

## GENERAL COMMERCIAL TERMS AND CONDITIONS OF DEMARKO sp. z o.o. sp. k.

### SPECIAL TRAILERS Division

These General Commercial Terms and Conditions are applied by **DEMARKO spółka z ograniczoną odpowiedzialnością spółka komandytowa** with its registered office in Świętochłowice [41-605], ul. Sądowa 19, entered to the National Court Register kept by the District Court Katowice – East in Katowice, 8<sup>th</sup> Business Department of the National Court Register under number 0000399259, holding NIP (tax identification number): 6272729965 and REGON (statistical number): 242760491.

#### 1. DEFINITIONS

- 1.1. Whenever these General Commercial Terms and Conditions use:
  - 1.2. **θCTC** – they shall mean these General Commercial Terms and Conditions including appendixes forming integral parts hereof;
  - 1.3. **DEMARKO** – it shall mean the company operating under the business name of DEMARKO spółka z ograniczoną odpowiedzialnością spółka komandytowa with its registered office in Świętochłowice [41-605], ul. Sądowa 19, entered to the National Court Register kept by the District Court Katowice – East in Katowice, 8<sup>th</sup> Business Department of the National Court Register under number 0000399259, holding NIP (tax identification number): 627-272-99-65 and REGON (statistical number): 242760491.
  - 1.4. **CONTRACTING PARTY** – it shall mean a natural person, legal person or organizational and legal entity without legal personality that makes a contract with DEMARKO for the purposes related to their business activity;
  - 1.5. **PARTIES** – they shall mean DEMARKO, the Contracting Party or DEMARKO and the Contracting Party;
  - 1.6. **CONTRACT** – it shall mean a contract of sale or delivery of specialized trailers produced by DEMARKO and subassemblies to such trailers (the object of performance) as well as contracts for the provision of maintenance services for the trailers sold or parts thereof, as concluded between DEMARKO and the Contracting Party;
  - 1.7. **FORCE MAJEURE** – it shall mean any circumstances that may occur after the Contract is concluded and which could not be foreseen by and were beyond the control of any of the Parties and whose occurrence or consequences could not be prevented by any of them by the exercise of due care and whose consequences affect the ability, timely and due completion of the Parties' obligations (damage, losses, delays); Force Majeure shall include especially such circumstances as: war operations, coup d'état, uprisings, terrorist attacks, natural disasters and abnormal weather conditions, catastrophes, embargoes, closing borders or major obstacles to traffic at borders, transportation bans issued by public authorities that make it impossible to complete the contract in whole or in part;
  - 1.8. **Hardship** – it shall mean any (expected or unexpected) changes in legal regulations that apply to the Contract and make it impossible to complete it in a duly manner.

#### 2. SUBJECT MATTER OF THE θCTC

- 2.1. The θCTC specify the rules for concluding and completing Contracts.
- 2.2. The θCTC form an integral part of each Contract and apply from the moment they are delivered to the Contracting Party upon signature of the Contract for the entire term of performance thereof.
- 2.3. The θCTC are communicated to the Contracting Party upon placing an order by the Contracting Party at the latest and they are also available at DEMARKO's registered office and at [www.demarko-trailers.com](http://www.demarko-trailers.com).
- 2.4. If the Contracting Party remains in permanent commercial relations with DEMARKO, acceptance of these θCTC by the Contracting Party upon the first order shall be deemed to be the acceptance hereof for any orders placed later on, unless the Parties agree otherwise;
- 2.5. Article 384 of the Civil Code shall apply in the cases specified therein.

#### 3. QUOTATIONS

- 3.1. In order to commence the procedure for concluding the Contract, the Contracting Party makes a request for quotation by calling at +48 32 230 25 75 or by sending an e-mail to DEMARKO's commercial representative at [info@demarko-trailers.com](mailto:info@demarko-trailers.com), or in writing to the address of the registered office. In their request the Contracting Party asks about the possibility and conditions for purchase of the objects of performance or services indicated in such request, and after receipt of the quotation prepared by DEMARKO according to the request submitted, the Contracting Party places an order within 14 business days.
- 3.2. A quotation as to the price is valid for 14 business days, unless the quotation specifies otherwise.
- 3.3. A quotation presented by DEMARKO is not tantamount to the automatic booking of subassemblies, raw materials and working time of machines needed for manufacturing the products covered by the quotation, nor to the booking of a production schedule.
- 3.4. Marketing materials, information given at DEMARKO's website, advertising information contained in booklets, folders and other media are provided for illustrative purposes only and they do not constitute an offer within the meaning of Art. 66 of the Civil Code.

