

# PURCHASING CONDITIONS 采购条款

## 1. SCOPE OF APPLICATION 适用范围

These Purchasing Conditions shall apply to any supplies of goods and services between supplier and Marquardt Switches (Shanghai) Co., Ltd. (hereinafter referred to as "Marquardt"). They shall form part of the contract for purchase or for work deliveries between Marquardt and the supplier, with the contract prevailing in case of conflict. Alterations and supplements shall be in writing to be valid. Any other general terms and conditions shall not apply without need of further notice of objection and shall be of no effect nor in any circumstance binding.

本《采购条款》适用于供应方与马夸特开关（上海）有限公司（以下称为“马夸特”）之间的任何供货和提供服务关系。他们构成马夸特和供应方采购和加工交付合同的组成部分，存在矛盾时适用合同规定。任何变更和补充应以书面形式作出方为有效。无须任何反对通知，任何其他一般交易条款均不得适用，在任何情况下均无法律效力，亦无法律约束力。

## 2. ORDERS 订单

2.1 Supply contracts (order and acceptance of such order) and delivery call-offs under a frame order as well as any alterations or supplements thereof shall be in writing to be valid. The written form can also be replaced by electronic data interchange.

供应合同（订单及对该订单之承诺）和框架订货下的交货要求及其变更和补充均应以书面形式为之方为有效。书面形式也可由电子数据交换形式所代替。

2.2 In case the supplier does not accept the order within two weeks upon receipt, Marquardt shall have the right to cancel such order. Delivery call-offs under a frame order shall be binding if not rejected by the supplier within two weeks upon receipt. 若供应方在收到订单起两周内未对该订单做出承诺，马夸特有权取消该订单。若供应方在收到框架订货下的交货要求起两周内未予拒绝，则该交货要求具有约束力。

## 3. PAYMENT, INVOICE AND DELIVERY NOTE 付款、发票和交货单

3.1 Payment shall be made by bank transfer or check, and, unless otherwise specified, within 14 days with 3% discount or within 30 days net from the date of delivery and receipt of invoice. 除非另有规定，付款应当以银行转账或支票方式进行，若自交付之日起收到发票之日起 14 日内付款的则享有 3% 的折扣，若自交付之日起且收到发票之日起 30 日内付款的则须全价支付。

3.2 In case of premature deliveries payment shall be made according to the agreed delivery dates.

若发生提前交付，则货款仍应按照约定的交付日期予以支付。

3.3 In case of defective deliveries Marquardt shall be entitled to withhold an appropriate amount until delivery has been duly performed.

若发生瑕疵交付，马夸特有权扣减适当的货款金额，直到供应方已依约履行交付义务。

3.4 The supplier shall forward the invoice in duplicate to the plant to be supplied. The invoice shall quote the number and date of the purchase order (and/or order placement and delivery call-off), additional data of the purchaser (reference to an account), sales tax identification number if relevant, place for unloading, number and date of delivery note and quantity of goods invoiced.

供应方应将发票一式两份发送至所供货的工厂。发票应标注采购订单（和/或订单下达和交货要求）的号码及日期、采购方的其他数据（账号指示）、营业税识别码（若有）、卸货地、交货单号码和日期以及所开具发票的货物数量。

3.5 Supplier's right of retention pursuant to Art. 264 of the Chinese Contract Law shall be excluded.

中国《合同法》第 264 条所规定的供应方的留置权在此予以排除。

## 4. NOTICE OF DEFECTS 瑕疵通知

Marquardt shall notify the supplier immediately in writing about any goods found defective in material or workmanship or otherwise not in conformity with the requirements of the order, as soon as such defects have been discovered in the ordinary course of business. Marquardt shall inspect the goods upon receipt only for identity, quantity and damage occurred during transport and clearly to be seen on the packaging. In so far the supplier waives his right to object to delayed or failed inspection or notice of defects made by Marquardt.

