

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 the present GENERAL CONTRACT FOR USE OF WAGONS (GCU).

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

CHAPTER I

OBJECT, SCOPE OF APPLICATION, TERMINATION, FURTHER DEVELOPMENT OF THE CONTRACT, DISCONTINUANCE 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 wagon users.

1.3 Use of a wagon includes the loaded and 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 another 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 at least six months' notice being provided in writing and sent to the GCU Bureau. Termination and the date from which this 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 that has voted against a proposed modification to the contract may, within six weeks of the proposal being adopted by the majority of the signatories, withdraw from the contract by giving written notice to the GCU Bureau, with effect from the date on which the modification enters into force.

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 a signatory is more than six months in arrears for an outstanding amount of more than 100 euros according to section I point 12 of Appendix 8, and, if the signatory has not paid the amount within two months after an additional request for payment 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 RIGHTS AND OBLIGATIONS 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, it shall appoint a certified Entity in Charge of Maintenance (ECM) and ensure that the latter integrates the maintenance provisions of the GCU, in particular of Appendix 10, into its maintenance system.
- 7.3 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 entity in charge of maintenance for his wagons, even if it has designated a legally separate ECM. ECMs are not parties to this agreement.
- 7.4 The keeper must provide the impacted user railway undertakings with the information on its wagons which is required for safe railway operations in electronic format as soon as possible. The provision of technical wagon data and additional data – where relevant – is provided for in Appendix 16.

Upon request and without delay, the keeper shall, make reliable maintenance information available to any user RU, as well as restrictions affecting operations (including the Maintenance File and Maintenance Record File) and, if required, further information, which may be necessary and sufficient to support safe operations or clarify incidents.

- 7.5 On behalf of its ECM, the keeper authorises the RU – on the basis of the public law applicable to the ECM that governs the subcontracting of maintenance functions – to carry out repairs in accordance with the requirements of Appendix 10. The ECM's responsibility for the outcome of the subcontracted maintenance functions and for performance monitoring remains unaffected.
- 7.6 The keeper must allow the RUs to conduct any inspections that may be necessary on wagons, as well as any required corrective measures during operation in accordance with Appendix 9.

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 the right of access to its wagons. Under this contract, the keeper may act through third parties authorised by it. In case of doubt, the keeper's instructions shall take precedence over any instructions from a third party claiming to be authorised 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 its wagons.
- 9.3 The keeper shall provide RUs with the instructions necessary for the carriage of empty wagons in good time.
- 9.4 Any request from a keeper for its wagons not to be handed over to certain RUs, whether signatory or third party, shall be met.

CHAPTER III RIGHTS AND OBLIGATIONS OF THE RU

Article 10: Acceptance of wagons

Provided that the keeper complies with its obligations under 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 wagons 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 fit to run.

Article 12: Handling of wagons

12.1 Each RU shall handle wagons with care and due diligence and shall carry out the legally required inspections. Detected damages shall be handled in accordance with Appendix 9. Similarly, it shall, in particular, carry out all of 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.

12.2 Each RU shall ensure that the procedures and regulations set out in this contract for restoring fitness to run* are integrated into its safety management system.

Article 13: Wagon periods for carriage and liability

13.1 The periods for carriage for loaded wagons depend on the transit periods for the goods being conveyed. Periods for carriage for empty wagons are subject to agreement. In the absence of such an agreement, the periods set out in Article 16 of the CIM for wagon-load consignments shall apply.

13.2 The user RU shall not be held liable for exceeding the periods for carriage if these are attributable to:

- fault on the part of the keeper
- an order placed by the keeper not resulting from a fault on the part of the user RU
- a defect on the wagon or its load
- circumstances which the user RU could not avoid and whose consequences it could not prevent
- justified refusal of the wagon or consignment 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 using Appendix 6. This amount, added to the compensation for damage specified in Article 23.2, may not exceed the amount payable for a wagon's loss. 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 its commercial services offered.
- 14.2 The following documents, included in Appendix 3, shall be used for the carriage of 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 upon between parties to the contract of carriage for issuing these documents in electronic format must ensure the integrity and reliability of the information contained from the time of issue. The procedure agreed upon between parties to the contract of carriage for supplementing 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 upon 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, via the communication platform (GCU Broker*), in accordance with the national and international laws and regulations in force. Details are set out in Appendices 4 (Wagon damage report) and 15 (Wagon Performance Message (WPM)).

