

## **General Terms and Conditions of the Poligrat GmbH and the Gustav Morsch GmbH (in the following POLIGRAT)**

### **1. Validity of the following terms of business**

1.1. These General Terms of Business apply solely to contracts by POLIGRAT with a businessman, a corporate body under public law or a special fund under public law.

1.2. Offers and services of POLIGRAT are made solely on the basis of these terms of business, which also apply to all future additions, extensions and modifications to contracts which have already been concluded. The General Terms of Business of customers of POLIGRAT which are contrary to these Terms and Conditions will not be accepted. Deviations from these Terms of Business are not valid unless other terms have been agreed in writing.

1.3. Contracts relating to industrial installations or components for such installations to be delivered by POLIGRAT are subject to POLIGRAT's terms relating to the supply of industrial installations. These terms amend these General Terms of Business. In cases when the terms are contradictory they are to be afforded priority over the General Terms of Business.

### **2. Offer, Conclusion of Contract and Written Form**

2.1. The estimate of costs and other documents presented by POLIGRAT within the framework of an offer, such as planning, treatment and construction details as well as information relating to process technology, are not binding unless they are expressly declared to be binding. Offers by POLIGRAT are subject to change. Contracts are only binding once POLIGRAT has confirmed the order. The actual receipt of parts for processing, other actions comparable with the receipt, or no response, should not be seen by the customer as proof of the conclusion of a contract. POLIGRAT may submit the written confirmation of an order up to 14 calendar days after the receipt of the customer's order, unless the customer specifically demands a shorter deadline.

2.2. All agreements must be made in writing. Verbal agreements must be confirmed in writing by POLIGRAT to be legally binding. This also applies to the agreement to dispense with the obligatory written form. The employees of POLIGRAT are not authorized to agree to dispense with the written form of agreement, to agree to terms other than those in the order confirmation, or to give guarantees. Written communications do not require a personal signature or an electronic signature to be valid. Communications sent by telefax or e-mail shall be sufficient to satisfy the requirement of the written form.

### **3. Service Provision, Deadlines, Partial Performance and Approval**

3.1. The dates and deadlines named by POLIGRAT are not binding unless otherwise expressly agreed in writing. Inasmuch as binding delivery dates have been agreed in writing, these shall begin with the date of the order confirmation by POLIGRAT, but not before the customer has supplied the relevant materials, documents, permits, approvals, etc. or before the receipt of a down payment if agreed.

3.2. POLIGRAT shall not be held responsible for delays in the supply of services as a result of acts of God, such as for example accident, traffic jams, delayed flights, problems with acquisition of materials, interruption of operations, industrial action, official directives etc., even if they affect suppliers and sub-contractors of POLIGRAT or their suppliers or sub-contractors, providing that they were not predictable or avoidable by POLIGRAT, even if such dates and deadlines were agreed to be binding. They entitle POLIGRAT to postpone the services by the duration of the interference plus such run-up time as may be necessary, or, if the supply of services thereby becomes impossible or unreasonable, to withdraw in whole or in part from the unfulfilled part of the contract. The same applies if the economic circumstances of the customer should deteriorate to a

considerable extent.

3.3. Partial performance through POLIGRAT is permitted and may be charged for separately. This does not apply if the partial performance is of no interest to the customer or is not reasonable for him for other reasons.

#### **4. Prices, Due Date, Compensation and Retention**

4.1. All prices quoted by POLIGRAT are net prices to which V.A.T. at the current rate must be added.

4.2. Agreed fixed prices are regarded as payment for the services by POLIGRAT listed in the order confirmation. POLIGRAT shall be compensated for any agreed or necessary additional services in accordance with its normal hourly rates.

4.3. Inasmuch as no other details are listed in the contract, POLIGRAT's prices are to be understood as ex works including loading inside POLIGRAT's factory, but exclusive of packaging, shipping and other transport costs.

4.4. If a contract is cancelled by a customer for a reason for which POLIGRAT is responsible, then POLIGRAT shall be entitled to payment only for the services supplied until the date of cancellation. The right to compensation shall lapse if the services supplied can be proven to be completely worthless for the customer as a result of the cancellation. In all other cases in which a customer or POLIGRAT cancels a contract, POLIGRAT shall retain its claim to the payment agreed in the contract, minus any saved expense and minus the amounts which POLIGRAT gains or culpably fails to gain through the alternative use of its services. Inasmuch as the customer does not prove in the case in question a larger share, or POLIGRAT does not prove a lower share of saved expenses and/or other opportunities for profit, the amount of the fee to be deducted from the fee shall be agreed at 40% of the fee with respect to the services which have not yet been rendered. The services already rendered shall be compensated in full.