一旦瑕疵在通常的商业进程中被发现，马夸特应当立即以书面形式将所发现的材料瑕疵、工艺瑕疵或其他不符合订单要求的瑕疵通知供应方。马夸特在收货时仅检查商品规格、数量及在运输过程发生的在外包装上清晰可见的损害。在此范围内，供应方放弃提出对马夸特延迟履行或未能履行检验或发出瑕疵通知义务的抗辩权。

## 5. NON-DISCLOSURE 保密

5.1 Neither party hereto shall disclose or make available in any form whatsoever any commercial and technical data gained during their business relationship unless such data are part of the public knowledge or domain.

合同任何一方均不得披露或公布其在商业关系存续期间所获得的任何形式的商业和技术数据，除非该数据已成为公众知晓的部分。

5.2 The parties hereto undertake not to furnish or make available to any unauthorised third parties any drawings, models, patterns, samples or similar objects. Reproduction of such objects is permitted only if allowed by owner's requirements and copyright conditions.

合同各方在此承诺不向任何未经授权的第三方提供或公布任何制图、模型、样本、样品或类似物件。仅在符合所有权人要求和版权条件的情况下，方可复制前述物件。

5.3 Subcontractors shall be committed accordingly.

分包商亦须相应地遵守本规定。

5.4 Each party hereto may use the established business relationship for advertising purposes only after having obtained previous written consent from the other party.

各方仅在事先获得对方书面许可的前提下，方可将业已建立的商业关系用于广告宣传。

## 6. DELIVERY DATES AND PERIODS 交付日期和期限

The delivery dates and periods agreed upon shall be binding. Compliance with such dates and periods shall be determined by the date the goods arrive at the respective Marquardt plant to be supplied. Unless delivery ex works has been agreed upon, the supplier shall make the goods available in time taking into consideration the time usually needed for loading and shipment.

所约定的交付日期和期限具有约束力。前述约定的交付日期和期限以商品到达所供货的相应的马夸特工厂的日期为准。除非另行约定在供应方处交货（delivery ex works），供应方应当在及时履行交货义务过程中充分考虑所必须的装运时间。

## 7. DELAY IN DELIVERY 迟延履行

7.1 The supplier undertakes to notify Marquardt immediately in writing of circumstances that occur or become known to him which are expected to cause a delay in delivery. The supplier shall compensate Marquardt for any damage caused by delay.

供应方承诺，将业已发生的或其获知的可能导致迟延履行情形立即以书面形式通知马夸特。供应方应当向马夸特赔偿因迟延履行而导致的任何损失。

7.2 If the delivery periods agreed upon are not adhered to, Marquardt is, notwithstanding any further claims, entitled to withdraw from the order and/or claim damages and/or procure replacement from third parties.

若所约定的交付期限未能遵守，马夸特有权撤销订单，并/或提出损害赔偿请求权，并/或寻求第三方替代履行，其他有关请求权不受影响。

7.3 Acceptance of a delayed delivery or performance does not imply a waiver for any claims for damages.

接受延迟交付或履行并不默示马夸特放弃损害赔偿请求权。

## 8. FORCE MAJEURE 不可抗力

Acts of God, strikes, lockouts, civil commotion, government directives and any other unforeseeable events of force majeure out of control of the party affected shall release the affected party from its duty to deliver or take delivery for the duration and to the extent of the event. This shall not apply in case the party concerned is already in delay. The parties hereto undertake to give each other the necessary information and to adjust their obligations in good faith to the changed circumstances.

因发生自然灾害、罢工、劳资纠纷引发的停工、民众暴乱、政府指令以及其他受影响合同方不能预见、不能控制的事件，应允许免除受影响方在该类事件存续期间，在不可抗力事件影响的范围内履行交付或接收义务。前述条款不适用于受影响方已存在迟延履行情形。合同各方在此承诺，在此情况下，应给予对方必要的通知，并诚实信用地根据不可抗力事件变化的情况调整各自相应义务。

## 9. QUALITY AND DOCUMENTATION 质量和文件

9.1 Concerning his deliveries the supplier shall comply with the state of the art, the relevant safety regulations and the specified technical data. Any and all modifications of the goods to be furnished hereunder, no matters whether deemed to be important for its later use, are subject to the prior written consent of Marquardt. The supplier shall permanently control the quality of the goods delivered. The parties hereto will inform each other of possible quality improvements.

