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The following “General Terms and Condition for the Long-Term Rental of Freight Wagons” (hereinafter referred to as “Terms and Condition”) shall apply to the provision of freight wagons (hereinafter referred to as “Wagons”) for a long term against payment to the Lessee (hereinafter referred to as “Lessee”) by the TRANSWAGGON company concluding the contract (hereinafter referred to as “TWA”).

The Terms and Conditions shall form an integral part of the individual rental contract concluded with the Lessee for the provision of Wagons (hereinafter referred to as “Contract”).

General terms and conditions of the Lessee shall not apply even if no explicit objection has been raised on the part of TWA.

The following priorities shall be applicable:

In the event of conflicts between the individual Contract or offer and these Terms and Conditions, the provisions set forth in the individual Contract or offer shall have priority.

Side agreements or reservations, modifications and/or amendments to these Terms and Conditions shall not become effective unless a *written* agreement has been made between the Parties. This shall also apply to a waiver of this written form agreement.

1. Definitions

The following terms used in these Terms and Conditions shall have the meaning attributed to them hereinafter.

Conflict zones

Regions where war-like conflicts or interventions on the part of higher authorities (e.g. measures taken by public authorities or states), particularly seizures, confiscations and expropriations are very likely to occur or already occurred. Economic crises shall be excluded, unless interventions on the part of higher authorities must be expected.

Corrective maintenance

Any kind of work that, beyond *preventive maintenance*, serves to restore the *intended state* of a Wagon.

Day

Calendar day.

Day of arrival

Day of the arrival of a Wagon at the agreed place of delivery.

Days lost involuntarily

Days lost, less flat-rate deadlines according to the Contract, arisen due to a breach of duty on the part of TWA or due to works to be performed, such as *preventive maintenance* works or legally required changes at a Wagon. In the aforementioned cases, no *rental rate* has to be paid between the *day* of the start of works until the *day* on which the Lessee is given notice of the Wagon's release for operation.

Defect

A *defect* shall be deemed to have occurred if the use of the Wagon for the intended purpose is impaired and the as-is state deviates from the desired state. A *defect* shall not be deemed to exist if the *operational fitness* of the Wagon actually exists.

ECM (Entity in Charge of Maintenance)

The entity responsible for maintaining freight Wagons in good order within the meaning of EU Regulation 445/2011.

Inspected by rail operator

The competent railway undertaking (hereinafter "RU"), its employees or a person employed for the fulfilment of its duties shall inspect the Wagon for damage or irregularities.

Intended state

The state a Wagon should have (desired state).

Immediately

Without negligent or intentional delay, in each case with respect to the task to be fulfilled.

LCI = Labor Cost Index

The *LCI* consists of data surveyed by Eurostat in quarterly intervals and determining the total costs for labour force per hour. In this context, wages and salaries (in the aggregate) of the industry (except for the construction industry) of the EU member states existing at the time of survey are taken into due account.

Long-term rental

Provision of a Wagon against payment for its use on the basis of a Contract for a definite period of time.

Maintenance

Maintenance shall include any and all works and the assumption of related costs that may be incurred in the course of the operation of a Wagon.

Minor repairs

Damage that need not be repaired during a stay in a garage. The term shall include, but not be limited to the following works: mounting of interceptors, note holders, grounding cables and spark guards, lubricating buffers, lubricating and mobilising screw couplings as well as guiding and locking components, securing bolts and riveting and siliconising wall panels (in case of riveting, always from the inside to the outside).

Operational fitness

This term describes the state a Wagon for being eligible for loading and transporting goods.

Operational fitness shall not be regarded as impaired if construction-related features of the Wagon are concerned. Particularly, covered Wagons must - due to their construction - guarantee the required air and temperature exchange so that they cannot be expected to be hermetically sealed. Under certain weather conditions, it cannot be excluded that moisture of any aggregate state may penetrate the Wagon.

The sliding doors consist of uncoated aluminium. This, too, is a construction-related feature not affecting the *operational fitness* of the Wagon. Uncoated aluminium is subject to natural oxidation and may, in case of direct contact, transfer abraded material to the goods during transport

Due to these and other construction-related features of the Wagon, TWA proceeds from the assumption that the Lessee or sender or another third party acting on behalf of the latter complies with its duty to provide for a packaging protecting against damage and loss.

Ordinary wear/usual tear

Wear or *tear* usually expected to occur at a part of a similar type and quality over the same period under observation or period of use.

PPI = Producer Price Index

The *PPI* is a value published by the Directorate General of the European Commission in quarterly intervals that includes the gross change of the trade price of industrial products. In the calculation, the following elements are taken into account: Mining and quarrying; manufacturing; electricity. Thus, the main elements of production in the steel industry are shown. The value relates to all EU member states existing at the time of the survey.

Preventive maintenance

Maintenance work specified by the *ECM* or the manufacturer in regularly recurring intervals and based on the mileage of the Wagon or of a construction component or on the basis of temporal aspects. In this context, the focus is on maintaining the *intended state*, particularly including any and all technical and administrative measures for maintaining the Wagon's *operational fitness*.

Rental

Rental of one or more Wagons for use for a limited period of time against payment.

Rental period

Term agreed upon in the Contract.

Rental rate

The price to be paid per *day* for the Wagons during the *rental period* until its termination. It shall consist of the price per *day* and surcharges and discounts.

Review

The *review* serves to inspect the as-is state of the Wagon. In case of discrepancies between the desired state and the as-is state, the protocol of the *review* shall – in case of *long-term rental* - serve as evidence for determining damages.

Special equipment

Installations and additions deviating from the normal state of the Wagon and based upon requests of the Lessee.

