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The following "General Terms and Conditions for the Provision of Freight Vehicles" (hereinafter referred to as "Terms and Conditions") apply to the provision of freight vehicles (hereinafter referred to as "vehicles") for a fee to renters (hereinafter referred to as "renters") of the TRANSWAGGON company concluding the contract (hereinafter referred to as "TWA").

The Terms and Conditions form an integral part of the respective individual rental contract for the provision of vehicles concluded with the renter (hereinafter referred to as the "contract").

Any collateral agreements or reservations, amendments and/or supplements to these Terms and Conditions require a written agreement between the contracting parties to be effective. This also applies to the waiver of this written form requirement.

## 1. Definitions

### **Arrival day**

Day of the arrival of a vehicle at an agreed handover location.

### **Corrective maintenance**

Work that serves to restore a vehicle to its *intended condition* outside of *preventive maintenance*.

### **Crisis areas**

Areas in which there is a high likelihood of war-like conflict or intervention by a high authority (e.g. official or state measures), particularly those which could lead to confiscation and expropriation. Economic crises are excepted, provided no force majeure is to be expected.

### **Day**

Calendar day.

### **Defect**

A defect exists if the use of the vehicle for its intended purpose is impaired and the actual condition deviates from the target condition. A defect does not exist if the vehicle is *operational*.

### **ECM (Entity in Charge of Maintenance)**

Entity in charge of maintenance of freight vehicles within the meaning of EU Regulation 445/2011.

### **Inspected by rail operator**

The competent railway undertaking (hereinafter referred to as "RU"), whose staff or vicarious agent examine the vehicle for damage or irregularities.

### **Immediately**

Without negligent or intentional delay, related to the task to be completed, respectively.

### **Intended condition**

Condition in which a vehicle should be (target condition).

### **Involuntary days lost**

Days lost, minus deadlines covered by flat rates, caused by a breach of duty on the part of TWA or required work, such as *preventative maintenance*, or legally required changes to the vehicle. In the aforementioned cases, no *rental fee* shall be payable from the *day* on which the work commences until the *day* on which the renter is notified that the vehicle has been released for operation.

### **Maintenance**

Maintenance includes all work and the assumption of related costs that may be incurred in the course of operating the vehicle.

**Minor repairs**

Damage that does not need to be repaired during a stay at a workshop. The term includes, but is not limited to, the following work: mounting interceptors, paper holders, grounding cables, spark protector panels, lubricating buffers, lubricating and mobilising screw couplings, lead and seal sites, securing bolts and the riveting and silconing of wall panels (for riveting, always from the inside to the outside).

**Normal usage/normal wear and tear**

Usage/*wear* and tear that would normally be expected on a part of the same type and quality over the same period of observation and use.

**Operational readiness**

Describes the condition in which the vehicle is suitable for loading and transporting goods.

The operational readiness is not diminished when supposed damage is based on construction-related characteristics. Specifically, due to their construction, covered vehicles must ensure the necessary air and temperature exchange so that they cannot be considered hermetically sealed. Under certain weather conditions, it cannot be ruled out that moisture – in any aggregate state – may penetrate the carriages.

The sliding doors are constructed of uncoated aluminium. This is also a construction-related characteristic that does not affect the vehicles' operational readiness. Uncoated aluminium is subject to natural oxidation and may cause oxidation debris to the goods during transport in case of direct contact.

Due to these and other construction-related characteristics of the vehicle, TWA assumes that the renter or the sender, or a third party acting on behalf of the sender, fulfils his obligation and packages the goods in such a way that they are protected from loss and damage.

**PPI = producer price index**

The PPI is a value published quarterly by the Directorate General of the European Commission that includes the gross change in the trade price of industrial products.

The following elements are taken into account in the calculation: Mining and quarrying; manufacturing; electricity, gas, steam and air conditioning supply. This figures the main elements of the production in the steel industry. The value refers to all EU Member States at the time of the survey.

**Preventive maintenance**

Maintenance required by *ECM* or the manufacturer in regular, recurring intervals and derived from the mileage of the vehicle, a component or according to a temporal component. The focus here is on maintaining the *intended condition*. This includes, in particular, all technical and administrative measures that serve to maintain the vehicle's *operational capability*.

**Review**

The review serves to examine the actual condition of the vehicle. In case of a discrepancy between the target condition and the actual condition, the protocol of the review serves as evidence for determining damages.

**Rental**

Permission to use one or more vehicles for a limited period in return for payment.

**Rental period**

Agreed term as per contract.