在涉及交付义务方面，供应方应符合当前技术水准、相应的安全法规和特定的技术规范。涉及待交付商品的任何修改，无论对于日后使用是否重要，都必须获得马夸特事先的书面认可。供应方应持续控制所交付商品的质量。合同各方将就可能的质量改进通知对方。

9.2 For materials which on account of laws, regulations and other provisions or due to their composition and effect on environment need a special treatment as to packaging, transport, storage, handling, trade restrictions and waste disposal, the offer furnished by the supplier to Marquardt shall be accompanied by the safety data sheet filled in, the data sheet required for possible resale abroad and the respective accident leaflet (transport). In case the materials or the legal situation change, the supplier will provide Marquardt with updated data sheets and leaflets for approval.

在材料方面，因法律法规或其它规定，或因材料构成和对环境影响而需要对包装、运输、储存、处理、贸易限制和废物处理进行特别的处理，则在供应方向马夸特提供的报价中必须随附填写完毕的安全数据单、未来可能的境外再出售所必须的数据单以及相应的事事故保险单（运输）。若材料或法律规定改变，供应方向马夸特提供最新的数据单和文件用于放行。

## 10. CLAIMS BASED ON DEFECTS 因瑕疵产生的请求权

10.1 If the goods or services supplied exhibit any defects, Marquardt at its discretion and if reasonable shall give the supplier the opportunity to sort out, repair or replace them, before processing or treatment is started on schedule or before merchandise is supplied to the customer. In case the supplier is unable to do so or only within an unreasonable period, Marquardt shall have the right to rescind the contract to this extent and to return the goods to the supplier at the supplier's risk and against reimbursement of the transport costs notwithstanding any claims for damages. In urgent cases Marquardt may, upon hearing of the supplier, accomplish the rework or repair itself or have it done by a third party. Any costs resulting therefrom shall be borne by the supplier. In case the same goods or services are repeatedly supplied with defects of material and workmanship. Marquardt shall be entitled to rescind the contract also with respect to the goods not yet supplied, if, after notification, the supplier has again delivered defective goods.

若所提供的商品或服务存在任何瑕疵，在加工或处理按期启动之前或成品被供应给马夸特的客户之前，在合理范围内，马夸特可自行决定允许供应方予以分拣、修理或更换瑕疵。若供应方未能消除瑕疵，或无法在合理期间消除瑕疵，马夸特有权根据供应方违约的范围解除合同，并将瑕疵商品退回供应商，有关风险及运输费用均由供应商承担，且马夸特的其他损害赔偿请求权不受影响。在紧急情况下，马夸特在听取供应商意见后，亦可自行或交由第三人重作或修理瑕疵。由此产生的任何费用应由供应方承担。若反复交付带有瑕疵材料或工艺的商品或服务，在马夸特通知供应方后仍然交付瑕疵商品，马夸特应有权就未交付商品解除合同。

10.2 In case Marquardt discovers a defect only after treatment or processing has started on schedule or the goods have been supplied to the Marquardt's customer and in case Marquardt complied with article 4 (notice of defect), Marquardt is, in addition to the right stated in article 10.1, entitled to claim damages for additional expenditure.

若瑕疵在加工或处理按期启动之后，或成品已被供应给马夸特的客户之后，才被马夸特发现，且马夸特已遵守第 4 条（瑕疵通知）规定的前提下，马夸特除享有第 10.1 条所规定的权利外，还有权提出就其他额外费用的损害赔偿请求权。

10.3 Marquardt shall immediately make available the parts to be replaced to the supplier at supplier's cost.

马夸特应当立即将待更换的零件退还给供应方，费用由供应方负担。

10.4 Claims based on defects within the meaning of Article 158 sec. 2 of the Contract Law of China lapse after 24 months upon delivery of the final product from Marquardt to the

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customer, at the latest, however, after 36 months upon delivery of goods or services to Marquardt.