Violently caused damage

Damage caused neither by *ordinary wear* nor by *usual tear*.

Wear / tear

As a rule, worn-out and torn parts are defined as parts that need not be repaired but have to be replaced after a certain period of use, including but not limited to brake pads, grease on buffers or on parts required for maintaining the *intended state*. Apart from that, air-controlling parts to be inspected and refurbished in regular intervals, such as, for instance, the control valve, the relay valve and the weighing valve shall be included.

Written / in writing

Emails, letters or app messages via the TRANSWAGGON Freight Buddy®-App (TFB), if content, author and time of preparation can be identified.

2. Provision, Start of *Rental*, End of *Rental*

- 2.1 The Wagons shall be handed over to the Lessee at the delivery place agreed upon on a carriage paid basis.
- 2.2 The *rental* of the respective Wagon shall start after the *day* of the *review*, unless the *review* was delayed or prevented due to a fault of the Lessee. In this case, the *rental* shall start on the *day of arrival* (where appropriate, according to the waybill stamp).
- 2.3 Upon provision of a Wagon by TWA, the Lessee shall be obliged to convince itself that the Wagon has the *operational fitness* required for the use intended by the customer and that it is free of visible damage. The Lessee shall give TWA detailed notice of defects, if any, prior to departure, but in no case later than within 48 hours (excluding Saturdays, Sundays and public holidays) either *in writing* or by using the TFB app by enclosing conclusive photographs and indicating the Wagon's number.
- 2.4 Wagons already in possession of the Lessee upon conclusion of the Contract shall be deemed to have been accepted by the Lessee as free of *defects*.

If the Lessee fails to give notice of defects within the period set forth in clause 2.3, the Wagons shall be deemed to have been accepted as free of *defects*, except for *defects* that actually existed at the time of the Wagon's provision and could be detected despite of a workmanlike *review*.

If the customer accepts the Wagon despite of having reported *defects*, TWA shall not be liable for damage caused by the reported *defects*. In this case, the customer shall indemnify TWA upon first request with respect to any damage asserted by third parties towards TWA.

- 2.5 The Contract for the respective Wagon shall end after its return and *review*, always provided that no *defect* can be identified. In case of *defects* existing at the time of return, clause 13.6 shall be applicable. A termination of the Contract for convenience prior to the end of the *rental period* shall be excluded.

3. Price Adjustment Clause

In case of multi-year Contracts, the application of a price adjustment clause at the end of the respective contract year shall be mandatory. The respective text and calculation formula have been attached to these Terms and Conditions as Appendix 1 and shall also form an integral part of these Terms and Conditions.

4. Invoicing and Payment

- 4.1 Invoicing shall take place in monthly intervals on the basis of the *days* of the identified *rental period* and the *rental rate* agreed upon. In this context, *days lost involuntarily* without any fault on the part of the Lessee shall be deducted. If possible, the settlement of *days lost involuntarily* shall take place in the following month.

- 4.2 Any goods or services delivered or rendered in addition to or in deviation from the Contract as well as the payment of freight surcharges or ancillary costs shall be separately invoiced in addition to a disbursement fee of 3 %.
- 4.3 Invoices issued by TWA shall become due for payment upon receipt by the Lessee. The invoice amount shall be transmitted without any deductions to one of the bank accounts indicated in the invoice.
- 4.4 Objections against the correctness or completeness of an invoice have to be raised within one month after invoice receipt. In the absence of objections raised in due time, an invoice shall be deemed to have been accepted, always provided that TWA has drawn explicit attention to this legal consequence in the invoice.
- 4.5 By derogation from clause 4.4, complaints of the Lessee against *days lost involuntarily* that were considered or not considered by TWA in the billing shall be made within 5 months after expiry of the *days lost involuntarily*. If complaints are made at a later time, claims of the Lessee, including claims for refunds or set-offs, shall be excluded.
- 4.6 The invoicing of the *rental rate* shall cover the period from the first provision of a Wagon until the effective termination of the Contract. If the Wagon is returned prior to the end of the *rental period*, the *rental rate* shall be invoiced, at least, until the end of the *rental period*. Reference is made to clauses 2.5 and 13.6.
- 4.7 If, during or after the *rental period*, other costs, particularly track usage charges, demurrage, parking expenses, freight costs, charges, repair costs or other claims arisen in connection with the Contract arise and such costs need not be borne by TWA according to the Contract, they shall be passed over to the Lessee after having been determined during the invoicing process.
- 4.8 A default in payment shall automatically occur 10 *days* after receipt of the invoice by the Lessee, without the necessity of a reminder. In the event of late payments, TWA reserves the right to charge default interest to the Lessee without further notice. In EU countries, the applicable rate of interest shall be the interest rate specified by the respective legislator pursuant to Directive 2011/7/EU or, as the case may be, pursuant to the respective national implementation rule. For Lessees outside the EU, the applicable rate of interest shall be the interest rate specified by the legislator pursuant to Directive 2011/7/EU or, as the case may be, according to the respective national implementation rule in Germany.
- 4.9 An offsetting by the Lessee against claims of TWA shall be possible in case of undisputed, accepted or judicially established counterclaims only.
- 4.10 All amounts invoiced by TWA shall be subject to the addition of statutory VAT, withholding tax, customs duty or any other direct or indirect taxes and levies (e.g. officially established contractual charges, if any) as well as freight rates, if any. If, due to withholding taxes or similar taxes and levies, TWA receives lower amounts than those agreed upon, the Lessee shall be obliged to pay the corresponding difference to TWA.

- 4.11 An assumption of the Contract or of liabilities existing towards TWA by a third party shall be subject to the *written* consent of TWA.