4.5. Invoices presented by POLIGRAT, including invoices for part payments, are to be paid in full immediately upon presentation. The customer is only entitled to retain payment or to offset the amount against possible counter-claims if the rights of retention and/ or the counter-claims are not disputed or have been determined in a court of law. Acceptance of cheques or bills of exchange shall not be regarded as fulfilment of the demand for payment.

#### **5. Reservation of Ownership**

5.1. In the case of contracts through which POLIGRAT is required transfer something to the customer, POLIGRAT shall retain the ownership of all services provided until payment has been received in full for all claims resulting from the contract in question as well as all other claims resulting from the business relationship with the customer. If the customer is in arrears, POLIGRAT shall be entitled to withdraw services to which POLIGRAT has retained property rights (services retained in future). This is not a withdrawal from the contract unless POLIGRAT has expressly agreed the contrary in writing.

5.2. Processing or modification of the retained services shall always take place for and on behalf of POLIGRAT as manufacturer, but without any obligation on the part of POLIGRAT. This means that as owner or co-owner POLIGRAT shares the newly produced uniform object in an amount that equals the value of the retained service in relation to the complete work of the newly produced object. (Co-) property acquired by POLIGRAT on the basis of the manufacturer's agreement will also be described as a retained service in the paragraphs below.

5.3. The customer shall store the retained service by POLIGRAT at no cost. The customer is required to treat the retained service with due care and to secure and store it, to

insure it against theft, damage and destruction and to treat it according to instructions. If so requested by POLIGRAT, he shall store it at his own expense separately or isolate it in a suitable manner and carry out all measures which are appropriate to secure the retained service in all respects. The customer hereby assigns any claims against insurance which may arise to POLIGRAT in full and irrevocably. POLIGRAT accepts this assignation.

5.4. In cases when a third party should make claims upon the retained service, especially in the case of seizure, the customer shall point out that the retained service is the property of POLIGRAT and shall immediately inform POLIGRAT in writing.

5.5. The customer is entitled to dispose of the retained service as part of ordinary business. He hereby assigns to POLIGRAT all demands up to the amount of the value of the retained service which he may acquire as a result of the disposal towards his purchasers or third parties. POLIGRAT accepts this assignation. However, the customer retains the right to collect the demand assigned to POLIGRAT for his own account and on his own account. This authorization is revocable in the case when the customer shall be in arrears. If the authorization of collection is revoked, the customer shall be obliged to inform POLIGRAT of the assigned demands and their creditors and to provide POLIGRAT with all information necessary for collection including the relevant documents.

5.6. In the case of withdrawal from the contract, especially due to the default in payment of the customer, POLIGRAT shall be entitled to disposal of the retained service on the open market and to use the proceeds to settle its claim. Irrespective of other rights due to POLIGRAT, the customer shall be obliged to reimburse POLIGRAT for the expense of drawing up the contract, the previous processing of contracts and the dissolution of the contract including the cost of recovery.

5.7. POLIGRAT undertakes to release securities to which it is entitled upon request by the customer, provided that the estimated value of the securities, including the securities listed under para. 6, exceed the demands of POLIGRAT to be secured by more than 30 %. The selection of the securities to be released lies at the discretion of POLIGRAT.

## **6. Contractor's lien and assignment as security**

6.1. POLIGRAT shall acquire a contractor's lien on the items handed over to POLIGRAT for processing following the transfer, to secure all demands arising from the related contract as well as all demands arising from the business relationship with the customer. If the customer should be in arrears of payment, following the threat of disposal POLIGRAT shall be entitled to dispose of a sufficient quantity of the items in its possession on the free market as should in its professional judgment be necessary in order to satisfy the claim.

6.2. Should POLIGRAT hand the items back to the customer before all demands of POLIGRAT have been met in full, then the customer hereby transfers to POLIGRAT the ownership of these items up to the value of the demands to be secured as listed in para. 6.1. POLIGRAT hereby accepts the assignment. The transfer of ownership shall be replaced by the customer's storing the items for POLIGRAT free of charge and on the terms of the following regulation. Should the customer have only an expectant right to the items, the transfer of ownership shall be replaced by the transfer of the expectant rights. The customer hereby grants POLIGRAT the right to cause the reservation of ownership to be cancelled by satisfying the owner's claims. If the items and rights to be transferred by way of security as listed have already been transferred to a third party by way of security, the customer hereby assigns to POLIGRAT his claims to the release, return and handover of the items. POLIGRAT hereby accepts the assignment. The items or rights which have been transferred or relinquished by way of security shall be described as a retained service. They are correspondingly subject to the terms as listed under para. 5.2. to 5.7.