**Rental fee**

The *rental fee* is the price to be paid per *day* for the vehicles during the *rental period* until the *end of the rental*. The *rental fee* is composed of the rate per *day* and surcharges and discounts.

**Special equipment**

Installations and additions based on renter request that deviate from the normal condition of the vehicle.

**Violent damage**

Damage caused neither by *wear and tear* nor by *normal usage*.

**Wear and tear**

Used and worn parts are generally those parts that do not need to be repaired but replaced after a certain period of their use, including the brake pads, grease on buffers or on parts that are necessary to maintain the *intended condition*. Furthermore, this includes air routing parts that must be regularly inspected and reconditioned, such as the control valve, the relay valve, and the weighing valve.

**Written notification**

Email, letter, or app message via the TRANSWAGGON Freight Buddy® app (TFB), if the content, author, as well as time of creation can be derived.

## 2. Provision, start of rental, end of rental

- 2.1 The vehicles are provided to the renter carriage paid at the agreed place of delivery.
- 2.2 The *rental* of the respective vehicle begins after the *day* of the *review* unless the renter culpably delays or prevents a *review*. In this case, the *rental* begins on the *day* of arrival (or as per waybill stamp).
- 2.3 The renter must notify TWA in writing of any vehicle *defects* within 3 *days* of arrival.
- 2.4 The vehicles already in the possession of the renter at the conclusion of the contract are accepted by the renter as free of defects.

If the renter does not report any *defects* within the period specified in item 2.3, the vehicles shall be deemed accepted as free of defects. Excluded from this are *defects* that were present at the time of provision and could not be discovered despite professional *review*.

- 2.5 The contract for the respective vehicle ends after return and *review*, provided that there is no *defect*. If a *defect* is present upon return, item 13.6 shall apply.
- 2.6 Termination of the contract for ordinary reasons is excluded before the expiry of the *rental period*.

## 3. Price adjustment clause

In the case of multi-year contracts, a price adjustment clause is mandatory at the end of the respective contract year. The text and calculation formula of the clause are attached to these Terms and Conditions as Appendix 1 and also form an integral part of these General Terms and Conditions.

## 4. Invoicing, payment

- 4.1 Invoicing is carried out monthly, based on the *rental period* calculated in *days* and the agreed *rental fee*. *Involuntary days lost* through no fault of the renter will be deducted. If possible, the settlement of *involuntary days lost* will be made in the following month.
- 4.2 Invoices from TWA are payable upon receipt by the renter. The invoiced amount must be transferred to one of the bank accounts indicated on the invoice without deductions.
- 4.3 The renter must lodge any complaints about *involuntary days lost*, either calculated or not calculated by TWA, within 6 months of the end of these *involuntary days lost*. If the complaint is made later, any claims of the renter, including reclaims or offsets, are excluded.
- 4.4 The *rental fee* is calculated from the time of initial provision through the end of the contract; if the vehicles are returned before the end of the *rental period*, the *rental fee* is calculated at least until the end of the *rental period*. Reference is made to items 2.5 and 13.6.

- 4.5 If, during the *rental period* or after it has ended, other costs arise, particularly track usage fees, demurrage, parking, freights, fees, repair costs or other claims arising in connection with the contract, which are not to be borne by TWA under the contract, these will be charged to the renter after they have been determined during invoicing.
- 4.6 Default of payment occurs automatically 10 days after receipt of the invoice by the renter, without the need for a reminder. In case of late payments, TWA reserves the right to charge interest on late payments to the renter without further notice. In EU countries, the interest rate applies as specified by the respective legislator in accordance with Directive 2011/7/EU or the Directive's national implementation. For renters outside the EU the interest rate applies that has been specified by legislator in Germany in accordance with Directive 2011/7/EU.
- 4.7 Off-setting by the renter against claims of TWA is only possible with undisputed, recognized or judicially determined counterclaims.
- 4.8 The *rental fee* is exclusive of any value-added tax, withholding tax, customs duty or other direct or indirect taxes and levies (e.g., any contract fees imposed by the authorities) and any freight charges that may be applicable. If TWA receives less than the agreed upon *rental rate* due to a withholding tax or similar taxes or duties, the renter agrees to pay the corresponding difference to TWA.
- 4.9 A takeover of the contract or of existing liabilities towards TWA by a third party is only possible with the *written* consent of TWA.