5. Right of Disposal of the Lessee

- 5.1 During the *rental period*, the Wagons shall be available to the Lessee for contractual use.
- 5.2 Technical, safety-related or structural changes at the provided Wagons, including installations, as well as changes of inscriptions thereon shall be admissible with the *written* consent of TWA only. If TWA gives its consent, all costs relating thereto shall be borne by the Lessee. After return of the Wagons, TWA shall have the right to request or cause the restoration of the status quo ante. The costs associated therewith shall be borne by the Lessee.
- 5.3 After TWA has given its *written* consent, the Lessee shall be entitled to affix advertising inscriptions at the Wagons at its own expense. TWA, however, reserves the right to prohibit such inscriptions if there exist objective reasons contradicting such approach. Prior to the execution of the respective works, the Lessee shall give notice of the planned advertising inscriptions by indicating the garage carrying out the work and details of the work. Prior to a return of the Wagons, the affixed advertising inscriptions shall be removed in a workmanlike manner at the Lessee's expense. Any charges, taxes or other levies arising due to the affixed advertising inscriptions shall be borne by the Lessee.
- 5.4 A subletting to third parties and the use of the Wagons in *conflict zones* shall be subject to the prior *written* consent on the part of TWA.
- 5.5 The Lessee's right of disposal is restricted with regard to the *preventive maintenance* of the wagons.

The wagons shall be submitted for *preventive maintenance* either at fixed time intervals or upon reaching a defined mileage threshold, depending on the respective maintenance model. The applicable maintenance intervals are determined by the requirements governing the specific wagon type.

The wagons may, in coordination with TWA, be forwarded to the overhaul workshop designated by TWA.

For time-based maintenance intervals, the wagons shall be submitted no earlier than two months and no later than one month before the due date. For mileage-based maintenance intervals, the wagons shall be submitted within the mileage corridor defined by TWA prior to reaching the maximum permissible mileage.

It should be noted that changes in usage patterns may cause the predicted maintenance date to change.

TWA shall request the relevant wagons from the Lessee in due time, taking into account the applicable maintenance intervals. The Lessee shall ensure that the wagons are made available on time for the performance of preventive maintenance.

In the event that the Lessee fails to come up to these liabilities either completely or in due time, the latter shall be liable towards TWA with respect to any and all consequences arising therefrom and shall bear any costs resulting therefrom.

- 5.6 The use of Wagons for the carriage of hazardous goods according to Appendix C to COTIF 1999 (RID) shall categorically be prohibited. In individual cases only, TWA reserves the right to issue a special *written* permission after having received *written* information on loaded goods (material number, packaging group, transport category and any other information required) and loading volume.
- 5.7 A use of the Wagons shall exclusively be permitted on European rail networks approved by the infrastructure operators (hereinafter "IO").
- 5.8 To the technically feasible extent and unless otherwise provided for in the Contract, the Lessee may liberally use the Wagon in the European rail network, always provided that any and all requirements and terms and conditions of the respective IO are complied with by the Lessee and the Wagon-using RU.

TWA proceeds from the assumption that every RU making use of the Wagon is a party to the General Contract of Use for Wagons (GCU) and is included in the list of contractual parties of the GUC for the entire period of use.

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

- 5.9 In the event that the Lessee or a RU appointed by the Lessee makes the Wagon available to a RU that has not yet become a party to the GCU or, as the case may be, is no longer included in the list of parties of the GUC, TWA must not suffer from any disadvantages resulting from this circumstance. In this case, the Lessee shall always place TWA in the position the latter would have had if the transport had been carried out by a RU being a party to the GCU.
- 5.10 TWA may at any time request the Lessee to indicate which RU has used the Wagon. The Lessee shall be obliged to render such information *in writing*. TWA shall have the right to prohibit the handover of a Wagon to certain RUs for good cause, irrespective of whether such RU has become a party to the GCU or not.
- 5.11 Without the prior *written* consent of TWA, the Lessee shall in no case be entitled to agree with the Wagon-using RU upon any deviations from the provisions set forth in the GCU. In the absence of an explicit statement to this effect, the provisions in the GCU shall not be changed or amended by these Terms and Conditions or by the Contract.
- 5.12 Rights of retention of the Lessee with respect to the Wagon shall be excluded.
- 5.13 When using the Wagons, the Lessee shall comply with any and all official regulations.

If official regulations or the provisions set forth in a GCU fail to be complied with, TWA reserves the right to have the Wagons parked at the Lessee's expense until the matter has been examined and,

where applicable, the Lessee has remedied such infringement. The Lessee shall be liable for any damage resulting therefrom.

- 5.14 TWA has become a party to the GCU as keeper (pursuant to Appendix 2 of the GCU) of the rented Wagons. In this context, the GCU regulates the legal relationship between the RU using the Wagon and the keeper of the used Wagon.

With respect to the disposal and provision for use of a Wagon for loaded and empty runs, the Lessee shall, vis-à-vis the RU using a Wagon, act as third party authorised by the keeper.

Towards the RU making use of a Wagon, the Lessee has to make it clear that, in all other cases, the RU using a Wagon has to address its statements in connection with the GCU directly to TWA as keeper of the Wagon. Irrespective thereof, the Lessee shall forward any and all Wagon-related statements and information rendered by the using RU *immediately* to TWA.

The Lessee shall assume liability towards TWA for compliance with the provisions of the GCU on the part of the Wagon-using RU and shall indemnify TWA against any and all disadvantages incurred by the latter due to any non-compliance. Where required, the Lessee shall agree upon supplementing contractual provisions with the Wagon-using RU in order to ensure that the RU complies with the provisions of the GCU.