符合中国《合同法》第 158 条第 2 款意义项下的因瑕疵而产生的请求权自终端产品从马夸特向其客户交付时起 24 个月后始得消灭，但最晚自供应方将产品或服务向马夸特交付时起 36 个月后方为消灭。

10.5 In case a defect in material or workmanship is discovered within 6 months upon delivery, this defect is assumed to have already existed on transfer of risk, unless this assumption is not compatible with the type of defect.

若材料瑕疵或工艺瑕疵在交付起 6 个月内被发现，则该瑕疵推定为自风险转移时业已存在，除非该项推定与瑕疵类型不匹配。

## 11. LIABILITY 责任

According to statutory provisions the supplier shall be liable for any damage caused to Marquardt by rendering defective goods and services or by breach of his contractual obligations. As far as Marquardt is held liable due to imperative statutory provisions for a damage resulting from a defective product (also partially) caused by the supplier, the supplier shall hold Marquardt free and harmless for damages of any third parties (notwithstanding the duty to indemnify each other for the pro rata damage).

根据法律规定，供应方应对由其提供瑕疵产品和服务或违反其合同义务而导致马夸特的任何损失承担责任。若根据强行法，马夸特必须为供应方所导致的瑕疵产品（包括部分地）承担损害赔偿赔偿责任，供应方应使马夸特免于承担任何第三方的损害赔偿赔偿责任（不论按照有关损害的比例是否需要彼此承担各自的赔偿责任）。

## 12. Industrial property rights 工业产权

12.1 The supplier shall be liable for any claims which, by using the products in conformity with the contract, result from the infringement of property rights, either granted or applied for.

在符合合同要求的使用产品过程中，供应方应对任何因产权（无论该产权系授予还是申请获得）侵权而引发的请求权承担责任。

12.2 The supplier shall hold Marquardt and its customers free and harmless of all liabilities resulting from making use of such property rights.

供应方应使马夸特及马夸特的客户免于承担因使用前述产权而导致的责任。

12.3 The parties hereto commit themselves to inform each other forthwith on all risks of infringement known and all (alleged or detected) events of infringement and to jointly oppose such claims of third parties.

合同各方在此均有义务彼此立即通报已知的侵权风险和所有（被诉的或被发现的）侵权事件，并共同对第三方的请求权提出抗辩。

12.4 Upon request the supplier shall inform Marquardt about the use of any published and unpublished property rights (granted or applied for) relating to the products to be delivered regardless whether they are owned by or licensed to him.

应请求，供应方应向马夸特通报与待交付产品有关的任何公布和未公布的（授予的或申请的）产权的使用情况，无论该产权由其所有还是被许可所得。

12.5 For all other claims the regulations pursuant to article 10 shall apply accordingly.

对于其他请求权，应相应地适用第 10 条的规定。

## 13. USE OF MANUFACTURING EQUIPMENT AND CONFIDENTIAL INFORMATION 制造设备和机密信息的使用

13.1 Models, moulds, templates, samples, drawings, sketches, tools, data carriers and other manufacturing equipment, as well as confidential information and engineering data provided to the supplier upon Marquardt's request or fully paid by Marquardt, shall not be passed on to third parties without Marquardt's written consent.

应马夸特的要求而提供给供应方的，或由马夸特全额承担费用的模型、模具、模板、样品、制图、草图、工具、数据载体和其他制造设备，以及机密信息和工程数据，未经马夸特书面同意，不得传递给第三方。

13.2 Tools or manufacturing equipment paid by Marquardt in whole or in part shall pass to Marquardt property in whole or in part.

由马夸特全额或部分付款的工具或制造设备应相应地全部或部分为马夸特所有财产。

## 14. MATERIAL PROVISIONS 材料规定

14.1 Materials provided by Marquardt shall remain Marquardt's property and shall only be used according to Marquardt's order. The supplier shall process and assemble the material for Marquardt. It is agreed that Marquardt gains co-ownership in the final product in proportion of the provided material to the value of the finished product.

由马夸特提供的材料属于马夸特的财产，应根据马夸特的订单予以使用。供应方应为马夸特加工并装配该材料。双方同意，马夸特按照所提供的材料所占最终产品的价值的比例，对最终产品享有相应的共同所有权。

14.2 In case of material sales to the supplier the respectively valid Marquardt conditions of delivery and payment shall apply.

