

# CONDITIONS OF DELIVERY AND PAYMENT

## GENERAL

All our deliveries are made subject to the following conditions of delivery and payment of the Marquardt Switches (Shanghai) Co., Ltd. (hereinafter referred to as "Marquardt") as well as the laws and regulations of the People's Republic of China (the "PRC"). Any agreement divergent from the above conditions requires our express written approval. Together with the order confirmation, the conditions of delivery and payment ("Conditions") constitute the sales contract between Marquardt and the purchaser, whereby in any kind of conflict the order confirmation prevails.

The sales contract (order confirmation and Conditions) as well as any alternations or supplements thereof shall be in writing to be valid. The written form can also be replaced by electronic data interchange.

## OFFERS

Our offers are not binding. The sales contract does not become conclusive until after written confirmation or execution of the order.

## NON-DISCLOSURE

The purchaser shall not disclose or make available in any form whatsoever any commercial and technical data gained during the business relationship with us unless such data are part of the public knowledge or domain.

The purchaser undertakes not to furnish or make available to any unauthorised third parties any drawings, models, patterns, samples or similar objects without our written consent. Reproduction of such objects is permitted only if allowed by owner's requirements and copyright conditions.

The purchaser may use the established business relationship for advertising purposes only after having obtained previous written consent from us.

## PRICES

Our prices shall be net prices in Renminbi (RMB), and shall exclude VAT, for delivery ex-factory, without packaging. **The prices valid on the day of delivery will be charged.**

## ORDER MODIFICATIONS

Order modifications require our written consent. The purchaser shall bear all costs incurred by us in the case of order cancellations, including without limitation the cost of production preparation and actual production for order performance.

## DELIVERY QUANTITIES

We deliver only in the specified packaging units.

**For customised products we reserve the right to deliver 10% more or less of the ordered or confirmed amount due to production engineering reasons.**

Partial deliveries are permissible. Partial order calls with a value below RMB 5,000– are made per item at the graduated price corresponding to the respective delivery quantity.

Orders up to a value of RMB 5,000– are delivered immediately ex-warehouse for cost reasons, provided we have the goods on stock.

## DELIVERY DATES

Delivery dates are stated according to our best estimations. They are only binding if expressly stated as such.

The delivery time will be extended by a reasonable amount if we are prevented from delivering on time by problems in

procurement, production or delivery for us or our suppliers due to force majeure, for example, energy shortages, difficulties in procuring materials, traffic holdups, strikes, lockouts or other unforeseeable events. Purchaser's claims for damages due to delay in delivery as well as claims for damages in lieu of performance shall always be limited to the amount of damage foreseeable.

In case of ordinary negligence we are not liable for consequential damage of the delayed or failed delivery, especially not for a purchaser's loss of profit or any other costs resulting from production loss.

## PACKAGING AND SHIPMENT

All goods shall be packaged according to normal trade procedures. Disposable packaging shall not be taken back. Reusable packaging shall be returned to Marquardt by the purchaser at his cost.

We shall always choose the cheapest type of shipment providing no other agreement has been made.

## TRANSFER OF RISK

The risk shall pass to the purchaser as soon as the goods leave our factory or warehouse. All shipments, including return shipments, travel at the purchaser's risk.

## RETURN SHIPMENTS AND CREDITS

Shipments may only be returned with our consent. For cost reasons, it is not possible to issue a credit note for orders of less than RMB 1,000–. We will retain 15 % of the value of the goods, but at least RMB 1,000– for inspection and repackaging of the goods to protect the next purchaser's interests. Customised products cannot be taken back.

## CONDITIONS OF PAYMENT, DEFAULT

Payments must be made within 30 days net after date of invoice. All bank charges in the country of payment will be paid by the purchaser. Bills of exchange will only be accepted without charges and on special agreement. We reserve the right to ask for securities or pre-payment. Delivery may be refused, if these requests are not granted. The purchaser is not released from his obligation to accept delivery.

If the purchaser makes default in payment, we are entitled to request interest for default amounting to at least 9% above the respective basic interest rate.

## RETENTION OF TITLE

The delivered goods shall remain our property until each and every claim has been duly satisfied. In connection with other parts we will acquire a share in the new product in the ratio of the value of our parts to the value of the other parts. It can already be considered agreed that any claims ensuing from resale of our property will be assigned to us.

## DEFECTS, LIABILITY

Our deliveries must be checked on receipt, whether they conform to the sales contract. Short or false deliveries and any defects must be reported to us within 14 days after receiving the goods or at the latest 14 days after discovering the defect in the case of latent defects.

