wagon for a certain period of time or a certain transport route, TRANSWAGGON shall charge the customer a lump sum for the use of the wagon. This lump sum represents the charge for the use of the wagon from the day of handover by the RU to the customer until the day of return to the RU. All rights and obligations arising from freight contracts with the RUs involved shall be assumed by the customer or shall be borne exclusively by the customer.
- 3.4 Unless expressly agreed otherwise, neither lump sums for wagon use nor all-in rates shall include any other costs such as customs duties, taxes, import and export duties, customs clearance charges, weighing costs, demurrage, siding charges, crane charges, transshipment charges, charges for exceeding the loading gauge, heavy goods surcharges and other unforeseeable costs arising as a result of special circumstances. Should these costs be invoiced to TRANSWAGGON, TRANSWAGGON will pass them on plus an advance commission of 3 %.

4 General conditions of use

- 4.1 The customer may freely use the wagon on the European rail network on the agreed routes, as far as this is technically possible and approved by the infrastructure managers or RUs. TRANSWAGGON assumes that the RU has acceded to the General Contract of Use (GCU) for the entire duration of use and is included in the list of contracting parties to the GCU. Any other use is only possible with the express written consent of TRANSWAGGON.
- 4.2 Subletting to third parties and the use of the wagons in crisis areas is only possible with the prior written consent of TRANSWAGGON.
- 4.3 As a rule, the wagons may **not** be used to transport **hazardous goods** in accordance with Annex C to COTIF 1999 (RID). In individual cases only, TRANSWAGGON reserves the right to issue exceptional written authorisation after providing information in writing on the goods (material number, packaging group, transport category) and quantities loaded.
- 4.4 If the customer has the wagons used for transport carried out by an RU which has not acceded to the GCU, TRANSWAGGON must not suffer any disadvantages as a result. The customer must always place TRANSWAGGON in the same position as if the transport had been carried out by an RU that has acceded to the GCU. Any consequences and costs that TRANSWAGGON may incur as a result shall be borne by the customer. Should these costs be invoiced to TRANSWAGGON, TRANSWAGGON will pass them on plus an advanced commission of 3%.
- 4.5 TRANSWAGGON has joined the GCU as keeper (in accordance with Annex 2 of the GCU) of the wagons provided. The GCU regulates the legal relationship between the RU and the keeper of the wagons used.

The customer shall act as the authorised third party of the keeper towards the RU when scheduling and supplying the wagon for loaded and empty runs.

The customer shall clarify to the RU that in all other cases declarations in connection with the GCU shall be addressed directly by the RU to TRANSWAGGON as the wagon keeper. Irrespective of this, the customer shall immediately forward to TRANSWAGGON all declarations and information of the RU which the customer has received in error and which concern the keeper of the wagon.

- 4.6 The customer is, in no way, authorized without prior consent from TRANSWAGGON to agree any deviations from the conditions of the GCU with the RU.
- 4.7 The customer is responsible to TRANSWAGGON for the compliance of the RU with the provisions of the GCU and indemnifies TRANSWAGGON against any disadvantages resulting from non-

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compliance. If necessary, the customer shall enter into supplementary contractual agreements with the RU in order to ensure compliance with the provisions of the GCU by the RU.

- 4.8 The customer is jointly and severally liable to TRANSWAGGON 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 wagon.
- 4.9 TRANSWAGGON may at any time request information from the customer as to which RUs have used the wagon. TRANSWAGGON may prohibit the handover of the wagon to certain RUs, irrespective of whether they have acceded to the GCU or not.
- 4.10 According to Directive 2008/110/EC (to amend Directive 2004/49/EC) on railway safety in the Community, wagon keepers must name an Entity in Charge of Maintenance (ECM) and have this certified in future.
- 4.11 **TRANSWAGGON AG, Zug, Switzerland** is the ECM for all of TRANSWAGGON's wagons. A certificate by the ECM regarding a functional maintenance management system is available and has been entered in the European Railway Agency (ERA) register. Restrictions of use cannot result from this for the customer.

If TRANSWAGGON does not receive the necessary information from the RU using the wagon that is required to properly perform its function as a keeper and ECM, TRANSWAGGON reserves the right to prohibit, in writing, use of the wagon by this RU.

- 4.12 TRANSWAGGON is required, in accordance with international standards, to convert the wagons to noise-reducing braking technology. In order to maintain unrestricted operational capability, the conversion must be completed by the end of 2020. The resulting additional costs (essentially the wear on the wheelset) influence the pricing of the wagons. TRANSWAGGON includes a cost allocation rate for this in the pricing.