The Lessee shall be obliged to give TWA *immediate* notice of any and all acts and omissions of the RU or a third party which are in conflict with the application of the GCU.

- 5.15 For all Wagons of TWA, TRANSWAGGON AG, Zug, Switzerland, shall assume functions 1-3 of the *ECM*. A certificate of the *ECM* with respect to a functioning maintenance management system is in place and has been entered in the register of the European Railway Agency (ERA). In this context, no restrictions on use can be derived for the Lessee. *ECM* functions 2-3 shall be implemented by the authorised TRANSWAGGON offices. *ECM* function 4 shall be carried out by authorised third parties.

In the event that TWA does not receive the required information from the Wagon-using RU in order to be able to perform the keeper and *ECM* functions properly, TWA reserves the right vis-à-vis the Lessee to prohibit a future use of the Wagons by such RU for good cause; notice of such prohibition shall be given *in writing*. Irrespective of whether TWA exercises this right, the Lessee shall be obliged to do everything and to omit nothing in order to make the Wagon-using RU forward the required information.

6. Long-Term Rental with *Maintenance* and Repair at the Expense of TWA (*Wet Lease*)

- 6.1 In the absence of explicit provisions according to which *maintenance* and repair shall be carried out at the expense of the Lessee, the following provisions shall apply.
- 6.2 TWA shall bear the costs for *maintenance*, *preventive maintenance* and *corrective maintenance* if these works are decisive for *operational fitness*. In this context, costs for *corrective maintenance* measures caused by the Lessee or a third party, particularly by those to whom the Lessee has

entrusted the Wagons, or by loaders, unloaders or the persons employed for the fulfilment of their duties or by any other service providers not acting on behalf of TWA shall be excluded.

- 6.3 During the entire *rental period*, empty freight rates shall be borne by the Lessee.
- 6.4 Following a release for operation by the *ECM* of TWA, the Lessee shall be responsible for removal of the Wagon within one working day. If a failure to comply with this duty of collection results in any damage for TWA or the garage, the Lessee shall be liable for such damage.
- 6.5 If, during the *rental period*, a Wagon is repaired or, upon initiation by competent authorities, inspected or temporarily withdrawn from service and the Lessee or a third party who received the Wagon from the Lessee is not liable for this circumstance, payment of the *rental rate* shall be interrupted as of the start of *corrective maintenance* carried out for the aforementioned reasons until the date of return to service.
- 6.6 The garages where *preventive maintenances*, *corrective maintenances* and *reviews* have to be carried out shall be specified by TWA. The Lessee shall, however, be entitled to have Wagons to be repaired at the expense of the Wagon-using RU repaired by the RU according to Art. 19 GCU without prior consultation with TWA. This simplified rule shall not apply if the Wagon-using RU has not become a party to the GCU. In any case, the Lessee shall send TWA *immediately* any and all documents relating to the *operational fitness* of the Wagons, particularly damage reports and invoices.
- 6.7 TWA shall not be obliged to provide replacement Wagons for the Lessee if Wagons are temporarily unavailable. If, however, a replacement Wagon is made available, the Lessee shall have a right of return only if the original Wagon had been provided with *special equipment* that fails to exist in the replacement Wagon. As of the date of the provision of the replacement Wagon, the Lessee shall in any case pay the entire *rental rate*.
- 6.8 TWA conducts a *preventive maintenance* policy. The mileage of the Wagons in terms of kilometres (km) and tonne-kilometres (tkm) shall be an important indicator in this context. The Lessee shall give TWA monthly notice of the tkm and km of the respective individual Wagons during the month that follows in each case. If the Lessee fails to comply with this obligation, it shall be liable for all consequences and costs resulting from such failure.
- 6.9 Maintenance planning and *rental rate* are based on a mileage of no more than 60,000 km per Wagon and contract year. In the event that the Lessee expects to exceed this limit, it shall give prior *written* notice to this effect.
- 6.10 If, during the term of the Contract, the annual mileage exceeds the mileage, as defined in clause 6.9 or otherwise agreed upon with the Lessee, TWA shall request the Lessee to make a subsequent payment of a net differential amount of EUR 0.05 per Wagon and excessive kilometre.
- 6.11 If, during the *rental period*, it turns out that a *corrective maintenance* of a Wagon is impossible or economically unreasonable and that, for this reason, the Wagon has to be withdrawn from service, TWA shall give the Lessee *immediate* notice to this effect. Economic unreasonableness shall be deemed to exist if the repair costs exceed the fair market value defined in Appendix 5 I. B. of the

GCU. In this case, the Wagon shall be scrapped by TWA; the costs arising in this respect shall be borne by the Lessee if the latter is responsible for the impossibility or the economic unreasonableness or if the Wagon-using RU is liable according to Art. 22 of the GCU. Damages to be paid by the Lessee to TWA in this case shall be calculated according to clause 11.7 of these Terms and Conditions, reduced by scrap proceeds arisen to the benefit of TWA. In this case, the duty to pay the *rental rate* shall cease to exist on the date of the completion of scrapping, but in no case prior to the end of the Contract's duration.

