

# PURCHASING CONDITIONS

## 1. SCOPE OF APPLICATION

1.1 This Order constitutes Marquardt Switches, Inc.'s ("Marquardt") offer and may be accepted by Supplier only in accordance with the terms set forth herein. Any acceptance of an offer of Seller, or any confirmation of a prior agreement between Marquardt and Supplier, is expressly made conditional on Supplier's acceptance of Marquardt's terms set forth herein. The order shall be accepted by Supplier by sending a written confirmation, the commencement of work, shipment of goods, furnishing of services hereunder or failing to object to Marquardt's order within a reasonable time. Any additional or different terms contained in Supplier's forms or otherwise are rejected and shall not become a part of the agreement between Marquardt and Supplier unless such additional or different terms are specifically agreed to in writing by Marquardt.

1.2 The Marquardt Purchasing Conditions shall only apply to persons or entities who have the relationship of independent contractors to Marquardt and are merchants as defined in the Uniform Commercial Code.

## 2. PURCHASE ORDER

2.1 Supply contracts and forecast delivery schedules as well as any alterations or supplements thereof shall be in writing to be valid. Orders given by electronic data interchange are also accepted.

2.2 If the Supplier does not accept the order within two weeks upon receipt, Marquardt shall have the right to cancel such order. Forecast delivery schedules shall be binding, if not rejected by the Supplier immediately upon receipt.

## 3. PAYMENT, INVOICE AND DELIVERY NOTE

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.

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

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

3.4 The Supplier shall issue a separate invoice for each shipment, and shall include the relevant Marquardt purchase order number. Unless otherwise specified in this purchase order, no invoice shall be issued prior to shipment of goods and no payment will be made prior to the receipt of goods and correct invoice.

## 4. INCOMING INSPECTION, NOTICE OF DEFECTS

Goods supplied by Supplier shall be subject to Marquardt's inspection and approval within a reasonable time after delivery, notwithstanding prior payment. If goods are nonconforming, they may be returned at Supplier's expense. Upon discovery of any nonconforming goods, Marquardt shall notify the Supplier immediately about any goods found defective in material or workmanship or otherwise not in conformity with the requirements of the order. Marquardt shall inspect the goods upon receipt only for identity, quantity and obvious damage occurring during shipping.

## 5. NON-DISCLOSURE

5.1 All specifications, commercial and technical data, and other information furnished by Marquardt, or its agents, to Supplier in connection with this order remain the exclusive property of Marquardt and shall be treated by Supplier as proprietary and shall not be disclosed outside the scope of this Order without the prior written authorization of Marquardt. The duty to maintain confidentiality does not apply to information that is a matter of public knowledge or is independently developed or received.

5.2 Supplier shall ensure that all sub-suppliers, to whom disclosure of confidential information is necessary, will comply with the obligation to safeguard such information.

5.3 Each party hereto may make reference to the established business relationship or information contained herein for advertising purposes only with the prior written consent from the other party.

## 6. DELIVERY DATES AND PERIODS, PLACE OF PERFORMANCE

6.1 The delivery dates and periods in this order or otherwise agreed upon by the parties shall be binding. Compliance with such dates and periods shall be determined by the date the goods are received at the proper destination. Early deliveries are not permitted.

6.2 The Supplier is obliged to notify Marquardt, in writing and without delay, when circumstances occur or become evident that will cause delay in delivery. In the event of delays due to force majeure or any other impediments to performance that are not fault of Marquardt, Marquardt shall have the right to terminate the contract, without further obligation or liability, if necessary to meet contractual obligations to their customers or others because the forecasted delivery date is too late for Marquardt's needs.

6.3 The parties acknowledge that late deliveries will cause harm and damages to Marquardt in the form of production shut-downs, additional transportation costs or other costs required to meet production deadlines for Marquardt's customer's. Accordingly, the parties agree that if Supplier is unable to make timely deliveries, Supplier shall pay *per diem* damages to Marquardt equal to .25% of the value of the goods to be delivered, provided that such liquidated damages do not exceed 5% of the value of goods ordered. This remedy is cumulative and does not affect whatever other remedies are available to Marquardt.

6.4 The place of destination specified by Marquardt in the order (unloading point) shall be the place of fulfillment for all deliveries performed by the Supplier.

## 7. QUALITY AND DOCUMENTATION

7.1 Supplier will provide and maintain a Supplier Quality Assurance Program that meets with Marquardt specifications. Supplier will comply with all quality requirements, specifications, and workmanship standards set forth in Marquardt's Quality Assurance Agreement, which is incorporated herein by reference. No changes to or substitutions of the goods delivered are binding upon Marquardt unless accepted by Marquardt in a prior writing.

7.2 By acceptance of this Order, Supplier certifies that any substances requiring any special handling, packaging, storage or shipment, shall be properly labelled, and that proper documentation on the substances, e.g., material safety data sheets, have been provided by the Supplier pursuant to all federal, state or local laws and regulations. Supplier will provide Marquardt with updated data documentation as necessary.