## 5. Renter's right of disposal

- 5.1 The vehicles are available to the renter for use in accordance with the contract for the *rental period*.
- 5.2 Technical, safety-related, or structural changes to the provided vehicles, including installations, as well as changes to the livery of the same, are only permissible with the *written* consent of TWA. If TWA grants this permission, the renter bears all associated costs. Upon return of the vehicles, TWA has the right to demand or commission the restoration of the status quo ante. The associated costs are borne by the renter.
- 5.3 The renter has the right to apply advertising livery to the vehicles at its own expense after *written* consent by TWA. However, TWA reserves the right to prohibit applying advertising livery if objective reasons not to do so exist. The renter must give notice of applying advertising livery prior to the execution of the work, specifying the work in detail and the workshop carrying out the work. Before returning the vehicles, the advertising livery must be professionally removed at the expense of the renter. The renter bears any fees, taxes or other charges arising from the placement of advertising livery.
- 5.4 Subleasing to third parties as well as the use of the vehicles in *crisis areas* is only possible with the prior *written* consent of TWA.
- 5.5 The renter's right of disposal is limited within the scope of *preventive maintenance* of the vehicles.

Vehicles can be transferred to the reconditioning workshop stipulated by TWA 2 months, but no less than one month, prior to the deadline for *preventive maintenance*, in consultation with TWA. TWA will request the relevant vehicles from the renter in due time.

If the renter does not comply with these obligations or delays their fulfilment, it is liable to TWA for any consequences resulting therefrom and bears any costs arising therefrom.

- 5.6 The use of the vehicles for the transport of dangerous goods in accordance with Appendix C to COTIF 1999 (RID) is generally not permitted. In individual cases only, TWA reserves the right to issue a special *written* permit indicating the loaded product (material number, packaging group, transport category and any additionally required information) and loaded amount.
- 5.7 The use of the vehicles is only permitted on the European rail networks approved by the infrastructure operators (hereinafter "IO").
- 5.8 To the extent that the *rental* agreement contains no stipulations to the contrary and it is technically possible, the renter may deploy the vehicles freely within the European rail network, provided that every requirement and condition set by the IO is complied with by the renter and the RU.

In this, TWA requires that the RU should be party to the General Contract of Use for Wagons (hereinafter "GCU") during the entire duration of usage and be included in the list of contractual parties in the GCU.

The right of access of TWA according to Art. 9 GCU remains unaffected.

- 5.9 If the renter provides the vehicles to a RU for use which is not party to the GCU, or no longer included in the list of railway companies party to the GCU at the time of use, TWA must not suffer any disadvantages as a result. In such a case, the renter must always ensure the position of TWA as if operation were carried out by a RU which is party to the GCU.
- 5.10 TWA may at any time request information from the renter as to which RU is using the vehicle. The renter is obliged to provide this information in writing. TWA may prohibit the handover of the vehicle to a certain RU for justified reasons, regardless of whether it is party to the GCU or not.
- 5.11 In no case does the renter have the right to agree to stipulations with the RU that deviate from the GCU without *written* consent from TWA. Neither these Terms and Conditions nor the contract modifies any provisions of the GCU unless expressly stated.
- 5.12 The renter's rights of retention to the vehicle are excluded.
- 5.13 The renter must observe all official regulations when using the vehicles.

In the event of a violation of the official regulations or the regulations of the GCU, TWA reserves the right to have the vehicles parked at the expense of the renter until the *review* and, if necessary, the correction of this violation to be carried out by the renter. The renter is liable for all damages resulting from this.



- 5.14 TWA is party to the GCU as the holder (according to Appendix 2 of the GCU) of the provided vehicles. The GCU regulates the legal relationship between the RU and the holder of the vehicles used.

The renter acts as the authorized third party of the holder vis-à-vis the RU with regard to the disposal and provision for use of the vehicle for loaded and unloaded runs.

The renter must make it clear to the RU used that in all other cases declarations in connection with the GCU must be addressed by the RU used directly to TWA as vehicle holder. Irrespective of this, the renter must *immediately* forward to TWA all declarations and information of the RU used that it receives concerning the vehicles.

The renter is responsible to TWA for compliance with the provisions of the GCU by the RU used and shall indemnify TWA against any disadvantages resulting from non-compliance. If necessary, the renter must conclude supplementary contractual agreements with the RU used to ensure that the RU used complies with the provisions of the GCU.

- 5.15 For all TWA vehicles, TRANSWAGGON AG, Zug, Switzerland undertakes the function 1-3 of *ECM*. A certificate from *ECM* regarding a functioning maintenance management system is available and has been entered in the register of the European Railway Agency (ERA). No restrictions on use can arise for the renter in this regard. The implementation of the *ECM* functions 2-3 is carried out by the authorized TRANSWAGGON company. Function 4 is performed by approved third parties.