7. Long-Term Rental with Maintenance and Repair at the Expense of the Lessee (Dry Lease)

- 7.1 If it has been explicitly agreed upon in the Contract that *maintenance* and *corrective maintenance* shall be carried out at the expense of the Lessee, the following provisions shall apply.
- 7.2 The Lessee shall bear the costs of *corrective maintenance*.
- 7.3 During the entire *rental period*, empty freight rates shall be borne by the Lessee.
- 7.4 Following a release for operation by the *ECM* of TWA, the Lessee shall be responsible for removal of the Wagon within one working day. If a failure to comply with this duty of collection results in any damage for TWA or the garage, the Lessee shall be liable for such damage.
- 7.5 During the period of *corrective maintenance*, the Lessee's duty to pay the *rental rate* shall continue to exist without any interruptions. Correspondingly, the Lessee shall not be entitled to a waiver or reduction of the *rental rate* during such period and shall bear the costs for *corrective maintenance*, unless TWA is responsible for the need of *corrective maintenance*.
- 7.6 *Corrective maintenance* and inspections shall exclusively be carried out by garages and mobile teams approved by TWA. *Minor repairs* by persons commissioned by the Lessee and not approved by TWA may be made after *written* consent of TWA only and, if so, exclusively within the framework of this provision. *Corrective maintenance* works the Wagon-using RU is entitled to carry out according to Art. 19.3 GCU, may be performed by the RU also without the consent of TWA if the Wagon-using RU has become a party to the GCU. In any case, the Lessee shall provide TWA *immediately* with all documents, particularly damage reports and invoices, relating to the Wagon's *operational fitness*.
- 7.7 TWA shall not be obliged to provide replacement Wagons for the Lessee if Wagons are temporarily unavailable. If, however, a replacement Wagon is made available, the following shall apply: Replacement Wagons shall in any case be provided against the *rental rate* contractually agreed upon. Empty freight rates relating to the Wagon's provision and return shall be borne by the Lessee. If the Parties agree that the replacement Wagon, instead of the Wagon under repair, is to be rented permanently, the *rental* of the originally rented Wagon shall end after the completed repair on the *day of arrival* of the Wagon at the return location specified by TWA.
- 7.8 TWA conducts a *preventive maintenance* policy. The mileage of the Wagons in terms of kilometres (km) and tonne-kilometres (tkm) shall be an important indicator in this context. The Lessee shall give

TWA monthly notice of the tkm and km of the respective individual Wagons during the month that follows in each case. If the Lessee fails to comply with this obligation, it shall be liable for all consequences and costs resulting from such failure.

- 7.9 Maintenance planning and *rental rate* are based on a mileage of no more than 60,000 km per Wagon and contract year. In the event that the Lessee expects to exceed this limit, it shall give prior *written* notice to this effect.
- 7.10 If, during the term of the Contract, the annual mileage exceeds the mileage, as defined in clause 7.9 or otherwise agreed upon with the Lessee, TWA shall request the Lessee to make a subsequent payment of a net differential amount of EUR 0.05 per Wagon and excessive kilometre.
- 7.11 If, during the *rental period*, it turns out that the *preventive maintenance* or the *corrective maintenance* of a Wagon is impossible or economically unreasonable and that, for this reason, the Wagon has to be withdrawn from service, TWA shall give the Lessee *immediate* notice to this effect. Economic unreasonableness shall be deemed to exist if the repair costs exceed the fair market value defined in Appendix 5 I. B. of the GCU. In this case, the Wagon shall be scrapped by TWA; the costs arising in this respect shall be borne by the Lessee if the latter is responsible for the impossibility or the economic unreasonableness or if the Wagon-using RU is liable according to Art. 22 of the GCU. Damages to be paid by the Lessee to TWA in this case shall be calculated according to clause 11.7 of these Terms and Conditions, reduced by scrap proceeds arisen to the benefit of TWA. In this case, the duty to pay the *rental rate* shall cease to exist on the date of the completion of scrapping, but in no case prior to the end of the Contract's duration.

8. Privacy Policy

- 8.1 To the extent necessary for implementing the contractual relationship, TWA shall be entitled to forward personal data of the Lessee as well as contact data of the Lessee's employees and subcontractors to third parties.
- 8.2 The Lessee shall be obliged to inform its employees and subcontractors about the potential disclosure of data.
- 8.3 The Lessee shall give its consent to the retention and processing of contract data for safeguarding the legitimate interests of the data controller within the organisation. This shall also apply after the end of the *rental*.
- 8.4 Apart from that, the Lessee shall give its consent to the use of its disclosed data for marketing purposes by TWA, except for personal data. The consent to use data for marketing purposes may be revoked by the Lessee at any time by sending an email to privacy@transwaggon.group.

9. Sensors, Telematics, TRANSWAGGON Freight Buddy® (TFB)

9.1 Sensors and telematics

The Lessee grants TWA access to and management of all sensor and telematics data necessary for the fulfilment of the contract and the execution of the keeper and ECM functions; this applies in particular to localisation, including time stamps and movestate.

TWA may update and further develop the sensor and telematics data solution at any time and, in particular, adapt it due to a change in the legal situation, technical developments, or to improve IT security. In doing so, the lessor shall take the lessee's legitimate interests into account appropriately and inform the lessee in good time of any necessary updates via the email address stored in the TFB account.

All values recorded by sensor devices and telematics devices during the performance of the contract will be made available to the lessee free of charge in accordance with the Data Act, provided that they are not excluded from the provisions of the Data Act. This right is non-transferable. However, access for authorised third parties such as loaders or unloaders or parties involved in traction may be requested at mailboxfreightbuddy@transwaggon.group.

The Lessor cannot guarantee or warrant that the sensor and telematics data are error-free, nor that the data can be used without interruption. The proper functioning of the data in connection with third-party software is not guaranteed. The lessor is not liable for success in this regard.

The Lessee must protect and store the access data provided to them in accordance with the state of the art against access by third parties. The lessee shall ensure that use only takes place to the extent agreed in the contract. Unauthorised access must be reported to the lessor immediately.

