

GENERAL CONTRACT OF USE FOR WAGONS

GCU

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PREAMBLE

The use of wagons by railway undertakings (RU)¹ as a means of transport necessitates the adoption of contractual provisions setting out the rights and obligations of each party.

In order to ensure the safety and to improve the efficiency and competitiveness of railway freight traffic, the wagon keepers and RUs listed in Appendix 1 hereby agree to apply the provisions of this

¹ Terms marked with an asterisk (*) are explained in Appendix 2 (Definitions)

CHAPTER I

OBJECT, SCOPE OF APPLICATION, TERMINATION, FURTHER DEVELOPMENT OF THE CONTRACT, DICONTINUANCE OF BEING A SIGNATORY

Article 1: Object

1.1 This contract, including its appendices, sets out the conditions for the provision of wagons for use as a means of transport by RUs in national and international traffic within the scope of application of the COTIF in force.

Commercial conditions for the use of wagons are outside the scope of this contract.

1.2 The provisions of this contract shall apply to wagon keepers and RUs* as users of wagons.

1.3 Use of a wagon includes the loaded run and the empty run, as well as cases in which the wagon is in the custody of a signatory RU.

1.4 Use and custody begin when the wagon is accepted by the RU and end with the handover of the wagon to the keeper or to some other authorised party, for example another signatory RU, the contractual consignee of the goods carried or the operator of private sidings authorised to take delivery of the wagon.

Article 2: Scope of application

2.1 This contract shall take precedence in international rail traffic over the CUV Uniform Rules (Annex D to the 1999 COTIF) and in domestic rail traffic over any national regulations that may be applicable, to the extent that this is admissible.

2.2 Admission shall be effective from the first day of the following month, provided that the application has been received by the GCU Bureau at least fifteen days before.

2.3 The provisions of this multilateral contract shall apply between the signatories to the extent that they have not concluded other provisions between themselves.

2.4 The GCU Bureau shall publish an updated list of signatories (Appendix 1, available on the website at www.gcubureau.org) every month, on the first day of the calendar month in question.

Article 3: Termination

3.1 Any signatory may withdraw from this contract at the end of each calendar year subject to notice of at least six months in a written declaration to be sent to the GCU Bureau. Termination and the date from which it becomes effective shall be published monthly by the GCU Bureau together with the list referred to in article 2.4.

3.2 In addition, any signatory having voted against a proposed modification of the contract may withdraw from the contract as of the entering into force of such modification by a written declaration to be sent to the GCU Bureau within six weeks after adoption of the modification by the majority of the signatories.

Article 4: Further development of the contract

The parties to the GCU shall adopt an Internal Regulation (Appendix 8) for the further development of the contract. The GCU Bureau shall be responsible for editing and coordinating any such modifications of the GCU.

Article 5: Discontinuance of being a signatory

If due amounts of more than 100 EUR owed by a signatory according to section I point 12 of Appendix 8 have been outstanding for more than six months and after an additional request for payment are not paid by the signatory within two months after the request has been sent, the discontinuance of its being a signatory shall be published in the monthly list according to article 2.4. From then on it shall be considered to be a third party according to articles 16 and 17.

Article 6: in abeyance

CHAPTER II OBLIGATIONS AND RIGHTS OF THE WAGON KEEPER

Article 7: Technical admission and maintenance of wagons

- 7.1 The keeper shall ensure that his wagons are technically admitted* in accordance with the national and international laws and regulations in force at the time of admission and that they remain technically admitted throughout the period of their use.
- 7.2 The keeper shall ensure that his wagons are maintained in accordance with the laws, regulations and mandatory standards in force. In particular, he shall appoint a certified Entity in Charge of Maintenance (ECM) and ensure that the latter performs all of its assigned tasks.
Upon request, the keeper shall make available to any user RU without delay reliable information about maintenance (including Maintenance File and Maintenance Record File) and restrictions affecting operations, necessary and sufficient to support safe operations.
For the purposes of this contract and vis-à-vis the other signatories, the keeper is considered to be, and have the responsibilities of, the ECM for his wagons.
- 7.3 The keeper must allow the RUs to conduct any inspections on wagons that may be necessary, in particular those referred to in Appendix 9.
- 7.4 The keeper must provide the impacted user railway undertakings with the information on its wagons required for safe railway operations in electronic format as soon as possible. The provision of this information and additional data - where relevant - is provided for in Appendix 16.