If TWA does not receive the necessary information from the RU used to properly perform the holder and *ECM* functions, TWA reserves the right vis-à-vis the renter to prohibit the future use of the vehicles by the RU used, in writing for good cause. Irrespective of whether TWA exercises this right, the renter is obliged to do everything possible and to refrain from doing anything to effect the transmission of the necessary information by the RU used.

## **6. Rental in case of *maintenance* and repair at the expense of TWA (Wet Lease)**

- 6.1 If not expressly agreed in the contract that *maintenance* and repair is to be borne by the renter, the following provisions shall apply.
- 6.2 TWA shall bear the costs of *maintenance*, *preventive maintenance* and *corrective maintenance* that are critical to *operational readiness*. Excluded from this are costs for corrective repair measures caused by the renter or a third party, in particular by those to whom the renter entrusts the vehicles or by loaders, unloaders as well as their respective vicarious agents or other service providers not acting for TWA.
- 6.3 Empty freight shall be borne by the renter for the entire *rental period*.
- 6.4 Following successful operational release by TWA's *ECM*, the renter is responsible for the removal of the vehicle within one working day. If damages are incurred by TWA or the workshop due to the breach of this removal obligation, the renter shall bear responsibility for this.



- 6.5 If a vehicle is repaired or inspected or temporarily withdrawn from circulation at the instigation of the competent authorities during the *rental period*, and if the renter or a third party to whom the renter has provided the vehicle is not at fault for this, payment of the rental fee shall be interrupted from the start of the *maintenance* for the aforementioned reasons until the vehicle is again provided to the renter.
- 6.6 The workshops for carrying out *preventive maintenance*, *corrective maintenance* and *inspections* are determined by TWA. However, the renter is entitled to have vehicles repaired at the expense of the RU used without prior notification to TWA in accordance with Art. 19 GCU. This simplified regulation does not apply if the operating railway company is not party to the GCU. In any case, the renter shall *immediately* send TWA all documents concerning the *operational readiness* of the vehicles, in particular damage reports and invoices.
- 6.7 TWA is not obliged to replace vehicles temporarily unavailable to the renter with replacement vehicles. However, if a replacement vehicle is provided, the renter only has a right of return if the original vehicle had been equipped with *special equipment* not available in the replacement vehicle. As of the provision of the replacement vehicle, the renter shall in any case pay the full *rental fee* again.
- 6.8 TWA operates a *preventive maintenance* policy. An important indicator for preventative measures is the mileage of the vehicle in kilometres (Km) and tonne-kilometres (ToKm). The renter shall regularly report the relational ToKm and Km for each individual vehicle on a monthly basis in the respective following month. Should the renter fail to fulfil this obligation, the renter shall be liable for any and all consequences and costs arising from this failure.
- 6.9 The maintenance planning and the *rental fee* are based on a maximum mileage of 60,000 km per vehicle and contract year. Should the renter expect to exceed this, this must be reported in advance in writing.
- 6.10 If the annual mileage as per item 6.9 or otherwise notified by the renter in advance is exceeded over the course of the rental contract, TWA will calculate a subsequent fee for the difference in the amount of € 0.05 per vehicle per additional kilometre.
- 6.11 If it becomes apparent during the term of the lease that *corrective repair* of a vehicle is impossible or economically unreasonable and they are therefore to be taken out of service, TWA shall notify the renter *immediately*. Economic unreasonableness shall be deemed to exist if the repair costs exceed the current value of the vehicle as defined in Appendix 5 I. B. GCU. In such cases, the vehicle will be scrapped by TWA. The costs thereof shall be borne by the renter if the renter is responsible for the impossibility or the economic unreasonableness. In such a case, the damages payable by the renter to TWA shall be calculated in accordance with item 11.7, minus the proceeds of scrapping received by TWA. In such a case, the obligation to pay the *rental fee* ends on the *day* on which the scrapping of the vehicle has been concluded, but not before the end of the contract term.