Failure to meet these deadlines may void the purchaser's rights resulting from breach of warranty against defects.

The purchaser's rights resulting from breach of warranty against defects are statute-barred after 12 months from the date the purchaser knows or should know such defect(s).

Justifiably rejected goods will be replaced or repaired at our discretion free of charge within a reasonable period (subsequent fulfilment). The purchaser can withdraw

from the sales contract or reduce the purchase price, if subsequent fulfilment fails or is impossible.

Other claims or demands are excluded, especially claims for damages not incurred on the delivered goods themselves. This does not apply, for example, to personal injury and damage to property according to the product liability laws or to gross negligence, injury to life, body or health or breach of the substantive contractual obligations, where liability is conclusive.

## INDUSTRIAL PROPERTY RIGHTS

In the case of claims for infringement of an industrial property right were entered against the purchaser with regard to the delivered goods, the purchaser shall immediately notify us in writing on those claims entered by third parties. We will not be under obligation (i) if infringements of an industrial property right are caused by using our goods in disconformity with the sales contract; (ii) if the goods are manufactured according to purchaser's design or specifications; (iii) at the time of the conclusion of the sales contract the purchaser knows or could not have been unaware of the third-party's claim.

The purchaser hereto commit itself to inform us forthwith on all risks of infringement known and all (alleged or detected) events of infringement without undue delay and to jointly oppose such claims of third parties with us.

## CONDITION OF GOODS

The descriptions of our goods only inform on their condition and are in no way a guarantee for their condition. Guarantee is only given if this has been declared expressly.

## TOOLS

Tools constructed for manufacturing our products shall remain our property even if the purchaser has had a share in the costs.

## PLACE OF FULFILMENT AND JURISDICTION

Place of fulfilment for delivery and payment as well as jurisdiction is Marquardt's domicile in Shanghai, the PRC.

## DISPUTE SETTLEMENT

All disputes arising in connection with the conditions of delivery and payment, 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, the PRC, language of arbitration shall be English.

## MODIFICATIONS

We reserve the right to make technical modifications and improvements to our products.

## PARTIAL INVALIDITY

The invalidity or incompleteness of any one of the aforesaid conditions shall not affect the validity or enforceability of the remaining conditions.

## LANGUAGE

These conditions of delivery and payment are executed in the English language and Chinese language. In case of inconsistency between both versions the English version shall prevail.

November, 2012

# 交货和付款条件

## 概述

我司所有交货均受此条款，即马夸特开关（上海）有限公司（以下简称“马夸特”）交货和付款条件，以及中华人民共和国（以下简称“中国”）法律法规规范的约束。任何与上述条件不符的约定均需经我司明确书面同意。交货和付款条件（以下简称“条件”）与订单确认书一同构成马夸特和买方之间的销售合同，如果二者之间出现任何冲突，应以订单确认书为准。

销售合同（订单确认书和条件）及其任何修改或补充只有采取书面形式方为有效。此书面形式也可用电子数据交换形式代替。

## 报价

我司报价不具有约束力。只有当书面确认或执行订单时，销售合同方最终确定。

## 保密

买方不得披露或以任何方式提供其在我司业务往来过程中获得的任何商业或技术资料，但已经成为公众知识或进入公共领域的资料除外。

买方承诺，非经我司书面同意，不得向任何未经授权第三方提供或披露任何图纸、模型、图案、样品或类似物件。只有为所有权人的要求和版权条件所允许时，才能复制此类物件。

仅经我司事先书面同意，买方可将与我司建立的业务关系用于其广告目的。

## 价格

我司价格为工厂交货、不含增值税和包装费用的人民币（RMB）净价。我们将按交货日期有效价格收取货款。

## 订单修改

订单修改需经我司书面同意。买方应当承担取消订单时我司发生的所有成本，包括但不限于为了履行订单所发生的生产准备和实际的生产成本。

## 交货数量

我司仅按照指定包装单位交货。

对于定做货物，由于生产工艺方面的原因，我司保留按照所订数量或所确认数量溢短装10%交货的权利。

允许分批交货。价值低于 5,000 元人民币的分批交货订单按照每种商品以及与相关交货数量对应的分级价格计算。

如果订单价值达到 5,000 元人民币，且我司拥有存货，则基于成本方面的考虑，在出库时立即交货。

## 交货日期

交货日期按照我司的最佳估计给出。只有在明确规定为交货日期时，此类交货日期才具有约束力。

如果我司或我司供应商由于不可抗力例如能源短缺、难以采购材料、交通堵塞、罢工、停工或其它不可预见事件而遭受采购、生产或交货方面的困难，从而导致我司无法按时交货，则应当合理延长交货时间。