Article 8: Inscriptions and signs on the wagon. Identification of the wagon

Without prejudice to the regulations in force, wagons shall carry the following inscriptions:

- indication of the keeper
- inscriptions and signs on the wagons as shown in Appendix 11
- where appropriate, the home station or region*.

Article 9: Keeper's right of deployment

- 9.1 The keeper shall have control over his wagons. The keeper may act under this contract through third parties authorized by him. In case of doubt, the instructions of the keeper shall overrule any instruction of a third party claiming to be authorized by the keeper.
- 9.2 Except when justified for reasons of safety, only the keeper shall be authorised to issue instructions to RUs regarding the use of his wagons.
- 9.3 The keeper shall provide the RUs with the instructions necessary for the carriage of empty wagons in good time.
- 9.4 Any request from a keeper for his wagons not to be handed over to certain RUs, whether signatory or third party, shall be met.

CHAPTER III OBLIGATIONS AND RIGHTS OF RUs

Article 10: Acceptance of wagons

Subject to compliance by the keeper with the obligations incumbent on him under the provisions of Chapter II, RUs shall accept wagons within the scope of their commercial services* offered.

Article 11: Refusal of wagons

An RU may refuse wagons if

- their acceptance is prohibited by a competent authority;
- it is temporarily impossible to accept them for operating reasons specific to the RU concerned;
- there are exceptional circumstances beyond the control of the RU (cases of force majeure in particular) that temporarily prevent the wagons being accepted;
- the condition of the wagon does not meet technical and maintenance regulations or conform to current loading guidelines;
- there are other substantial reasons which might affect the safe operation of the wagon; such reasons must be notified to the keeper.

An RU may not refuse its own wagons when they are empty and in running order.

Article 12: Handling of wagons

Each RU shall handle wagons with care and due diligence and shall carry out the inspections laid down in Appendix 9. Similarly, it shall carry out in particular all the safety-related inspections needed on wagons, irrespective of their keeper. The costs relating to these routine inspections shall not be separately invoiced to the keeper.

Article 13: Wagon periods for carriage and liability

13.1 The periods for carriage for loaded wagons shall depend on the transit period for the goods being conveyed. Periods for carriage for empty wagons shall be determined by agreement. In the absence of such an agreement, the periods set out in Article 16 of the CIM for wagon-load consignment shall apply.

13.2 The user RU shall not be held liable for exceeding the periods for carriage when this is caused by:

- the fault of the keeper,
- an order placed by the keeper not resulting from a fault of the user RU,
- a defect on the wagon or its load,
- circumstances that the user RU could not avoid and the consequences of which it could not prevent,
- justified refusal of the wagon or shipment as covered by Article 11.

13.3 If these periods are exceeded for a reason ascribable to an RU, the keeper may claim compensation for loss of use of the wagons. Unless otherwise agreed, the amount of compensation for loss of use shall be calculated from Appendix 6. This amount, added to the compensation for damage specified in Article 23.2, may not exceed the amount payable for loss of the wagon. It shall be charged in addition to the compensation for loss granted under Articles 20.3 or 23.1.

Article 14: Deployment of empty wagons

- 14.1 The RU shall execute the instructions given by the keeper for the carriage of empty wagons within the scope of their commercial services offered.
- 14.2 The documents listed below, included in Appendix 3, shall be used when forwarding empty wagons:
- wagon note,
 - charges note,
 - subsequent orders,
 - notification of circumstances preventing carriage,
 - notification of circumstances preventing delivery.

These documents may be issued in paper format or recorded electronically.

The procedure agreed on among parties to the contract of use for issuing these documents in electronic format must ensure the integrity and reliability of the information they contain as of the moment they are issued. The procedure agreed on among parties to the contract of use for completing or amending the electronic wagon note must ensure amendments are identifiable. It must also ensure that the original information contained in the electronic wagon note is preserved. The electronic wagon note must be authenticated. Authentication may take the form of an electronic signature or other suitable procedure.