The sensor and telematics data used can be found in the individual contract section. An overview of the available sensor and telematics devices, as well as the recording and transmission parameters, can be found at: <https://www.transwaggon.group/de/allgemeine-geschaeftsbedingungen-agb>

9.2 TRANSWAGGON Freight Buddy® (TFB) / Data Protection

As an option, TWA shall provide the Lessee with the location data available in the own scheduling system or, where equipped, the GPS/sensor data of the Wagons.

Data shall be accessed via a standardised interface or, as the case may be, via access to the own TWA web portal. The portal services around GPS data are marketed under the brand name TRANSWAGGON Freight Buddy ® (TFB) and shall support the Lessee with respect to movement/location data monitoring, shock and impact detection, sensor-based cargo monitoring and communication with TWA (reporting of damage, handover minutes etc.). The portal shall be accessible via the approved internet browsers indicated in the portal.

The portal and TFB data shall in any case be stored in the TWA database and can be transmitted to the user or Lessee as status message (daily message or action-controlled report).

The user of the TFB shall be granted a right to use such data. A disclosure towards third parties outside the user's/Lessee's company group shall be subject to the consent by TWA.

10. Other Freight Forwarding Services

In the event that, apart from the *rental*, TWA renders additional freight forwarding services for the Lessee, such services shall be governed by the “General Terms and Conditions for Freight Forwarding Services” of TWA.

Freight forwarding services within the meaning of this term may include, but are not limited to: planning and organisation of freight transport by rail, including pre-carriage and on-carriage, organisation of train composition/handling/interim storage, organisation of the return of empty Wagons, selection and purchase RU-service as sender, selection and provision of transport services as freight rate-paying third party, transport monitoring. Upon request of the Lessee, additional freight forwarding services can be added.

11. Risk Assumption / Damage / Loss and Breach of Duty as a Responsibility of the Lessee

- 11.1 The Lessee shall bear the risk for the Wagons in the period from their handover to their return, particularly including the risks of force majeure, any kind of loss, vandalism, sabotage and fire as well as riots and war-like events.

It shall be at the discretion of the Lessee to take advantage of appropriate insurance possibilities.

- 11.2 The Lessee shall be liable for faults of third parties, particularly of those who get a Wagon from the Lessee, loaders, unloader and service providers, as well as for faults of all persons employed by the Lessee for the fulfilment of its duties.

- 11.3 If a claim by TWA against the Lessee arises in addition to a claim by TWA against a Wagon-using RU according to the GCU, the Lessee shall be jointly and severally liable together with such RU. To the extent that a liability of the Wagon-using RU (according to Art. 22 GCU) actually exists, TWA shall assert its claim at first against the RU. If, within a period of 4 months after assertion of the claim, no compensation can be obtained from the RU or the liable RU cannot be identified within such period, the Lessee shall be made liable for the damage.

In the event of damage arising during railway operations, the Lessee shall be obliged to obtain and provide TWA within 2 working days with all documents (damage report etc.) required for being able to exercise its rights against the Wagon-using RU or, as the case may be, the IO. If claims cannot be asserted due to missing documents, the Lessee shall be liable for the damage incurred by TWA for this reason.

- 11.4 In case of damage falling into the sphere of risks of the Lessee or under the liability of the Lessee according to these Terms and Conditions, the Lessee shall compensate TWA for any and all damage and costs, particularly the costs for *corrective maintenance*, the costs for the transport of empty Wagons from and to the garage, the use of mobile teams as well as all other costs arising in connection with the damage. Apart from that, the Lessee shall indemnify TWA against such costs upon first request.

- 11.5 If official or safety-related specifications fail to be complied with and if *wear* parts are dealt with improperly a liability on the part of the Lessee shall be assumed.
- 11.6 In case of damage falling into the sphere of risks of the Lessee or under the liability of the Lessee according to these Terms and Conditions, the Lessee shall continue to pay the *rental rate* for the period of *corrective maintenance* in the amount applicable at the time being.
- If repair works are delayed without TWA being directly or indirectly responsible for such delays, the Lessee shall be obliged to continue payments until the Wagon's return to service.
- 11.7 In the event of a loss of a Wagon, the Lessee shall be obliged to pay monetary damages to TWA for the material damage. Monetary damages shall be calculated on the basis of the current market value (to be calculated according to Appendix 5 GCU) of the Wagon at the time of the damage event. In case of loss of a Wagon, TWA shall also be entitled to a compensation for consequential damage.
- 11.8 If, during the term of the *rental*, TWA determines that the Lessee or a RU appointed by the latter repeatedly operates Wagons improperly and, despite of a *written* request by TWA to change the conduct in question, continues to act so that a Wagon is at risk of damage, TWA shall have the right to terminate the Contract without notice for good cause. Any additional rights TWA might have on the basis of the Contract or by virtue of law, particularly the right of refund of repair costs, freight rates for empty runs and payment of the *rental rate*, shall remain unaffected by the termination without notice for good cause.
- 11.9 In the event of *violently caused damage*, TWA shall, in addition to the billing of the mere damage elimination costs, charge a processing fee to cover the administrative costs for handling the damage. The processing fee shall in case of *violently caused damage* in a value of up to EUR 1,000 amount to EUR 45 and in case of a higher *violently caused damage* to EUR 65 per repair measure.

12. Secrecy Duty of the Lessee

- 12.1 The Parties undertake to keep secrecy with respect to any commercial or technical data and information not publicly known which were disclosed, made accessible or otherwise became known within the framework of their cooperation.
- 12.2 The secrecy duty shall not extend to information that was verifiably and lawfully received by a Party from third parties or was already publicly known at the time of contract conclusion or became known at a later time and a disclosure of such information shall not be regarded as an infringement of this secrecy duty.
- 12.3 Unless otherwise provided for by the Parties *in writing*, the secrecy duty shall survive a termination of the *rental period* by 5 years.