## 7. Rental in case of *maintenance* and repair at the expense of the renter (Dry Lease)

- 7.1 If it is expressly agreed in the contract that *maintenance* and *corrective repairs* are to be carried out at the renter's expense, the following regulations apply.
- 7.2 The renter shall bear the costs of *corrective maintenance*.
- 7.3 Empty freight shall be borne by the renter for the entire *rental period*.
- 7.4 Following successful operational release by TWA's *ECM*, the renter is responsible for the removal of the vehicle within one working day. If damages are incurred by TWA or the workshop due to the breach of this removal obligation, the renter shall bear responsibility for this.
- 7.5 The renter's obligation to pay the *rental fee* continues uninterrupted during *corrective maintenance*. Accordingly, the renter is not entitled to a waiver or reduction of the *rental fee* for this period and must bear the cost of *corrective maintenance* unless TWA is responsible for the corrective maintenance requirement.
- 7.6 *Corrective repairs* and inspections must be carried out only by TWA-approved workshops and mobile teams. *Minor repairs* can only be performed by non-TWA-approved personnel commissioned by the renter with *written* consent of TWA and exclusively within the scope of this regulation. *Corrective repairs*, to which the RU used is entitled in accordance with Article 19.3 GCU, may also be carried out by the RU used without the consent of TWA if the RU used has joined the GCU. In any case, the renter shall *immediately* send TWA all documents concerning the operational readiness of the vehicles, in particular damage reports and invoices.
- 7.7 TWA is not obliged to replace vehicles temporarily unavailable to the renter with replacement vehicles. However, if a replacement vehicle is provided, the following applies: Replacement vehicles are always provided against the contractually fixed *rental fee*. The dead freight costs associated with provision and return shall be borne by the renter. Should the parties agree that the replacement vehicles are to be rented permanently in place of the vehicles currently undergoing maintenance, the rental of the originally rented vehicles ends following the completed maintenance on the *arrival day* of the vehicle at the return location stipulated by TWA.
- 7.8 TWA operates a *preventive maintenance* policy. An important indicator for preventative measures is the mileage of the vehicle in kilometres (Km) and tonne-kilometres (ToKm). The renter shall regularly report the relational ToKm and Km for each individual vehicle on a monthly basis in the respective following month. Should the renter fail to fulfil this obligation, the renter shall be liable for any and all consequences and costs arising from this failure.
- 7.9 The maintenance planning and the *rental fee* are based on a maximum mileage of 60,000 km per vehicle and contract year. Should the renter expect to exceed this, this must be reported in advance in writing.

- 7.10 If the annual mileage as per item 7.9 or otherwise agreed with the renter in advance is unexpectedly exceeded, TWA will calculate a subsequent fee for the difference in the amount of € 0.05 per vehicle per additional kilometre.
- 7.11 If it becomes apparent during the term of the lease that *preventive maintenance* or *corrective repair* of a vehicle is impossible or economically unreasonable and they are therefore to be taken out of service, TWA shall notify the renter *immediately*. Economic unreasonableness shall be deemed to exist if the repair costs exceed the current value of the vehicle as defined in Appendix 5 I. B. GCU. In such cases, the vehicle will be scrapped by TWA at the expense of the renter. The damages payable by the renter to TWA shall be calculated in accordance with item 11.7, minus the proceeds of scrapping received by TWA. In such a case, the obligation to pay the rental fee ends on the *day* on which the scrapping of the vehicle has been concluded, but not before the end of the contract term.

## 8. Privacy Policy

- 8.1 To the extent necessary for the execution of the contractual agreement, TWA shall be entitled to disclose personal data of the renter, as well as contact data of the renter's employees and the subcontractors used by the renter to third parties.
- 8.2 The renter is obliged to inform its employees and subcontractors about the possible disclosure of the data.
- 8.3 The renter consents to the storage and processing of the contract data for the purpose of safeguarding the legitimate interests of the data controller within the organization. This also applies after the end of the rental.
- 8.4 Furthermore, the renter consents to TWA using the data it discloses, with the exception of personal data, for marketing purposes. The renter may withdraw the consent to use for marketing purposes at any time by sending an email to [privacy@transwaggon.group](mailto:privacy@transwaggon.group).

## 9. TRANSWAGGON Freight Buddy® (TFB) / Data Protection

TWA optionally provides the renter with the location data available in its own dispatching system or, if equipped, the GPS/sensor data of the vehicles.

The data is accessed via a standardized interface or via access to TWA's own web portal. The portal services around GPS data are marketed under the brand name TRANSWAGGON Freight Buddy® (TFB) and support the renter in monitoring movement/location data, shock and impact detection, sensor-based cargo monitoring, as well as in communication with TWA (damage reports, handover protocols, etc.). The portal can be accessed via the approved internet browsers named on the portal.

The use of the TFB is subject to a fee and is not included in the rental fee.