5 Ordering and provision

- 5.1 The wagon order shall be addressed to TRANSWAGGON and shall not be deemed accepted until it has been confirmed in writing. The order must contain all information required for the execution of the transport or the provision of a suitable wagon.
- 5.2 If TRANSWAGGON is unable to make the wagon available on the agreed date, the customer may cancel his order or place a new order in consultation with TRANSWAGGON. Further rights, in particular the right to compensation, are excluded.
- 5.3 If a wagon order is cancelled by the customer, TRANSWAGGON may demand compensation from the customer for the costs incurred as well as for the days lost in accordance with the demurrage charges.

6 Use of the wagon by the customer

- 6.1 If TRANSWAGGON makes a wagon available to the customer, the latter shall be obliged, after handover of the wagon by the RU, to ensure that the wagon is suitable for its purposes and shows no recognisable damage. The customer must notify TRANSWAGGON of any defects within 48 hours (Saturdays, Sundays and public holidays not included) using the form developed by TRANSWAGGON for this purpose.

If the customer does not notify TRANSWAGGON of any defects within this period, this shall be deemed confirmation of the proper condition of the wagon and its suitability for the transport intended

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by the customer. In this case TRANSWAGGON is entitled to charge the customer demurrage and other costs of the standstill, as far as these were caused by the delay.

If the customer accepts the wagon for use despite notification of defects, liability on the part of TRANSWAGGON for the notified defects is excluded.

If the customer demands that the wagon be replaced as a result of the defects reported, TRANSWAGGON will withdraw the defective wagon and replace it in good time with a non-defective wagon of an equivalent value. In this case, TRANSWAGGON is not liable for costs that arise for the customer directly or indirectly as a result of the downtime for the wagon.

If the customer demands the replacement of the wagon due to the reported defects, TRANSWAGGON will remove the damaged wagon and replace it promptly with an equivalent, undamaged wagon. In this case TRANSWAGGON is not liable for any costs incurred directly or indirectly by the customer due to the downtime of the wagon.

- 6.2 If TRANSWAGGON has made the wagon available to the customer for a certain period of time or for a certain transport route, the customer shall comply with all provisions of the infrastructure managers, the RUs and the competent authorities as well as TRANSWAGGON's instructions regarding the handling of the wagon.

The customer shall be liable for all actions of the consignor or his vicarious agents as well as for the details in the consignment note which are based on notifications from the customer or which were used by them.

- 6.3 If TRANSWAGGON has made the wagon available to the customer for a specific transport route, the customer is obliged to load and supply the wagon immediately after it has been handed over by the RU; the same applies to unloading at the place of destination and dispatch of the empty wagon in accordance with TRANSWAGGON's specifications.

- 6.4 Immediately after dispatch of the wagon, the customer shall transmit to TRANSWAGGON in text form all information and data necessary for TRANSWAGGON to be able to dispose of the empty wagon again in its proper condition at the destination point. If this information is not provided or is provided late, the customer shall be liable for compensation, in particular for downtime, demurrage in accordance with the current demurrage regulations and additional freight. At the end of use, the conditions of the participating RU shall apply, otherwise also for the return of the wagon to the RU.

- 6.5 The customer may also have his obligation to transmit the data fulfilled by commissioned service providers or RUs. In particular, the customer consents to data transmission by the commissioned or used RU for the running of a wagon used by the customer. These data may include dispatch notifications, status reports on the route (running interruption reports / damage reports), the load weights, the NHM code and the expected time of receipt of the wagon.

- 6.6 If the wagon is dispatched to a destination station outside the country where the TRANSWAGGON company has its registered office, TRANSWAGGON may require the customer or its contractual partner to bring the empty wagon to a station to be designated by TRANSWAGGON for dispatch immediately after unloading.

- 6.7 The customer has no right of retention in respect of the wagon.

- 6.8 The customer shall ensure the proper return of the wagon without residues of cargo or loading equipment in a clean-swept condition. Any subsequent additional costs incurred for cleaning and loss of use in accordance with the demurrage charges shall be borne by the customer.

- 6.9 Unless otherwise agreed in the individual order, the following provisions shall apply to demurrage charges.

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TRANSWAGGON requires immediate loading and unloading of the wagons. The customer is responsible for complying with the loading and unloading deadlines and for reporting wagons ready for collection to TRANSWAGGON on time. The commissioning of third parties does not release the customer from his fundamental obligation towards TRANSWAGGON.

Unless otherwise agreed in the individual order, the demurrage fee shall be as follows

on day 1 of the time subject to demurrage	90 Euro / day.
from day 2 of the time subject to demurrage	180 Euro / day.