13. Return of the Wagons

- 13.1 The Lessee shall return the Wagons in their *intended state*, undamaged, empty and clean, that means, in particular, free from cargo residues, cargo materials and cargo securing materials and in

an odour-neutral state. Apart from that, the Lessee shall return the Wagons at the return location on time. The Lessee shall be obliged to give TWA notice about the arrival of the Wagons at the return location in due time.

- 13.2 At the end of the *rental*, the Wagons shall - at the expense of the Lessee and on a carriage-paid basis - be returned to the return location specified by TWA or agreed upon with the Lessee through the RU proposed by TWA. If the Lessee makes use of another RU for the return and such RU has not concluded a takeover agreement with the subsequent RU, the Lessee shall assume any costs arising from such circumstance and indemnify TWA against such costs.
- 13.3 In the event that the Lessee is in delay with the return of the Wagon for more than 14 *days*, starting on the return date agreed upon, TWA may grant the Lessee a grace period of 14 *days in writing*. If the Wagons fail to be returned also after expiry of such grace period and TWA incurs damage for this reason, TWA shall be entitled to charge the Lessee, in addition to the *rental rate*, a flat rate for delay in the amount of 15 % of the *rental rate* per *day* and Wagon for the period between the return date agreed upon and the *day* of actual return. An assertion of further claims for damages shall not be excluded.
- 13.4 The return shall in any case be made within the framework of a *review* of the Wagon by a garage approved by TWA or an external third party appointed by TWA and the Lessee. The findings made in this context shall be regarded as complained about towards the Lessee as of the time of service of the minutes. The Lessee shall be obliged to respond to the complaint within 7 *days* after service of the minutes; otherwise the *defects* identified in the minutes at the latter's expense shall be deemed as accepted.

The Parties may attend the *review* on a random basis.

- 13.5 In derogation from clause 13.4, the Lessee may agree upon a joint *review* with TWA. For this purpose, the Lessee shall request such *review* 6 weeks prior to the return of the Wagon.

In this case, the joint findings shall be binding for the Lessee and TWA. Both Parties may appoint authorised representatives with respect to the return/acceptance. If the Lessee or its authorised representative fails to appear for the joint *review*, TWA shall be entitled to carry it out on its own; in this case, the findings made by TWA shall be binding for both Parties.

- 13.6 If, after the *review*, Wagons have to be cleaned, maintained or *inspected by a railroad operator*, the obligation to pay the *rental rate* shall cease to exist as of the time of the completion of such works, but in no case earlier than upon the end of the term of the Contract. The associated costs shall be borne by the Lessee. The obligation according to sentence 1 shall not apply if TWA is responsible for the necessity of repair works after return.

14. Liability of TWA

- 14.1 TWA's liability shall be governed by the statutory provisions of the country where the TWA company concluding the Contract has its registered office.

- 14.2 TWA's liability shall be limited to intent and gross negligence. This provision shall not imply a limitation of TWA's duty to provide Wagons.
- 14.3 Except for cases of gross negligence, intent or violation of a major obligation, TWA's liability per Wagon shall be limited to a compensation of material damage up to a maximum of twelve monthly rental payments for the respective Wagon. This limitation shall include statutory reduction rights, if any, of the Lessee. TWA shall be liable for damage resulting from injury to life, body or health, unless such damage is caused by a negligent breach of duty on the part of a legal representative or a person employed for the fulfilment of its duties.
- 14.4 Liability for a breach of contractual obligations shall be limited to damages foreseeable at the time of conclusion of the contract and typical for the contract.
- Liability for pecuniary and consequential pecuniary loss is excluded to the extent permitted by law.
- 14.5 TWA shall not be liable for loss or reduction in value of the transported goods.
- 14.6 The Parties shall give each other complete notice of any damage in due time and give the other Party or a third party appointed by the other Party for this purpose the opportunity to inspect the damage. The settlement of the damage according to Art. 19.3 GCU shall not be affected by this.
- 14.7 The Lessee shall be obliged to assert its claims primarily towards the party who actually caused the damage if it is entitled to assert its own claims against such party.
- 14.8 If and to the extent that the preceding regulations provide for claims against TWA, the Lessee shall give TWA *written* notice of such claims within a period of 15 *days* after having become aware of the damage, but in no case later than 30 *days* after the damage event. If TWA does not receive this notice in due time, a claim, if any, on the part of the Lessee shall lapse.

15. Use, Operational Regulations

- 15.1 In its relationship to TWA, the Lessee shall be obliged to comply with any and all official regulations, terms of use applicable to the Wagon, the UIC Loading Guidelines as well as all legal and safety-related requirements when using the Wagons. It shall be obliged to be kept informed about any changes and amendments in this context.
- 15.2 Without the *written* consent of TWA, neither the Wagons themselves nor their signs and inscriptions may be changed in any way, unless explicitly requested by the Wagon-using RU or a public authority. In the event of instructions to this effect, the Lessee shall give TWA *immediate written* notice. Ownership plates or plates of constructors must not be removed or changed.
- 15.3 If the Lessee fails to give *written* notice of defects, particularly at signs and inscriptions, it shall be liable towards TWA and third parties with respect to any and all consequences and costs resulting from such failure and shall indemnify TWA at first request.