若材料系销售给供应方，马夸特方面相应有效的交付和支付条款应予适用。

## 15. CORPORATE RESPONSIBILITY 公司责任

The supplier undertakes to fulfill the principles and requirements of the Marquardt Code of Conduct, which can be found on <https://us.marquardt.com/meta-footer/downloads/>. 供应方承诺会履行《马夸特行为规范》中的原则和要求，本行为规范可以在网址：<https://us.marquardt.com/meta-footer/downloads/> 中找到。

For the supplier it is an essential element of the contract to observe the rules of the Marquardt Code of Conduct. Furthermore, the supplier uses his best efforts to forward the Marquardt Code of Conduct to his customers and to convince them to observe these requirements. 对于供应方来讲，本合同的基本要素就是必须遵守《马夸特行为规范》的规定。而且供应方应该竭尽全力将《马夸特行为规范》传授给其客户并劝说他们也遵守这些规定。

Upon request of Marquardt the supplier shall give a written self-assessment within an adequate period in the required form. This self-assessment includes information about the observation of the Marquardt Code of Conduct. 在马夸特要求下，供应方应在充足的期限内按照所要求的形式给出一个书面自我评估。自我评估包括与遵守《马夸特行为规范》有关的信息。

## 16. GENERAL 一般条款

16.1 In the event one of the parties hereto becomes insolvent or a domestic or foreign insolvency proceeding in or out of court on a significant part of the property of one of the parties hereto is

opened, the other party shall be entitled to rescind the contract with respect to the part not yet fulfilled.

若合同一方资不抵债，或合同一方重要资产自愿或依法庭命令进入国内或国外破产程序，合同另一方有权解除合同的未履行部分。

16.2 The invalidity or incompleteness of any one of the aforesaid provisions shall not affect the validity or enforceability of the remaining provisions hereof. In this case the contracting parties undertake to supplement or replace the ineffective or incomplete provision by a provision with which the economic purpose of the ineffective provision is reached as far as possible.

上述条款任何部分无效或缺失并不影响其余条款的效力或执行。在此情况下，合同各方承诺以最符合该无效条款经济目的的条款补充或替换该无效或不完整条款。

16.3 All relations arising out of the contract shall be governed exclusively by the laws of the People's Republic of China excluding the applying of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

由本合同产生的所有法律关系仅受中华人民共和国法律管辖，排除适用《联合国国际货物销售合同公约》。

16.4 Place of fulfillment shall be Marquardt' domicile in Shanghai and/or the plant to be supplied designated by Marquardt.

交付履行地点应当为马夸特在上海的住所和 / 或马夸特指定的收货厂。

16.5 All disputes arising in connection with this Agreement which cannot be settled amicably shall be irrevocably decided by the China International Economic and Trade Arbitration Commission (CIETAC) according to the rules of arbitration in force at the time of application, thereby excluding proceedings before general courts. Venue of arbitration shall be Shanghai, China, language of arbitration shall be English. Notwithstanding the foregoing, the Parties agree that each Party has the right to seek temporary or permanent injunctive or other similar relief in any court or other authority of competent jurisdiction in respect of any claims of breach of confidentiality or intellectual property rights infringement or for an order of specific performance or other injunctive relief as permitted under Applicable Laws.

与本协议有关而产生的争议，若不能通过友好协商解决，则由中国国际经济贸易仲裁委员会（CIETAC）根据仲裁申请提交时所适用的仲裁规则予以仲裁解决。仲裁裁决具有终局效力，并排除普通诉讼途径解决。仲裁地点为中国上海。仲裁语言为英语。无论本合同前述条款有何规定，合同双方同意各方均有权就任何违反保密义务或知识产权侵权的主张向任何一个有管辖权的法院或其他机关寻求临时或永久禁令或其他类似救济措施，或申请实际履行的执行令或其他相关法律允许的禁令救济。

16.6 This Agreement is executed in the English and Chinese language simultaneously. In case of inconsistency between both versions the English version shall prevail.

本协议同时以中英文签署。如出现两个语言文本不一致的情况以英文版为准。

March 2019