The arrangements for handling these documents in paper or electronic format are set out in the Wagon Note Guide of the CUV (GLW-CUV), published by the International Railway Transport Committee (CIT).

- 14.3 If the keeper has failed to issue instructions by the time the RU takes the wagon back after unloading at the latest, the RU shall be obliged to send the wagon back to its home station or region or to any other previously agreed station.

Article 15: Information to be supplied to the keeper

User RUs shall supply the keeper with information on the use of his wagons in a timely manner, in accordance with the national and international laws and regulations in force.

Article 16: Handover of a wagon to third parties

An RU that hands over a wagon to a third party without the authorization of the keeper shall be liable to the latter in particular for any damage that may result. The liability of the third party remains unaffected.

Article 17: Acceptance of wagons from third party keepers

The present contract shall apply to wagons whose keepers are not GCU signatories from the moment they are accepted by a signatory RU as part of a handover or exchange. In such cases, the RU which accepts the wagon is considered as its keeper vis-à-vis the other parties to the GCU for this run and for the empty return run following it. This is to be indicated in the CUV wagon note.

CHAPTER IV

ASCERTAINMENT AND HANDLING OF DAMAGE TO WAGONS IN THE CUSTODY OF AN RU

Article 18: Ascertainment of damage

- 18.1 When damage to a wagon or the loss or damage of the removable accessories mentioned on the wagon are discovered or presumed by an RU or the keeper claims they exist, the RU shall without delay and, if possible, in the keeper's presence, draw up a wagon damage report (as per Appendix 4) documenting the nature of the damage or loss and, insofar as possible, the cause and the time it took place.
- 18.2 When the damage or loss of parts does not prevent use of the wagon in traffic, the keeper does not need to be invited when the damage or loss is recorded.
- 18.3 A copy of the wagon damage report shall be sent to the keeper without delay.
- 18.4 If the keeper does not accept the contents of the wagon damage report, he may ask for the nature, cause and extent of damage to be recorded by an expert appointed by the parties to the contract or by judicial means. This procedure shall be subject to the law of the country in which it takes place.
- 18.5 When a wagon sustains damage or loss of a part and is unable to run or be used as a result, the RU shall also inform the keeper immediately, providing the following information as a minimum:
- the wagon number
 - the status of the wagon (loaded or empty)
 - the date and place it was withdrawn from service
 - reason for withdrawal from service
 - details of the department to contact
 - probable duration of wagon unavailability (up to 6 working days; more than 6 working days).

Article 19: Handling of damage

- 19.1 The RU shall arrange for the wagon to be put back to running order in accordance with the provisions of Appendix 10. If the cost of repairs is more than 850 EUR, the agreement of the keeper must first be sought, except in the case of brake block replacements or if Appendix 13 is applied by the RU. If the keeper does not respond after 2 working days (not including Saturdays) the repair work shall go ahead.
- 19.2 If the cost of repairing the damaged wagon is greater than the compensation calculated according to Appendix 5, the wagon shall be considered beyond repair from an economic point of view.
- 19.3 When the damage does not affect the wagon's suitability to run, but makes its use difficult, the RU may carry out work to make the wagon fit for use again without the keeper's agreement, up to an amount of 850 EUR. By agreement with the keeper, the RU may be authorised to carry out additional work.

19.4 The RU that initiated the maintenance in accordance with Appendix 10 shall check whether and to what extent the work requested has been completed on the basis of information received from the workshop.

Any restrictions on use (e.g. fitness to run, fitness for service) that become apparent after the repairs must be documented by the RU.

On completion of the repairs and failing any specific instructions from the keeper, the RU shall forward the wagon to the destination station for which it was initially bound.

19.5 In cases where the RU carries out measures in application of the provisions of Appendix 9, it shall do so with qualified staff and all due care. In the context of the preceding provision, "qualified staff" (operations staff) means staff possessing the competences and authorisations to take corrective measures, described in the RU's safety management system (SMS).

Repair work in application of the provisions of Appendix 10 may only be performed by approved workshops.