## **7. Transfer of Risk and Fulfilment**

Inasmuch as no debt to be discharged shall arise from the contract, the risk of accidental destruction or accidental deterioration on the part of the services or part services to be provided by POLIGRAT is transferred to the customer upon dispatch, even if POLIGRAT has taken over the costs of shipping and transport or the transport is effected through vehicles owned by POLIGRAT. The services to be shipped by POLIGRAT will only be insured for transport purposes if the customer declares in writing his wish for such insurance. Customers shall take delivery of services which have been shipped, even if they are seen to be faulty. This ruling is without prejudice to the customers rights of guarantee.

## **8. Guarantee**

POLIGRAT's guarantee is in line with the legal requirements while taking into account the following conditions:

8.1. The customer does not hereby receive a guarantee in the legal sense. Specifically, slogan-like descriptions, reference to general accepted (DIN) norms, the use of trademarks or quality labels, the presentation of specimens or sample etc. do not of themselves indicate the issuing of a guarantee or warranty. POLIGRAT shall not be liable for the incorrect use of the product supplied, and in particular not for a use which deviates from the instructions for use. Any guarantee for the use of the product shall expire after the end of the storage or shelf life (expiry date) of a product,. In the case of chemicals supplied, a guarantee will only be assumed for the product's fault-free condition and not for the chemical reactions arising during the course of its use.

8.2. The customer shall immediately inspect every single delivery in all respects with a regard to visible defects and typical deviations of qualitative or quantitative nature or other types of defects and deviations. If a service is accepted without complaint it shall be taken as approved. The installation or other use of the service shall be taken as approval. Notices of defect must be communicated immediately in writing to POLIGRAT, stating clearly the nature and extent of the fault.

8.3. In the case of service faults, POLIGRAT shall initially have the choice between remedying the fault through repair, new production or supplying a replacement. If POLIGRAT should seriously and irrevocably refuse to fulfil the service or remove the fault, or the supplementary performance fail or be unacceptable for the customer, the customer may choose to reduce the payment (reduction) or to rescind the contract (rescission) and to demand compensation instead of the service only within the framework of the limitation of liability in accordance with para. 9. Only in the case of a minor contravention of the contract, in particular in the case of only minor faults, shall the customer not have the right to rescind the contract.

8.4. If the customer chooses to rescind the contract as a result of a fault defect of title or a material defect, and after the failure to provide the supplementary performance, he shall have no claim to compensation because of the defect. If the customer selects compensation following the failure to provide the supplementary performance, the defective service shall remain with the customer of this is acceptable. In this case the claim to compensation is limited to the difference between the agreed payment and the value of the defective service.

8.5. The customer's rights with regard to defects which do not affect a building, or works that consist of the supply of planning and supervision services for a building, shall lapse after one year. In the case of a contract for services this will be calculated from the date of acceptance; in the case of a purchase contract it will be calculated from the date of delivery.

8.6. The above-mentioned restrictions of guarantee and the above-mentioned provisions concerning its limitation shall not apply in the case of fraudulent concealment of defects, the failure of a guaranteed characteristic, the takeover of a guarantee for the quality of a service, or in the case of an infringement of an essential contractual duty, gross negligence or premeditated action on the part of POLIGRAT, physical injury or damage to

health which can be attributed to POLIGRAT, or in the case of loss of life. Claims according to the law of product liability shall not be affected by the above provisions.

8.7. If it should transpire during the course of attempts at rectification that no defect of service was present, then the customer shall be required to reimburse the costs of the attempts at rectification which have been undertaken, as well as the repayment of all expenses incurred as a result of the rectification.

## **9. Liability**

9.1. Inasmuch as POLIGRAT is liable to pay compensation on account of legal or contractual provision, regardless of the legal basis, the amount due shall be limited to the amount of the compensation of POLIGRAT's public liability insurance. POLIGRAT shall permit the customer to inspect the insurance policy at any time upon request. Should the public liability insurance grant no compensation or only partial compensation, then POLIGRAT shall grant legal or contractual compensation in accordance with the following provisions:

9.2. POLIGRAT's liability shall be limited to compensation for the direct average damage which was predictable and typical for the contract according to the nature of the service. POLIGRAT shall not be liable for lost profits and non-material impairment.

9.3. With regard to the amount, POLIGRAT shall only be liable at most for the amount equal to three times the value of the contract, but at least for a maximum amount of EURO 50,000.00. Compensation due to delay is limited for each full week of delay to 0.5 %, with a maximum of 10% of the value of the contract in question.