#### 4. ORDERS AND CONTRACTS

- 4.1. Effective conclusion of a Contract is conditional upon an order being placed by the Contracting Party in reply to a quotation submitted by DEMARKO. In the event when a quotation provides for receipt of a deposit, a Contract is concluded when the full amount of such deposit is credited to DEMARKO's bank account.
- 4.2. An order can be placed in one of the following forms:
  - 4.3. in writing by registered mail sent to DEMARKO's address;
  - 4.4. in writing directly at DEMARKO's registered office;
  - 4.5. by electronic mail to the address indicated in the quotation;
- 4.6. An order can be placed only by the persons authorized to represent the Contracting Party under an copy from the National Court Register (KRS), Central Register and Information on Economic Activity (CEIDG) or relevant power of attorney. Valid documents that enable identification of powers to conclude a Contract should be attached to the order.
- 4.7. An order sent by the Contracting Party must contain all necessary information required for completing the order, namely:
  - 4.8. the Contracting Party's details (company name, address of the registered office, KRS, NIP and REGON numbers);
  - 4.9. number of the quotation referred to by the Contracting Party;
  - 4.10. desired date of completion of the Contract;
  - 4.11. agreed form of payment and currency of the order;
  - 4.12. identification of a carrier and place of delivery;
  - 4.13. date when the order was placed;
  - 4.14. full name, telephone number and e-mail address of the person placing an order on behalf of the Contracting Party.
- 4.15. In the event when it is necessary to make changes to the technological design or when it is necessary to do extra and unforeseen work, DEMARKO shall not be responsible for any consequences of delay in completing the Contract.
- 4.16. Orders containing changes compared to the quotation or supplementing the content thereof shall not be treated as acceptance of such quotation, but as a new request for the possibility of concluding a Contract, which will require submission by DEMARKO of a new quotation. In such event the present quotation ceases to be binding.
- 4.17. Application of Art. 68<sup>o</sup> of the Civil Code shall be excluded, i.e. no immediate reply to the quotation in relation to the Contracting Party with whom DEMARKO remain in permanent commercial relations shall not be deemed to be an acceptance of such quotation.
- 4.18. A Contract is made upon acceptance of the quotation by the Contracting Party (receipt by DEMARKO of an order). The Contract is composed of:
  - 4.19. DEMARKO's quotation;
  - 4.20. The Contracting Party's order;
  - 4.21. these θCTC.
- 4.22. Regardless of the form of conclusion of the Contract, DEMARKO may correct any obvious typographical and numerical errors in the Contracting Party's orders without affecting the content of the Contract.
- 4.23. The date of completion of the Contract is agreed individually depending on technological capabilities, availability of materials, subassemblies to trailers and other circumstances.
- 4.24. DEMARKO reserves the right to change the date of completion of the Contract, if it is necessary due to Force Majeure or Hardship. At the same time DEMARKO agrees to inform the Contracting Party of a postponed date of completion of the order 1 day before the deadline agreed in the Contract at the latest.
- 4.25. If DEMARKO finds out that the Contracting Party is insolvent, or a liquidation procedure is opened against the Contracting Party, or that the Contracting Party makes an assignment without a creditor's consent, or for a Contracting Party being a foreign entity, a course of events occur by operation of law of the country where the Contracting Party's registered office is located, which could produce similar effects to the ones described above, or if the Contracting Party fails to collect the object of performance on time, or is in delay with payment of the price or any part thereof, DEMARKO may terminate, in writing, in whole or in part, all the contracts made with such Contracting Party which are effective and uncompleted on the termination date, without setting any additional dates, or DEMARKO may demand a security in the form of a cash deposit or a bank guarantee, regardless of the payment conditions agreed previously.

#### 5. PRICE AND PAYMENT CONDITIONS

- 5.1. A contract is performed after the full amount of the deposit specified in the quotation is credited to DEMARKO's bank account.
- 5.2. DEMARKO will issue an invoice for the completed performance in accordance to the data indicated in the order. All prices given are net prices. VAT is added to net prices according to tax regulations in force as at the date of issue of an invoice, and shall be paid by the Contracting Party in the amount applicable as at the date when DEMARKO completed the performance.
- 5.3. In spite of any complaint made, the Contracting Party is obligated to pay full amount due under the invoice on the due date set.
- 5.4. In case of delay in payment of the price or a fee, DEMARKO shall have the right to cease performance of any Contracts made with the Contracting Party until all the outstanding liabilities of the Contracting Party are paid, or to terminate the Contract without setting any extra dates. In the event of termination, DEMARKO shall have the right to retain the deposit, demand payment of a contractual penalty specified in the Contract in the amount due for termination of the Contract caused by the Contracting Party's actions, or to charge parking space rental costs to the Contracting Party up to the date of submission of a declaration on termination of the Contract.