The portal and TFB data are generally stored in the TWA database and can be transmitted to the user or renter as a status message (daily message or action-controlled reporting).

The user of the TFB is granted the right to use this data. Any rental to third parties outside the user's/renter's group of companies requires the consent of TWA.

## 10. Additional services

If TWA provides additional services to the renter under the contract, these shall be regulated separately in the contract.

## 11. Risk assumption / Damage / Loss and breach of duty as responsibility of the renter

11.1 The renter bears the risk for the vehicles during the period from their handover to their return. This also includes, in particular, the risks of force majeure, any form of loss, vandalism, sabotage and fire as well as riots and war-like events.

It is at the discretion of the renter to take appropriate insurance measures.

11.2 The renter shall be responsible for the fault of third parties, in particular those to whom the renter entrusts the vehicles, loaders, unloaders and service providers, as well as for the fault of all vicarious agents employed by them.

11.3 If a claim of TWA against the renter arises in addition to a claim of TWA against a vehicle-using RU according to the GCU, the renter shall be jointly and severally liable with this RU. Insofar as liability of the vehicle-using RU (according to Article 22 GCU) is given, TWA shall first make a claim against the RU. If compensation cannot be obtained from the railway company within 4 months of submission of the claim, or if it is not possible to determine the liable railway company within this period, the renter shall be held jointly liable for the damages.

In case of damage occurring during railroad operation, the renter is obliged to gather and provide TWA with all documents (damage logs, etc.) within 2 working days which are necessary for exercising its rights vis-à-vis the operating railway company or the IO. If claims cannot be asserted due to missing documents, the renter shall be liable for the damage incurred by TWA.

11.4 In case of damage that falls into the renter's sphere or for which the renter is responsible, the renter shall reimburse TWA for the *corrective maintenance*, the dead freight to and from the workshop as well as all other costs arising in connection with the damage. The renter shall further indemnify TWA against such costs upon first request.

11.5 In the event of non-observance of official or safety-related requirements as well as in the event of incorrect handling of wear parts, it shall be presumed that the renter is responsible.

11.6 In the event of damage that falls into the renter's sphere or for which the renter is responsible under these Terms and Conditions, the renter shall continue to pay the *rental fee* for the period of *corrective maintenance* in the amount applicable at the time.

If repairs are delayed without TWA being directly or indirectly responsible for the delays, the renter shall be obligated to continue payment until the equipment is returned to service.

11.7 In case of loss of the vehicle, the renter is obliged to pay TWA appropriate compensation in money for the property damage. The monetary compensation is calculated on the basis of the current market value (to be calculated in accordance with Appendix 5 of the GCU) of the vehicle at the time the damage occurred. In addition, the renter must reimburse TWA for consequential damages in the event of loss of the vehicle.

11.8 If, over the course of the rental, TWA determines that the renter repeatedly and despite writing demands from TWA to change its behaviour, continues to improperly operate vehicles, causing the vehicle to suffer damage, TWA shall have the right to terminate the contract for good cause without notice. Additional rights of TWA arising from the contract or statute, particularly the payment of repairs, dead freight, and the rental fee, shall remain unaffected in case of termination for good cause without notice.

11.9 In the case of *violent damage*, TWA will apply a processing fee to cover part of the administrative costs of handling the damage, in addition to the simple invoicing of repair costs. The flat-rate settlement fee is € 25 for *violent damage* up to € 1000 and € 35 for higher *violent damage* per repair measure.

## 12. Duty of confidentiality of the renter

12.1 The contracting parties undertake to maintain confidentiality with regard to any commercial or technical data and information disclosed, made accessible or that otherwise becomes known within the scope of their cooperation, which is not in the public domain.

12.2 The confidentiality obligation shall not extend to such information that a contracting party demonstrably receives lawfully from third parties, or that was already generally known at the time of the conclusion of the contract, or that subsequently became known without there being a breach of this confidentiality obligation.

12.3 After the end of the *rental period*, the obligation to maintain confidentiality shall continue for 5 years, unless the contracting parties agree otherwise in writing.

## 13. Return of the vehicles

13.1 The renter shall return the vehicles in the *intended condition*, undamaged, empty and clean, which means, in particular, free of cargo residues, cargo materials and cargo securing materials, and odour-neutral. Furthermore, the renter shall return the vehicles to the place of return on time. The renter is obliged to inform TWA in time about the arrival of the vehicles at the place of return.