9.4. Claims for compensation which do not affect a building or works that consist of the supply of planning and supervision services for a building, shall lapse after one year. In the case of a contract for services this will be calculated from the date of acceptance; in the case of a purchase contract it will be calculated from the date of delivery.

9.5. The above-mentioned restrictions of liability and provisions concerning its limitation shall not apply when the liability for damage is the result of an infringement of an essential contractual duty, or gross negligence or premeditated action on the part of POLIGRAT, its legal representatives or agents, or of the fraudulent concealment of defects or the failure of a guaranteed characteristic. Nor do the above-mentioned restrictions of liability apply in the case of physical injury or damage to health or life which is attributable to POLIGRAT, or a liability according to the provisions of the law of product liability.

## **10. Product Liability, Exemption**

Without the renunciation of further claims on the part of POLIGRAT, the customer shall keep POLIGRAT indemnified without limit against all third-party claims which are made against POLIGRAT on the basis of product liability or similar provisions, provided that the liability is based on the circumstances which were effected by the customer or other third parties without the express and written agreement of POLIGRAT, e.g. such as the offering of the product.

## **11. Trade Secrets, Data Protection**

11.1. POLIGRAT shall retain all rights of ownership and copyright and other trade property rights as well as the rights to expertise with regard to all illustrations, drawings, calculations and other documents and software made available by POLIGRAT in physical or electronic form. They are not to be disclosed to third parties. They may only be used for the execution of the contract in question and must be returned to POLIGRAT immediately if they are not part of the service to be provided by POLIGRAT, or upon request, or if no contract is agreed.

11.2. The customer agrees that the usual data which are necessary or expedient for

business communications should be processed and stored in the data-processing system of POLIGRAT.

## **12. Special Conditions for Contract Processing**

The following further provisions shall apply in the case of contracts and contract processing to be supplied by POLIGRAT.

12.1. Before conclusion of the contract, the customer is expressly required to inform POLIGRAT if the parts for processing are not suitable exclusively for the usual purpose or if they are to be employed in unusual conditions or conditions which represent a particular health, safety or environmental risk, or are to be used under conditions which represent undue stress. The customer shall supply all parts submitted for processing with a delivery note which contains a description of the part as well as precise information regarding the batch size. POLIGRAT can only carry out spot checks to determine the number of parts submitted. The customer shall ensure that he only submits to POLIGRAT for contract processing suitable constructions which are fit for contract processing, which are suited to contract processing as a result of their chemical composition and mechanical characteristics. POLIGRAT can check the suitability of the parts only through a visual inspection. Materials with other characteristics can only be accepted for processing by POLIGRAT following express written confirmation in the contract note. The customer shall reimburse POLIGRAT for all damage including lost profits which may arise through the presentation of materials or constructions which are not suitable for contract processing.

12.2. The contract processing work for which POLIGRAT is responsible shall be covered by the price referred to in the provisions under para. 4. Cleaning and repair work and packaging will be charged separately. If other additional work is necessary, POLIGRAT shall be entitled to invoice this in appropriate manner and in accordance with the usual terms applicable within the sector.

12.3. POLIGRAT will carry out all contract processing in accordance with the current state of technology. POLIGRAT shall be required to submit work of average nature and quality, taking into consideration the customary tolerances with regard to nature, quantity, quality and packaging. Rejects and reduced quantities up to 5% in the case of small parts submitted as batch goods shall not be regarded as a material defect. Provided that the written contract note does not expressly state anything to the contrary, POLIGRAT shall not be responsible for ensuring that the processed parts are suitable for another purpose other than the usual one, or that they fulfil other expectations on the part of the customer. POLIGRAT shall not be responsible if the customer has submitted unsuitable materials or constructions for contract processing.

## **13. Applicable Law, Place of Performance, Place of Jurisdiction**

The law applicable to these Terms of Business is the law of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the international Sale of Goods. The place of performance for all present and future claims resulting from the business relationship between POLIGRAT and its customer is Munich, providing that the circumstances of the contract do not make another arrangement essential. The determination of the place of performance has no influence on the place of jurisdiction. If the client is a businessman, a corporate body under public law or special fund under public law, Munich is the sole place of jurisdiction for all disputes resulting from the business relationship between POLIGRAT and the customer.

## **14. Closing provision**

Should one of these terms and conditions of business prove or become ineffective, the other terms and conditions of business remain unaffected. Unless the parties agree otherwise, the ineffective conditions shall be replaced by the legal provisions which achieve the intended purpose of the ineffective business condition. The contract shall be ineffective if its pursuance, even under the consideration of the above-mentioned changes, would represent an unreasonable hardship for one of the parties.