Article 16: Handover of a wagon to third parties

An RU that hands over a wagon to a third party without authorisation from the keeper shall be liable to the latter, in particular, for any damage that may result therefrom. 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 If damage to a wagon or the loss or damage of removable accessories mentioned on the wagon is 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, it 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 detached
 - reason for the detachment
 - 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 user RU, which detects the damage and detaches the wagon, shall arrange for the wagon to have its fitness to run restored in accordance with the provisions of Appendices 9 and 10 and put the wagon back into service. When Appendix 10 is used, the repair is carried out based on an authorisation by the ECM (Article 7.5).
- 19.2 If the cost of repairs is more than 850 euros, the keeper's agreement 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 two working days (not including Saturdays), the repair work shall go ahead. If the keeper refuses the cost estimate for the repair, the keeper is responsible for repairing the damage.
- 19.3 When the damage does not affect the wagon's fitness to run, but makes its use difficult, the RU may carry out work to restore the fitness for use* of the wagon without the keeper's agreement, up to an amount of 850 euros in accordance with the provisions of Appendix 10.
- By separate agreement with the keeper, the RU may be authorised to carry out additional work.
- 19.4 If the cost of repairing the wagon exceeds the residual value calculated according to Appendix 5, the wagon shall be considered beyond repair from an economic point of view.

19.5 In cases where the RU carries out corrective 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.

These approved workshops:

hold a valid ECM certification for maintenance functions in accordance with the ECM Regulation/in accordance with applicable public law, which includes at least the maintenance delivery function

and

are listed in the European Agency for Railways Database of Interoperability and Safety (ERADIS)

and

are conversant with Appendices 7, 9, and 10 to the GCU and instruct their employees on changes to the GCU on a regular basis

19.6 The RU that has arranged the repair in accordance with Appendix 10 shall ensure that the workshop provides the notice of release to service* to the RU after completion of the work to put the wagon back into service, using the codes according to Appendix 10, Annex 6.

A copy of the notice of release to service and any additional information shall be sent to the keeper without delay either by the RU or by the workshop, if so provided in the contractual relationship between the RU and the workshop.

19.7 If one of the following cases applies, the wagon is considered removed from operation and a notice of return to operation provided by the keeper is necessary:

- the RU has detached a wagon in accordance with Appendix 9, point 2.2.5, Variation C

- the RU has detached a wagon in accordance with Appendix 9, point 2.2.5, Variation A and the workshop has applied Appendix 10, Module M00.001 to request additional maintenance instructions from the keeper

- the RU has requested the delivery of parts using the form H^R (Appendix 7 GCU)

- in its notice of release to service, the workshop has indicated restrictions for use which are different from the actions to be taken according to Appendix 9

The keeper shall provide a notice of return to operation to the RU on the basis of the notice of release to service

19.8 Upon completion of the repairs and without any specific instructions from the keeper, the RU shall forward the wagon to the destination station for which it was initially bound.

19.9 The management of spare parts is covered in Appendix 7.

19.10 The 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 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. This period shall be extended by the duration of the wagon's immobilisation for any reason not ascribable to the RU or due to damage.

20.2 Any 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 a lost accessory, compensation amounting to the value of the part in question

20.4 Upon receiving compensation, the keeper may request to be notified in writing 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 accessory) be returned to him against repayment of the compensation received. The period between payment of the compensation for loss of the wagon and repayment thereof by the keeper shall not qualify it for any compensation for loss of use.

Article 21: Handling of bogies

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

CHAPTER V

LIABILITY IN THE EVENT OF THE 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 part.

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 its wagon as proof that there was no fault on its 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 accessories (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 euros, seek recourse against an RU, if it 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 euros
- damage assigned to the RU in excess of 850 euros shall be handled in accordance with the provisions of Article 22.1

Article 23: Amount of compensation

- 23.1 In the event of loss of the wagon or its accessories, the amount of compensation shall be calculated in accordance with Appendix 5.
- 23.2 In the event 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 exempt from liability, 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 RUs following it in the chain of use were able to exonerate themselves under the terms of Article 22.
- 24.2 Outside of the current chain of use, the 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 provided that they can be shown to be at fault. The keeper shall be presumed to be at fault if it has not correctly fulfilled its duties under 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 solely or partly responsible for the damage, the parties to the contract shall primarily hold the third party liable when settling the claim. 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 its civil liability insurance in accordance with applicable laws.

CHAPTER VII

LIABILITY FOR STAFF AND OTHER PERSONS

Article 28: Principle of liability

The signatories shall be liable for their employees and other persons whose services they make use of to perform the contract, insofar as these employees 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 interest 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, it 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 on which the agreed period or the periods specified in the CIM expire
 - b) for claims brought under Chapter V, from the day on which the loss of or damage to the wagon was recorded or the day on which 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.