- 5.5. Ownership to the object of performance delivered by DEMARKO to the Contracting Party under the Contract passes to the Contracting Party only after the full price or fee is paid. Until that moment the Contracting Party cannot transfer ownership, possession or custody of such objects to any other persons nor use them for own purposes. If the Contracting Party is in delay with making payments due under more than one Contract, DEMARKO has the right to apply any payment made by the Contracting Party for any invoice towards interest for delay in the first instance, and then towards the oldest outstanding dues.
- 5.6. DEMARKO allows for the possibility of settling off claims.
- 5.7. Any payment made before the due date does not authorize the Contracting Party to receive any discounts or rebates.
- 5.8. If the price or fee was agreed in a foreign currency, it must be paid in such currency only. Art. 358 § 1 of the Civil Code shall not apply.

#### 6. RELEASE OF THE OBJECT OF PERFORMANCE AND RESPONSIBILITY

- 6.1. The object of performance is released to the Contracting Party at DEMARKO's production facility that manufacturers trailers (the address is each time given in the order confirmation), after signature of the acceptance report by both Parties to the Contract (a specimen can be found in the appendix). The time limit for collection is maximum 7 business days from receipt of a notification of readiness for release.
- 6.2. Release shall take place not earlier than after 4 business days from the date when the amount corresponding to the agreed selling price is credited to DEMARKO's bank account.
- 6.3. Costs of transport shall be borne by the Contracting Party. The Contracting Party selects the manner of shipping and organizes the dispatch process, by indicating a carrier as per FCA ICC INCOTERMS 2010, unless the Parties agree otherwise.
- 6.4. Risk of any accidental loss, damage to the object of performance and any burdens and benefits related therewith shall pass to the Purchaser upon expiry of the time limit for collection thereof or upon the moment when the object of performance is handed over by DEMARKO to the carrier.
- 6.5. Any missing items in the object of performance must be reported within 2 business days from the date of formal acceptance by the Purchaser in writing or by e-mail, otherwise it shall be deemed that the Contracting Party has no claims for that reason.
- 6.6. DEMARKO shall not be held responsible for any benefits lost by the Contracting Party due to failure to perform or inadequate performance of the obligation nor for any losses caused in connection with the fact that the object of performance was produced after the deadline "Orders and Contracts" item 5 of the θCTC), due to the Contracting Party's delay in collecting the object of performance or in connection with the fact that the object of performance is not fit for the purpose specified by the Contracting Party.

#### 7. STORAGE

- 7.1. The objects of performance delivered by DEMARKO are stored in accordance to the rules for storing materials of which they were made and taking into account the possibility of damage to spatial parts, until expiry of the time limit for collection thereof.
- 7.2. If the object of performance remains at DEMARKO's registered office after expiry of the time limit for collection thereof, DEMARKO shall charge a fee for rental of a parking space corresponding to 0.03% of the order value for each day of parking.