7 Transport through TRANSWAGGON

- 7.1 If and to the extent that TRANSWAGGON carries out the transport on their own wagons, the issue of the consignment notes by the customer, in particular with regard to the indication of tariffs, contracts with RUs and routing regulations, shall be effected in accordance with TRANSWAGGON's instructions. If consignment notes or corresponding instructions are not available, the customer is obliged to request them immediately; otherwise they shall be liable for additional costs and other damages.
- 7.2 TRANSWAGGON may demand that the customer use the consignment notes provided by TRANSWAGGON.

8 TRANSWAGGON Portal / TRANSWAGGON Freight Buddy (TFB) / Data protection**8.1 Services**

TRANSWAGGON optionally provides the customer with the location data available in their own scheduling system or, if equipped, also the GPS/sensor data of the wagons.

Access to the data is via a standardised interface or via access to TRANSWAGGON's own web portal. The portal services around the GPS data are marketed under the brand name TRANSWAGGON Freight Buddy (TFB) and support the customer in the monitoring of running and location, shock and impact detection, sensor-supported load monitoring as well as in communication with TRANSWAGGON (damage reports, handover reports, etc.). The portal is accessible via PC or mobile devices.

The use of the TFB is subject to a fee.

8.2 Data protection

The special regulations on data protection at TRANSWAGGON are set out in the Terms of Use for the portal or on the TRANSWAGGON website.

8.3 Right to use the data of the portal and the TFB data

The portal and TFB data are kept in TRANSWAGGON's database and can be transmitted to the customer of the wagons as status reports (daily reports or action-controlled reports).

The customer of the wagons is granted the right to use this data. Any transfer to third parties outside the customer's group requires the consent of TRANSWAGGON.

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9 Damage to the wagon

- 9.1 The customer shall be liable for damage to and loss of the wagons provided and taken over in accordance with the contract until their return (Section 6.4) unless the customer proves that the damage did not occur during the period of their use. The time at which the customer or his agent has actual power of disposal over the wagon shall be decisive for acceptance. The time at which TRANSWAGGON or their agent regains actual power of disposal over the wagon shall be decisive for the return. TRANSWAGGON reserves the right to claim damages from the customer for any subsequent damage that may be attributed to the customer's use of the wagon.
- 9.2 As far as legally permissible, the customer is also responsible for the fault of third parties they use and their vicarious agents.
- 9.3 If the RU is liable (in accordance with article 22 of the GCU), TRANSWAGGON will first make use of the RU responsible for the liability. If no compensation can be obtained from the RU within a period of 12 months or if the liable RU cannot be determined within this period, the customer will be held jointly and severally liable for the damage.

In the event of damage occurring in railway operations, the customer is obliged to procure and make available to TRANSWAGGON in good time all documents (damage report, etc.) necessary for asserting the rights against the RUs or the infrastructure manager.

- 9.4 With the conclusion of the respective individual contract, the customer assigns to TRANSWAGGON all his claims against the RUs involved and/or other third parties if and to the extent they have arisen due to the damage or loss of the wagon. TRANSWAGGON accepts this assignment.
- 9.5 The consignor and consignee and their agents shall be regarded as vicarious agents of the customer. The customer is liable for his vicarious agents.
- 9.6 The customer shall be liable for damage within a private siding.
- 9.7 The customer has to inform TRANSWAGGON within 24 hours after knowledge of the occurrence of a damage.
- 9.8 If damage occurs, the customer is obliged to take all measures to secure TRANSWAGGON's claims for damages against the RU and other third parties. The customer is obliged to do everything in his power to minimize the damage.
- 9.9 In the event of damage for which the customer is responsible in accordance with these conditions, the customer must reimburse TRANSWAGGON for the costs of the complete restoration of the wagon, the repair-related empty freight charges and the loss of earnings incurred during the repair period, which is calculated on the basis of the current demurrage regulations. If a total loss occurs, the customer must reimburse TRANSWAGGON for the full current value of the wagon in accordance with Annex 5 of the GCU.
- 9.10 In the event of damage, the customer shall also be responsible for their agents to protect their rights towards the RU.
- 9.11 TRANSWAGGON shall, in addition to the pure invoicing of the costs of repairing violent damage caused by the customer, also charge a handling fee to cover the administrative costs of handling the damage.

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10 Liability of TRANSWAGGON

- 10.1 If TRANSWAGGON makes wagons available to the customer for a journey (Section 3.3), TRANSWAGGON's liability is limited to intent and gross negligence as far as legally possible.

TRANSWAGGON limits liability from this contractual relationship to twice the all-in rate or twice the lump sum fee for wagon use and provision.