16. Special Right of Termination of the Lessor

In the following events, TWA shall have the right to terminate the Contract completely or partially for good cause without notice:

- in case of insolvency or the opening of insolvency proceedings against the Lessee;
- restructuring measures relating to the Lessee's company, accompanied by a recourse to creditors;
- delay in payment with respect to an amount of more than 2 monthly rental payments if a reminder has been sent for such invoices and they fail to have been completely paid within 2 weeks after the date of the reminder;
- if the Lessee is responsible for *maintenance* and fails to comply with such obligations despite of a *written* reminder;
- in the event of an improper use of the Wagons contrary to the Contract despite of a *written* reminder;
- use of the Wagons on the part of a non-GCU RU, unless TWA has given its *written* consent to a use by such RU;
- expiration of a bank guarantee agreed upon and not renewed despite of a *written* extension request.

17. Credit insurance and the customer's obligation to cooperate

- 17.1 TWA maintains credit insurance to cover the payment risk. The customer undertakes to provide all information necessary to maintain and adjust the insurance cover in a complete, truthful and timely manner and to cooperate to a reasonable extent in the event of any queries or additional claims by the credit insurer.
- 17.2 If the Lessee's credit rating deteriorates or if information essential for the credit insurance is missing or incomplete, TWA has the right to renegotiate the terms and conditions.
- 17.3 In addition, in the cases mentioned in paragraph 2, TWA is entitled to terminate the contract in writing with three (3) months' notice to the end of the month.

18. Right of Proposal in Case of a Change of Circumstances

If circumstances forming a basis of the Contract become subject to a material change after conclusion of the Contract and TWA would not have concluded the Contract or would have concluded it with different contents if it had foreseen such change, TWA may provide the Lessee with a proposal on new conditions supposed to restore the balance. If the Parties fail to come to an agreement in this respect within 30 *days* after receipt of the new conditions, TWA may terminate the Contract by observing a notice period of 3 months after occurrence of the case of hardship. Circumstances in the aforementioned sense shall include, but not be limited to applicable freight rates, energy prices, *maintenance* and repair costs, transport conditions, operational requirements, in particular changes in legal or regulatory requirements and provision conditions.

19. Place of Jurisdiction, Limitation Period, Original Text

- 19.1 The exclusive place of jurisdiction shall be the place of the registered office of the TRANSWAGGON company having concluded the Contract with the Lessee.
- 19.2 The applicable law shall be the law of the country where the TRANSWAGGON company concluding the Contract has its registered office.
- 19.3 Claims of a Party towards the other one shall be subject to a limitation period of 3 years unless otherwise provided for by mandatory law or a clause in these Terms and Conditions. The limitation period shall start at the end of the year during which the claims have come into being.
- 19.4 The original version of these Terms and Conditions has been drawn up in the German language and, where appropriate, translated into the national languages of the individual local branch offices of the TRANSWAGGON companies. In the event of discrepancies between a translated version and the German original wording, the German original wording shall, to the extent permitted by applicable national law, have priority.

20. Severability Clause

- 20.1 If one or more provisions in the Contract or these Terms and Conditions are or become void, ineffective or unenforceable during the *rental period*, the Parties undertake to replace them by other effective and enforceable regulations coming as close as possible to such provisions in economic terms.
- 20.2 All other provisions shall remain unaffected and continue to be effective.
- 20.3 The preceding provisions shall also apply if the Contract or these Terms and Conditions are found to be incomplete. In this case, the Parties shall supplement the Contract or the Terms and Conditions by provisions coming as close as possible to the economic goals originally pursued by the Parties when concluding the Contract.

Appendix 1 to the Terms and Conditions (Price Adjustment Clause)

1. This price adjustment clause shall form an integral and material part of every Contract providing for a *rental period* of more than 1 year, and shall be deemed to have been explicitly attached thereto.
2. This clause refers to public statistical indices accessible for everybody on the relevant websites, and therefore distinguishes itself by the greatest possible transparency and neutrality.
3. The calculation of the price adjustment by using the formula specified under point 5 shall be made 14 days prior to the expiry of each contract year, calculated as of the beginning of the Contract.
4. The adjustment can have increasing as well as reducing effects.
5. The price adjustment clause is defined as follows:

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

whereby:

HR_{new}	corresponds to the new <i>rental rate</i> ;
HR_{old}	corresponds to the <i>rental rate</i> valid at the time of the calculation;
S_{const}	corresponds to the percentage portion of the <i>rental rate</i> that is not subject to the adjustment clause. For a <i>Wet Lease</i> , it amounts to 50 %, for a <i>Dry Lease</i> to 55 %;
$S_{R\&M}$	corresponds to the percentage portion of the <i>rental rate</i> that relates to the costs for <i>preventive maintenance</i> and <i>corrective maintenance</i> . For a <i>Wet Lease</i> , it amounts to 35 %, for a <i>Dry Lease</i> to 30 %;
PPI_{new}	corresponds to the <i>Producer Price Index</i> established by Eurostat in quarterly intervals for the countries of the European Union available at the time of calculation;
PPI_{old}	corresponds to the <i>Producer Price Index</i> established by Eurostat in quarterly intervals for the countries of the European Union for the same quarter of the previous year; The <i>PPI</i> Index can be found at the following link: https://ec.europa.eu/eurostat/databrowser/view/sts_inpp_q/default/table
S_{Admin}	corresponds to the percentage portion of the <i>rental rate</i> relating to labour costs, always amounting to 15 %;
LCI_{new}	corresponds to the <i>Labour Cost Index</i> established by Eurostat in quarterly intervals for the countries of the European Union available at the time of calculation;
LCI_{old}	corresponds to the <i>Labour Cost Index</i> established by Eurostat in quarterly intervals for the countries of the European Union for the same quarter of the previous year; The <i>LCI</i> Index can be found at the following link: https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_R2_Q_custom_7955594/default/table