## 8. RIGHTS IN CASE OF DEFECTS

8.1 Marquardt is entitled to all explicit or implied statutory rights and remedies, including those set forth in Article 2 of the Uniform Commercial Code, and all rights and remedies granted under Supplier's warranties, if any, for delivery of nonconforming or defective goods by Supplier. Upon notice from Marquardt that goods were found to be nonconforming or defective within the warranty period, Supplier shall, without delay and at its sole cost and expense replace or repair the goods or correct the defect or malfunction. Supplier shall provide an extended warranty period for any replacement, repair or correction made during the warranty period, starting on the day of successful completion of such replacement, repair or correction.

8.2 If Supplier does not or cannot timely make replacements, repairs or corrections to the goods, or Marquardt, at its exclusive option, shall have the right to (a) make the replacement, repair or correction itself at Supplier's sole cost and expense, or (b) have such replacement, repair or correction made by a third party at Supplier's sole cost and expense, or (c) obtain from Supplier total reimbursement of the purchase price paid for the nonconforming goods, together with reimbursement of any costs incurred by Marquardt as a consequence of the nonconforming or defective goods.

8.3 In the event of repeated late or defective deliveries by Supplier, Marquardt may cancel all orders not yet performed by giving notice to Supplier of such cancellation, which shall be effective immediately upon receipt by Supplier.

8.4 Supplier shall be responsible for the costs of all claims brought forward by third parties resulting from personal injury, property damages, including special, incidental, and consequential damages and the cost of defending such claims, including reasonable attorney's fees which result from Supplier's nonconforming goods delivered to Marquardt.

8.5 Supplier's liability for claims arising out of or related to nonconforming goods delivered to Marquardt by Supplier shall extend for forty-eight months after the delivery of goods to the customer of Marquardt.

## 9. LIABILITY

9.1 Supplier will defend, indemnify and hold harmless Marquardt and its officers, agents, employees and assigns, against any claims, loss, damage or expense, including without limitation, payment of direct, special, incidental and consequential damage, and expenses of defending such claims, including reasonable attorney fees, for property loss and/or damage, and personal injury and/or death, which may be sustained by third parties and/or by Marquardt, its agents, employees, or subcontractors, which results from Supplier's performance or non-performance of this purchase order, except for claims resulting from the sole negligence of Marquardt. Marquardt will inform supplier of any claim, demand or suit asserted or instituted against it and, to the extent of Marquardt's ability to do so, permit Supplier to defend the same and make settlement in respect thereto.

9.2 Seller shall carry insurance covering the liabilities and indemnification provided herein. Supplier will at all times maintain with reputable insurance companies comprehensive liability insurance in an amount satisfactory to Marquardt for any liability under any Marquardt purchase order. At Marquardt's request, Supplier will name Marquardt as an additional insured and supply to Marquardt a certificate of such insurance providing for ten days prior notice to Marquardt for cancellation or any material change.

## 10. RIGHTS IN CASE OF TITLE DEFECTS (ESPECIALLY INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS OF THIRD PARTIES)

10.1 Supplier warrants and guarantees that the goods or services delivered under this order infringe upon any industrial property rights of third parties or the European Union, North America or other countries in which the goods are to be delivered by the customers of Marquardt.

10.2 Seller shall hold Marquardt harmless against any and all claims or actions for infringement of a third party industrial or intellectual property right, to pay all costs incurred by Marquardt for the defense of such claim or action, including reasonable attorney's fees, and to indemnify Marquardt for any damage, loss and prejudice suffered by Marquardt as a direct or indirect consequence of such claim or action.

## 11. USE OF MANUFACTURING EQUIPMENT AND CONFIDENTIAL INFORMATION

11.1 Models, molds, templates, samples, drawings, sketches, tools, data carriers and other manufacturing equipment, especially confidential information and engineering data provided to Supplier upon Marquardt's request or fully paid by Marquardt, shall not be passed on to third parties without Marquardt's written consent. Marquardt shall reserve any and all property rights, copyrights and industrial property rights in the manufacturing documents and equipment provided to Supplier.

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

## 12. MATERIAL PROVISIONS

12.1 Materials provided by Marquardt shall remain property of Marquardt and shall only be used for the intended purpose. Supplier shall process and assemble the material for Marquardt. In this case Marquardt will gain co-ownership in the final product in proportion of the provided material to the value of the finished product. Supplier shall retain co-ownership for Marquardt.

12.2 In case of material sales to Supplier the Marquardt conditions of delivery and payment shall apply.

## 13. CORPORATE RESPONSIBILITY

13.1 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/>

13.2 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.

13.3 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.

## 14. PLACE OF JURISDICTION, GOVERNING LAW

14.1 This order, and the rights and obligations of the parties thereto, shall be determined in accordance with the laws of the State of New York.

14.2 Any dispute arising out of or in connection with this order shall be venued in New York State Supreme Court in Madison County, New York or in the federal district court in the Northern District of New York.