- 13.2 At the end of the rental, the vehicles shall be returned at the expense of the renter to the place of return prescribed by TWA, or agreed with the renter by means of the RU proposed by TWA, carriage paid. If the renter uses another RU for the return, which has not concluded a takeover agreement with the subsequent RU, the renter shall bear any costs arising therefrom and indemnify TWA against such costs.
- 13.3 If the renter is more than 14 days in arrears with the return of the vehicle, starting from the agreed return date, TWA may set the renter a grace period of 14 days in writing. If the vehicles are not returned even after expiration of this grace period, and if TWA suffers damage as a result, TWA shall be entitled to charge the renter a *flat rate* for delay in the amount of 15% of the *rental fee per day* and vehicle for the period between the agreed return date and the *day* of actual return in addition to the rental fee. The assertion of claims for damages in excess thereof is not excluded.
- 13.4 The return of the vehicle is always carried out through a *review* by a TWA-approved workshop or an external third party determined by TWA and the renter. The findings made in the process shall be deemed to be complained at the renter by delivery of the protocol. The renter must respond to the complaint within a period of 7 days from the delivery of the protocol, otherwise the *defects* identified in the protocol at the expense of the renter shall be deemed to have been acknowledged.

The parties may accompany the *review* on a random basis, if necessary.

- 13.5 Notwithstanding item 13.4, the renter may agree with TWA on a joint *review*. The renter must request this 6 weeks prior to the return of the vehicle.

The joint findings recorded in the protocol are then binding on the renter and TWA. Both parties may appoint authorized representatives for the return. If the renter or its authorized representative does not appear for the joint *review*, TWA shall be entitled to carry out such a *review* independently, and its findings shall then be binding on both parties.

- 13.6 If vehicles have to be cleaned, repaired or *inspected by a railroad operator following review*, the obligation to pay the *rental fee* ends when this work is completed, but not before the end of the contract term. The associated costs are borne by the renter. The obligation pursuant to sentence 1 shall not apply if TWA is responsible for the necessity of repair work after return.

## 14. Liability TWA

- 14.1 TWA is liable according to the legal regulations of the country in which the TWA company that has concluded the contract has its registered office.
- 14.2 TWA's liability is limited to intent and gross negligence. This does not imply any limitation of TWA's duty to provide vehicles.
- 14.3 Except in cases of gross negligence, intent or the breach of a principal obligation, TWA's liability per vehicle shall be limited to the compensation of material damage to a maximum amount of 12 months' rent of the respective vehicle. This limitation includes any statutory rights of reduction of the renter.



TWA is liable for damages resulting from injury to life, limb or health, unless these are based on a negligent breach of duty by a legal representative or a vicarious agent.

14.4 TWA shall not be liable for loss or depreciation of the transported goods.

## 15. Use, Operational regulations

15.1 The renter shall ensure that all official regulations, all conditions of use applicable to the vehicle and all legal and safety requirements are observed when using the vehicles. It shall remain informed of any changes on an ongoing basis.

15.2 Without *written* permission from TWA, no changes may be made to the vehicle itself, nor to its identification or markings, unless these have been expressly demanded by a RU or authority. In the event of an order to that effect, the renter shall *immediately give written notice* to TWA. Ownership and constructor signs shall not be removed or altered under any circumstances.

15.3 If the renter fails to submit a *written notice of defects*, in particular with regard to the identification and markings of the vehicle, the renter shall be liable to TWA and third parties for all consequences and costs arising from this failure and shall indemnify TWA upon first request.

## 16. Owner's special right of termination

The owner is entitled to full or partial termination for good cause without notice in the following cases:

- In case of insolvency of, or the opening of insolvency proceedings against the renter,
- Restructuring measures of the renter's company with recourse to creditors,
- Delay in payment of an amount exceeding 2 months' rent, insofar as a payment reminder has been sent and the payment has not been received within 2 weeks of the date of the reminder,
- If the renter is responsible for maintenance and does not comply with these obligations despite a *written* warning,
- In case of improper use of the vehicles in violation of the contract, despite *written* warning,
- Use of the vehicles by a non-GCU RU, unless TWA has consented in writing to the use by that RU,
- Expiration of a bank guarantee agreed and not renewed, despite a *written* demand for an extension.

## 17. Right of proposal in the event of a change in circumstances

If circumstances, which have become the basis of the contract, have changed seriously after the conclusion of the contract, and TWA would not have concluded the contract, or would have concluded it with different content if TWA had foreseen this change, TWA may propose new conditions to the renter, through which the balance may be restored. If the parties do not reach an



agreement within 30 days after receipt of the new conditions, TWA may terminate the contract, taking into account a notice period of 3 months after the occurrence of the hardship. Circumstances in the aforementioned sense include, but are not limited to, valid freight rates, energy prices, maintenance and repair costs, transport conditions, operational requirements and presentation conditions.