买方因迟延交货和替代履约而提出的损害赔偿应当始终以可预见的损失金额为限。

在一般过失的情况下，我司无需就迟延交货或无法交货而引发的间接损失承担任何责任，

特别是无需就买方的利润损失或生产损失引发的任何其它费用承担责任。

## 包装和运输

所有货物均应按照通常贸易程序进行包装。一次性包装无需回收。对于可重复使用的包装材料，买方应当自行承担费用将其退还给马夸特。

如无其它约定，我司通常选用最具经济性的运输方式。

## 风险转移

货物一经离开我司工厂或仓库，其风险即转移给买方。所有货物在运输途中的风险（包括退货在内）均由买方承担。

## 退货和退货单

只有经我司同意，才能退货。基于成本方面的考虑，对于价值在 1,000 元人民币以下且无法开具退货单的订单。我们将保留货物价值的 15%（但不低于 1,000 元人民币）作为货物检验和重新包装所用，以保护下一个买家的利益。定做货品不得退货。

## 付款条件，违约

货款应当在开票日期后 30 个净日内支付。在付款国发生的所有银行费用应当由买方支付。只有在不收取费用并且经特殊约定的情况下，我司才接受汇票。我司保留要求提供担保或预付款项的权利。如果这些要求未能得到满足，我司可以拒绝发货。买方并不因此免除收货义务。

如果买方拖欠货款，我司有权要求按照至少高于相应基准利率 9% 的标准收取逾期付款利息。

## 所有权保留

在所有索赔均适当解决前，所交付的货物仍应属于我司财产。货物与其它部件相结合时，我司将按照我司部件价值与其它部件价值的比例，在新产品中享有相应份额。可以认定，双方已经约定因转售我司财产所得的任何请求权均归属于我司。

## 缺陷，责任

在收货时，必须检验我司所交付的货物是否符合销售合同的约定。货物短缺、发货错误以及任何货物缺陷必须在收到货物后 14 天内向我司报告，如果是货物的潜在缺陷，则必须在发现该缺陷后最迟 14 天内向我司报告。

如果未能满足这些期限，则买方无权要求我司承担违反瑕疵担保的责任。

自买方知道或者应当知道货物缺陷之日起 12 个月届满时，买方即丧失要求我司承担违反瑕疵担保责任的权利。

因具有正当理由而被拒收的货物，我司将选择在合理期间内免费换货或修理（后续履行）。如果后续履行失败或者无法后续履行，则买方可以撤销销售合同或降低购买价格。

买方不得提出其它索赔或要求，特别是不得基于所交付货物本身之外的原因要求赔偿损失。这一约定并不适用于（例如）产品责任法项下的人身伤害和财产损失，或者重大过失、对生命、身体或健康造成的损害或违反实质性合同义务的情形，在这些情况下（我司）需承担相应责任。

## 工业产权

如果（第三方）就所交付的货物对买方提起工业产权侵权索赔，买方应当立即将第三方提起的上述索赔书面通知我司。我司无需就下列情形承担任何义务：（i）如果工业产权侵权是因为采用与销售合同不一致的方式使用我司产品所致；（ii）如果工业产权侵权是由根据买方设计或要求生产出的产品所致；（iii）如果在销售合同订立之时买方已知或不可能不知存在第三方的侵权索赔。

买方特此保证将其所知的一切侵权风险和所有（宣称的或发现的）侵权事件毫不延迟地立刻通知我司，并且与我司一起共同对抗第三方的此类索赔。

## 货物状况

对我司货物所作的描述仅为其状况说明，而绝非对其状况的保证。只有明确表明为保证时才构成货物状况的保证。

## 工具

即使买方在其成本中承担一定的份额，为生产我司产品所建的工具仍应属于我司财产。

## 履行地和管辖地

交货和付款地以及管辖地均为马夸特在中国上海的住所地。

## 争端解决

由本交货和付款条件引起的、或者与本交货和付款条件有关的所有争端，如果未能通过友好协商解决，则应提交给中国国际经济贸易仲裁委员会（“贸仲”）按照申请时有效的仲裁规则，最终仲裁解决，并据此排除法院的管辖权。仲裁地为中国上海；仲裁所用语言为英语。

## 修改

我司保留对产品进行技术修改和改进的权利。

## 部分无效

上述任何条件无效或不完善不应影响其它条件的效力或可执行性。

## 语言

本交货和付款条件采用英语和中文签订。如果两种语言存在不一致，则以英语的版本为准。

2012年11月