- 10.2 If TRANSWAGGON carries out the transport for the customer for an all-in rate (Section 3.2), TRANSWAGGON shall be liable to its customers, subject to special conditions in domestic traffic, in accordance with the statutory regulations applicable to the companies in the international transport chain used to fulfil the contract.

These include in particular the CIM, SMGS, the Hague Rules and the CMR. In all other cases TRANSWAGGON shall be liable in accordance with the provisions of CIM.

TRANSWAGGON assigns its identical claims against the party causing the damage to the customer. The customer shall primarily claim the actual causer of the damage.

TRANSWAGGON is liable for domestic traffic in accordance with the valid liability regulations of the RU used.

- 10.3 TRANSWAGGON is not liable for exceeding normal running times, even if these are caused by the wagon. Liability for consequential damage is excluded.
- 10.4 TRANSWAGGON shall not be liable for services provided by third parties which TRANSWAGGON procures or arranges on the instructions of the customer. At the customer's request TRANSWAGGON assigns claims against these third parties to the customer.
- 10.5 If and to the extent that claims for compensation against TRANSWAGGON exist in accordance with the above provisions, the customer must notify TRANSWAGGON in writing within five days of becoming aware of the damage, but at the latest within four weeks of the damage occurring.
- If TRANSWAGGON does not receive the notification of the claim for damages in due time, any claim for compensation by the customer shall lapse. If TRANSWAGGON receives the notification of damage at a time when it is no longer possible to safeguard their rights against third parties, the claim for compensation against TRANSWAGGON shall be reduced to this extent.
- 10.6 TRANSWAGGON is not liable for any loss or depreciation of the transported goods.

11 Settlement and payment

- 11.1 If TRANSWAGGON carries out the transport for the customer against payment of an all-in rate (Section 3.2), the customer is obliged to immediately send TRANSWAGGON the documents required for invoicing, in particular original consignment notes or duplicate consignment notes.
- 11.2 Invoices from TRANSWAGGON are due without deduction within ten days of the invoice date. The invoice amount is to be paid into one of the bank accounts indicated on the invoice. Offsetting is only possible with due and undisputed counterclaims. Default of payment occurs after the expiry of the period even without reminder.
- 11.3 In case of delayed payments TRANSWAGGON reserves the right to charge default interest to the customer without further notice. The interest rate applicable in EU countries is the rate specified by the respective legislator in accordance with Directive 2011/7/EU or national implementation of the Directive. In countries outside the EU, an interest rate of 0,75 % per calendar month or part thereof

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shall apply from the due date of the invoice amount. The law of the registered office of the respective TRANSWAGGON company is decisive for determining the interest rate.

12 Value added tax (VAT)

If the services of TRANSWAGGON are subject to VAT, the VAT will be charged to the payer in addition to the agreed fee and shown separately in the invoice.

13 Collateral

In order to secure all claims to which TRANSWAGGON is entitled against the customer, TRANSWAGGON has a lien on all goods, transport documents and funds which have been voluntarily handed over to them in connection with a service within the meaning of Section 3.1, insofar as these are the property of the customer.

14 Place of fulfilment, jurisdiction, statute of limitations, original text

- 14.1 The place of fulfilment and jurisdiction shall be the registered office of the TRANSWAGGON company which concluded the contract.
- 14.2 The law of the country shall apply in which the TRANSWAGGON company which concluded the contract has its registered office.
- 14.3 All claims against TRANSWAGGON, regardless of their legal basis, are subject to a limitation period of six months, unless statutory provisions prescribe a different period. The limitation period shall commence upon the entitled party's knowledge of the claim, but at the latest on the day on which the wagon is returned by the consignee.
- 14.4 The General Terms and Conditions for the Use of freight wagons (GTC Use) of TRANSWAGGON are originally written in German and, if applicable, translated into the national languages of the individual local TRANSWAGGON offices. In the event of differences between the translated versions and the original German text, the original German text shall take precedence insofar as this is permissible under the respective national legislation.

15 Severability clause

- 15.1 If one or more provisions of the contract or of the GTC Long-term hire become void, ineffective or impracticable, the contracting parties undertake to replace these by other effective or practicable provisions which come as close as possible to these.
- 15.2 All other provisions shall not be affected and shall remain in full force and effect.
- 15.3 The foregoing provisions shall also apply in the event that the contract or the GTC Long-term hire should prove to be incomplete. In this case, the parties shall supplement the contract or the GTC Long-term hire with provisions which correspond as closely as possible to the economic objective pursued by the contracting parties in concluding the contract.