#### 8. QUALITY GUARANTEE

- 8.1. The object of DEMARKO's performance is covered by a 12-month quality guarantee, subject to item 11 below.
- 8.2. Granting the quality guarantee is conditional upon meeting the following conditions:
  - 8.3. 3 technical inspections must be done at the Seller's production facility;
  - 8.4. the first technical inspection must be done up to 10,000 km;
  - 8.5. the second technical inspection must be done up to 25,000 km;
  - 8.6. the third technical inspection must be done up to 40,000 km;
  - 8.7. subsequent technical inspections must be done at intervals of 20,000 km at DEMARKO's manufacturing facility in Bytom;
  - 8.8. calibration of the braking system of the object of performance with a tractor unit must confirmed by a relevant document;
  - 8.9. the vehicle must be used in accordance to the operating manual, which is provided during the collection of the object of performance;
  - 8.10. a log book including confirmations of inspections done at DEMARKO must be presented.
  - 8.11. The Contracting Party must inform DEMARKO (in writing, by e-mail at [service@demarko-trailers.com](mailto:service@demarko-trailers.com) or by phone at 727 666 666) of any defect disclosed which is covered by the guarantee within 3 business days, otherwise the Contracting Party will lose their guarantee rights.
  - 8.12. DEMARKO commences repair of the object of performance on condition that it is clean and has the original log book, if such book was issued.
  - 8.13. Costs of transport of the object of service to the place of repair shall be covered by the Contracting Party. If DEMARKO determines that it is necessary to repair it at its current location, travelling costs of DEMARKO's service and maintenance team, including daily allowances and remuneration for the time of doing repair shall be covered by the Contracting Party.
  - 8.14. The guarantee covers the following services: repair or free replacement of parts found to be defective by their manufacturer or by the manufacturer's representative including an accompanying service, provided such defects were disclosed during the guarantee term and their cause was present in the object of performance at the moment when it was released to the Contracting Party or upon expiry of the time limit for collection thereof. New parts and assemblies will be used for repair or replacement, or a standard replacement will be done after assessment of their condition by the manufacturer or by the manufacturer's representative. DEMARKO shall decide upon a choice of a guarantee service.
  - 8.15. The guarantee shall not apply especially in the event of:
    - 8.16. any defects resulting from recklessness, gross negligence, destruction, delayed provision of information on defects, lack of maintenance or improper maintenance;
    - 8.17. consequences of wear and tear of individual elements of the object of performance such as: rolls, bearings, tires, fuses, bulbs, friction lining, motor brushes, electrical contacts, suspension parts, chains, steering rod ends, steering system, filtering elements, operating fluids and lubricants;
    - 8.18. any defects caused as a result of mechanical damage, especially mechanical damage to anti-corrosive coating;
    - 8.19. daily operations, technical inspections, adjustments, parameter changes;
    - 8.20. consequences of repairs, alterations, changes or modifications of elements of the vehicle done by any person other than the manufacturer;
    - 8.21. damage caused due to use of liquids, spare parts and accessories other than the ones originally used or of equal quality;
    - 8.22. damage caused as a result of natural phenomena such as hail, fire or flood;
    - 8.23. damage caused as a result of accidents;
    - 8.24. any other costs not mentioned in this guarantee, especially costs arising out of the immobilization of the vehicle.
  - 8.25. Any post-guarantee repairs are done at the Contracting Party's costs, costs of inspections are charged to the Contracting Party.
  - 8.26. The Contracting Party loses its guarantee rights also in the event when damage is caused due to improper use of the object in contradiction with the operating manual, due to use in excess of its nominal capacity, replacement of manufacturer's parts with spare parts or any change or repair done by the Contracting Party or at the Contracting Party's order, without DEMARKO's written approval or in the event of manipulation in the steel structure or the object of performance without DEMARKO's approval.
  - 8.27. DEMARKO shall reply to any complaint within 14 business days from receipt thereof.
  - 8.28. DEMARKO declares that the subassemblies delivered by manufacturers are covered by the manufacturer's guarantee. DEMARKO shall not bear any guarantee liability in this regard, and the Contracting Party may send any claims related to any defects in such subassemblies directly to their manufacturer or via DEMARKO.
  - 8.29. The Contracting Party shall have no rights under statutory warranty for physical defects of a thing sold, as per Art. 558 of the Civil Code; exclusion of warranty shall not apply to cases where an ordering party is a consumer.
  - 8.30. The Contracting Party shall have no right to substitute performance of guarantee services under Art. 480 of the Civil Code.

#### 9. CONFIDENTIALITY

- 9.1. The Contracting Party agrees to keep secret any information obtained in connection with the conclusion and performance of the Contract and agrees not to disclose it without the prior written express consent of DEMARKO to any third person in any manner and not to use it for own purposes. The content of the Contract, including the subject matter of other documents and information made available to the Contracting Party shall be treated as confidential. Any communication, disclosure, use and proposing a disposal of company secret is acceptable only after the prior written express consent of DEMARKO. An obligation to keep secret does not apply to data required to be disclosed under applicable regulations.

#### 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. Any drafts, engineering drawings, prototype models developed and any preparatory work done by DEMARKO remain DEMARKO's exclusive property. It is forbidden to use them, derive ideas therefrom nor communicate them to any other persons except to the persons having the written consent and on conditions accepted by DEMARKO.

#### 11. FINAL PROVISIONS

- 11.1. These θCTC apply as from 1 January 2016.
- 11.2. The Contracting Party agrees to immediately notify DEMARKO in writing of any change of its registered office or place of residence and mailing address (including e-mail and fax number if provided to DEMARKO). No such notification will result in any mail sent to the previous addresses and numbers being deemed to be effectively delivered.
- 11.3. No assignment of rights arising out of the Contract concluded with DEMARKO towards any third persons is possible without DEMARKO's written consent.
- 11.4. DEMARKO may transfer rights and obligations arising out of the Contract to any third entity, to which the Contracting Party gives its consent.
- 11.5. If any of these θCTC is invalid, the remaining terms remain valid.
- 11.6. Relevant regulations of Polish law shall apply in any matters not governed by these θCTC, including to the resolution of any disputes related to validity, application, performance and effects of breach of the Contract. The United Nations convention on contracts for the international sale of goods dated 11 April 1980 is excluded.
- 11.7. The court competent for resolving any disputes that may arise out of this Contract is the court competent for DEMARKO's registered office.