Approved workshops are:

- a) Workshops which have a valid certificate for an entity in charge of maintenance (ECM certificate) containing the maintenance delivery function as a minimum,
- and
- b) are listed in the European Railway Agency Database of Interoperability and Safety (ERADIS)
- and
- c) which are conversant with Appendices 7, 9, 10 and 13 to the GCU and instruct their employees on changes to the GCU on a regular basis.

The RU or his auxiliary must inform the keeper of the work performed, using the codes provided in Appendix 10, Annex 6.

19.6 Management of spare parts is covered in Appendix 7.

19.7 Coverage of the cost of repair work is dealt with in Chapter V.

Article 20: Handling of lost wagons and removable accessories

20.1 A wagon shall be considered lost if it is not placed at the keeper's disposal within three months following the day of receipt of his search request by the RU to which he provided the wagon, or if the keeper has received no indication on the whereabouts of the wagon. To this period shall be added the time during which the wagon is immobilised for any reason not ascribable to the RU or because of damage.

20.2 A piece of removable accessory mentioned on the wagon shall be considered lost if it is not returned with the vehicle.

20.3 If an RU is liable, it shall pay the keeper:

- for a lost wagon, compensation calculated in accordance with Appendix 5
- for lost accessory, compensation amounting to the value of the part in question.

20.4 The keeper, on receiving the compensation, may request in writing to be notified when the wagon (or removable accessory) is found. In this case, the keeper may require that within six months of receiving the notification, the wagon (or removable tackle) be returned to him against repayment of the compensation received. The period between payment of compensation for loss of the wagon and repayment thereof by the keeper shall not qualify him for any compensation for loss of use.

Article 21: Handling of bogies

The provisions of this chapter shall apply in the same way to the handling of bogies.

CHAPTER V

LIABILITY IN THE EVENT OF LOSS OF OR DAMAGE TO A WAGON

Article 22: Liability of the user RU

22.1 The RU which has custody of a wagon shall be liable to the keeper for any loss of or damage to the wagon or accessories unless it proves that the damage was not caused by fault on its parts.

22.2 The RU shall not be liable if it brings proof of one of the following:

- circumstances that the RU was not able to avoid and the consequences of which it could not prevent;
- fault of a third party;
- insufficient maintenance by the keeper when the RU can prove that the wagon was properly used and inspected;
- fault of the keeper.

If the RU is found to be partly responsible, the damage shall be borne by the responsible parties in proportion to their respective share of responsibility.

The keeper cannot cite the existence of a hidden defect on his wagon as proof that there was no fault of his part.

22.3 The RU shall not be liable for:

- loss of or damage to removable accessories that is not listed on both sides of the wagon;
- loss of and damage to removable tackles (filling hoses, tools, etc.),
provided that it cannot be shown to be at fault.

22.4 To facilitate the handling of damage and take account of the normal wear and tear of the wagon, the quality of its maintenance and its use by third parties, the damage catalogue in Appendix 12 shall be applied as follows:

- damage assigned to the keeper shall be borne by the keeper; independently of this, the keeper may, for damage in excess of 850 EUR, seek recourse against an RU, if he can bring proof that the RU in question was at fault,
- damage assigned to the RU shall be borne by the user RU up to a maximum of 850 EUR,
- damage assigned to the RU in excess of 850 EUR shall be handled in accordance with the provisions of Article 22.1.

Article 23: Amount of compensation

- 23.1 In case of loss of the wagon or its accessories, the amount of compensation shall be calculated in accordance with Appendix 5.
- 23.2 In case of damage to the wagon or its accessories, compensation shall be limited to the cost of repairs. Compensation for loss of use shall be granted in accordance with Article 13.3 and compensation for the change in operational value for damaged wheelsets in accordance with Appendix 6, Part II. When a request is sent to the keeper for spare parts to carry out repair work, the period of loss of use shall be suspended between the date of the request and the date on which the parts are received. The total amount of compensation (for loss of use and for reprofiling wheelsets) may not exceed the amount that would be payable for loss of the wagon.

Article 24: Liability of previous users

- 24.1 When the RU which has custody of a wagon is not liable, each previous user in the current chain of use (loaded or empty run) shall be liable to the keeper for any damage to the wagon and for the loss of or damage to its accessories in accordance with Article 22, if the subsequent RUs in the chain of use could exonerate themselves under the terms of Article 22.
- 24.2 Outside of the current chain of use, previous user shall only be liable to the keeper if the keeper can prove that this user caused the damage and if this user cannot exonerate himself under Article 22.