## **18. Place of jurisdiction, Statute of limitations, Original text**

- 18.1 The place of exclusive jurisdiction shall be at the place of the registered office of the TRANSWAGGON company that concluded the contract with the renter.
- 18.2 The law of the country in which the TRANSWAGGON company that concluded the contract has its registered office shall apply.
- 18.3 The claims of a contractual party are subject to a period of limitation of 3 years unless mandatory law or a clause of these Terms and Conditions stipulate otherwise. The limitation period commences at the end of the year in which the claims arose.
- 18.4 These terms and conditions are originally written in German and, if necessary, translated into the national languages of the individual local TRANSWAGGON company. In the event of differences between the translated versions and the original German text, the original German text shall prevail insofar as this is permitted by the respective national legislation.

## **19. Severability clause**

- 19.1 If one or more provisions of the contract or of these Terms and Conditions should be void, ineffective or unenforceable or become so during the rental period, the parties undertake to replace such provisions by other effective or enforceable provisions which, in particular, come as close as possible to such provisions in economic terms.
- 19.2 This shall not affect any other provisions and they shall continue to retain their effectiveness.
- 19.3 The above provisions shall also apply in the event that the contract or these Terms and Conditions prove to be incomplete. In this case, the contracting parties shall supplement the contract or the Terms and Conditions with provisions that correspond as closely as possible to the economic objective that the contracting parties are pursuing in concluding the contract.

**Appendix 1 to the Terms and Conditions (Price adjustment clause)**

1. This price adjustment clause forms an integral and essential part of any contract that provides for a rental period of more than 2 years and is shall be considered explicitly appended thereto.
2. The clause refers to public statistical indices that are accessible to everyone on the relevant websites, and is therefore characterized by the greatest possible transparency and neutrality.
3. The calculation of the price adjustment using the formula specified in item 5 is carried out 14 days before the end of each contract year, calculated from the beginning of the contract.
4. The adjustment can result in both an increase or reduction.
5. The price adjustment formula is defined as follows:

$$HR_{new} = HR_{old} \times \left( S_{const} + S_{R\&M} \times \frac{PPI_{new}}{PPI_{old}} + S_{Admin} \times \frac{LCI_{new}}{LCI_{old}} \right)$$

in which:

$HR_{new}$  corresponds to the new rental fee.

$HR_{old}$  corresponds to the valid rental fee at the time of rental.

$S_{const}$  corresponds to the percentage of the rental fee not subject to the adjustment formula. For a Wet Lease this is 50%, for a Dry Lease it is 55%.

$S_{R\&M}$  corresponds to the percentage of the rental fee which refers to the costs for preventative maintenance and corrective maintenance. For a Wet Lease this is 35%, for a Dry Lease it is 30%.

$PPI_{new}$  corresponds to the Producer Price Index set by Eurostat quarterly for the countries of the European Union available at the time of calculation.

$PPI_{old}$  corresponds to the Producer Price Index set by Eurostat quarterly for the countries of the European Union available for the same quarter of the previous year.

The PPI Index can be found at the following link:

[https://ec.europa.eu/eurostat/databrowser/view/STS\\_INPP\\_Q\\_custom\\_2907025/bookmark/table?bookmarkId=20b8c1f8-fe90-4349-a4c1-482c20ca21e2](https://ec.europa.eu/eurostat/databrowser/view/STS_INPP_Q_custom_2907025/bookmark/table?bookmarkId=20b8c1f8-fe90-4349-a4c1-482c20ca21e2)

$S_{Admin}$  corresponds to the percentage of the rental fee which relates to labour costs. This is always 15%.

$LCI_{new}$  corresponds to the Labour Price Index set by Eurostat quarterly for the countries of the European Union available at the time of calculation.

$LCI_{old}$  corresponds to the Labour Price Index set by Eurostat quarterly for the countries of the European Union available for the same quarter of the previous year.

The LCI index can be found at the following link:

[https://ec.europa.eu/eurostat/databrowser/view/LC\\_LCI\\_R2\\_Q\\_custom\\_6776506/bookmark/table?bookmarkId=71115569-7ea8-4841-ace4-40a35ced6c8b](https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_R2_Q_custom_6776506/bookmark/table?bookmarkId=71115569-7ea8-4841-ace4-40a35ced6c8b)