Article 25: Obligation to mitigate losses

When payment is made for damage caused to wagons, the parties to the contract shall abide by the general principles associated with the obligation to limit the resulting losses.

Article 26: Settlement of damages

The user RU or workshop acting as its auxiliary shall invoice the cost of repairing the wagon to the keeper, with the exception of costs for which the user RU is liable under the terms of Article 22. When the previous user is liable for the damage, the keeper shall send that user an invoice for the cost of the repairs for which he was himself invoiced by the user RU or workshop. The keeper may claim compensation for loss of use, in accordance with Article 13.

CHAPTER VI

LIABILITY IN THE EVENT OF DAMAGE CAUSED BY A WAGON

Article 27: Principle of liability

- 27.1 The keeper or a previous user subject to this contract shall be liable for damage caused by the wagon when they can be shown to be at fault. The keeper shall be presumed to be at fault if he has not correctly fulfilled his duties as these arise from Article 7, unless this breach of duty did not cause or contribute to the damage.
- 27.2 The liable party shall indemnify the user RU against any third party claims if the user RU is not at fault.
- 27.3 Where the user RU is partly responsible, the compensation shall be borne by each party in proportion to its respective share of responsibility.
- 27.4 When a third party is responsible or partly responsible for the damage, the parties to the contract shall claim compensation for the damage primarily from this third party. In particular the signatory which has a contract with the third party shall pursue the claim vis-à-vis the third party as a matter of priority.
- 27.5 Upon request, the keeper shall be required to provide proof of his civil liability insurance in accordance with applicable laws.

CHAPTER VII
LIABILITY FOR STAFF AND OTHER PERSONS

Article 28: Principle of liability

The contracting parties shall be liable for their servants and other persons whose services they make use of for the performance of the contract, when these servants and other persons are acting within the scope of their functions.

CHAPTER VIII OTHER PROVISIONS

Article 29: Loading guidelines

The RUs shall ensure that shippers comply with the UIC loading guidelines in force.

Article 30: Accountancy, payments and interests on late payments

30.1 The EURO (ISO code: EUR) shall be used as the sole monetary unit for all accounts and payments.

30.2 Payment must be made within 60 days following the date of receipt of the invoice, accompanied by the appropriate supporting documentation. An invoice is considered to be paid once the full amount due is credited on the account specified by the creditor.

30.3 If the payment period is exceeded, the creditor may charge interest for late payment from the sixty-first (61st) day for the unpaid amount.

30.4 The yearly interest rate is calculated as follows: the interest rate applied by the European Central Bank to its most recent main refinancing operations (MRO) plus 800 basis points. Basis for the calculation is the interest rate in force on the 1st of January of the calendar year in which the invoice was established.

Article 31: Obligation to pay damages

When a signatory fails by its own fault to meet an obligation which is due under this contract, he shall compensate the affected signatory for the direct damages suffered.

Article 32: Competent jurisdiction

Unless otherwise agreed between the parties, the competent jurisdiction shall be that in which the defendant is established.

Article 33: Limitation

33.1 The period of limitation for actions based on chapter III shall be one year. The period of limitation for actions based on chapters V and VI shall be three years.

33.2 The period of limitation shall run as follows:

- a) for claims brought under chapter III, from the day when the agreed period or the periods specified in the CIM expire;
- b) for claims brought under chapter V, from the day when the loss of or damage to the wagon was recorded or the day when the keeper could consider the wagon or the accessories lost in accordance with Article 20;
- c) for claims brought under chapter VI, from the day on which the damage occurred.

Article 34: Languages

The present contract exists in English, German and French; each language version has the same contractual value.

Two GCU members with different national languages must carry out their correspondence in one of the official GCU languages. The fields in the form in Appendix 4 must thus be written in at least one of those three languages. Invoices may be issued in the national language of the place of issue. The provisions of Annex 6 of Appendix 10 (coding of interventions) remain unaffected.

Article 35: Entry into force

This contract shall enter into force on 1.7.2006