

# Terms of Sale and Delivery

Version October 2014



## 1. Constantia Flexibles

Constantia Flexibles ("CF") means Constantia Flexibles International GmbH together with all its affiliates wherever located. The Seller is either CF itself or an affiliate of CF.

## 2. Governing terms and conditions

These Terms of Sale and Delivery ("Terms") together with the Seller's Offer ("Offer"), confirmation by the Seller of an order ("Order Confirmation") and any separate agreement ("Special Agreement") (such as a sales Agreement, supply agreement any supplementary conditions and annexes) constitute the entire agreement ("Agreement") between the Seller and the Buyer with respect to the supply of products ("Products") by the Seller. Any differing, conflicting or supplementary terms, conditions, and warranties, especially any general terms and conditions of the Buyer, even if known, do not form part of the Agreement, unless the Seller expressly agrees to those in writing.

## 3. Offers and orders

All of the Seller's offers are non-binding and subject to reasonable technical and other changes. If an Order is placed for the specified Products, the Offer including these Terms are deemed to be binding and accepted by the Buyer. Likewise, the Agreement is deemed to be binding and accepted by the Buyer if the Buyer accepts delivery or makes payment for the Products. Orders are subject to confirmation by the respective company of the Seller. The Agreement is not deemed to be concluded until such time as the respective Seller sends a written Order Confirmation.

## 4. Social integrity

The Parties expressly state their intention to comply with the following principles to the best of their abilities with respect to their performance and the performance of their sub-contractors:

The Parties respect and accept the cultural

and social diversity of all nations and companies, support the fundamental right to the freedom of association and the right to collective bargaining, commit to the prohibition of any form of forced labour, human trafficking, slavery, and the abolition of exploitative child labour, observe the right to reasonable compensation, ensure compliance with the applicable national regulations regarding working hours and provide a safe and healthy work environment for their employees (based on the United Nations Universal Declaration of Human Rights). The Parties further commit to take the measures required to prevent actions that are harmful to the economy, such as bribery and corruption.

## 5. Tolerances on quantity

For all Products, the Seller shall be entitled to deliver above or below the quantity ordered for sales within the limits specified below:

quantity	percentage rate
0 - 4,999 m <sup>2</sup>	50%
5,000 - 9,999 m <sup>2</sup>	30%
10,000 - 30,000 m <sup>2</sup>	10%
above 30,000 m <sup>2</sup>	5%

In relation to labels (in case of order by items) delivery above or below the quantity ordered within the limits specified below are permitted:

quantity	percentage rate
0 – 1mil items	25%
1mil – 5mil items	20%
5mil – 10mil items	15%
more than 10mil items	10%

The tolerances on quantity are effective for the total quantity ordered as well as for any partial delivery. The tolerances on quantity listed above do not constitute a defect and cannot be used to substantiate a complaint by the Buyer.

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## 6. Minimum purchase quantity

The minimum purchase quantity per order amounts in any case to 1,000 m<sup>2</sup>.

## 7. Coating weight per unit area

The dimensional tolerance for aluminium is determined by AFCO Standards 1 and 2. The prescriptive coating weight per unit area shall be understood with dimensional differences of +/- 8%.

## 8. Scope and form of delivery

For the scope of delivery as well as quality and specification of all Products the Seller's Order Confirmation shall exclusively be authoritative. If the Buyer has not given special instructions, (which have been accepted by the Seller) the Order shall be carried out with the materials used regularly in the trade in accordance with customary manufacturing processes.

## 9. EAN/GS1-Code

The Seller shall not be liable for any consequences that arise from defects in film masters or in similar material that is provided by the Buyer for the purposes of the printing of the EAN/GS1 or uniform product codes or similar codes or symbols. The printing of the EAN/GS1- Code shall be in accordance with the state of the art. Given the influences that bar codes may undergo after delivery by the Seller, together with the absence of a standardised measuring and reading technique, the Seller grants no warranty with respect to the EAN/GS1 code – in particular not with regard to readings at checkout tills. The Buyer shall indemnify the Seller and hold it harmless against any claims relating to the use of the EAN/GS1-Code.

## 10. Samples and drawings

If the Buyer provides the Seller with samples, drawings, etc. it is the sole responsibility of the Buyer that such samples, drawings, etc. do not infringe any third party intellectual

property rights. The Buyer shall indemnify the Seller and hold it harmless against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Seller in connection with any claim or action regarding an infringement of third-party intellectual property rights by the samples, drawings, etc. provided by the Buyer. Projects, drawings, sketches, printing proofs, etc. as well as other property of the Buyer are stored with the Seller at the risk of the Buyer. The obligation to store the materials mentioned above ends one year after their latest use. If requested by the Seller, the Buyer will remove or dispose of the materials after said year at its own expense. If this does not occur within 14 business days, the Seller has the right to dispose of the materials at the expense of the Buyer.

## 11. Designs, negatives, plates, printing cylinders, films, and digital data

Designs, negatives, plates, printing cylinders, films, and digital data prepared by the Seller remain its property even if the Buyer has financially contributed to their creation.

## 12. Packaging material

The Buyer agrees to hold the Seller harmless in respect of any duty (financial or otherwise) to take back packaging material. The Buyer agrees to dispose of packaging material at its own cost.

## 13. Pricing

All prices mentioned in the Agreement are net prices. Any applicable taxes and other charges such as duties, customs, tariffs, imposts, and government-imposed surcharges shall be stated separately on the Seller's invoice unless included in the base price and will be reimbursed by the Buyer. If the Sale/Delivery can not be invoiced in euro, the Buyer bears the exchange risk from the date of the Order Confirmation until full payment. Prices in Order Confirmations and Agreements are based on the raw material and transport prices valid

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on the respective dates of the Order Confirmation or of the Agreement. In the event of a change of relevant raw material and transport prices, the Parties undertake to renegotiate the prices. If no reasonable agreement can be reached, the Seller reserves the right to terminate the Agreement unilaterally. If the Buyer cancels the Order, the Seller will invoice to the Buyer the full costs of the raw material it reserved for the Order plus all additional costs incurred for the preparation of the Order. The Buyer agrees to bear such costs.

Unless otherwise agreed upon, in case of contracts with buyers having their registered office (seat) in a country of the EURO zone, the official national currency of the Federal Republic of Germany shall be deemed the currency agreed upon in the contract.

## 14. Invoicing and payment

The Seller shall submit invoices to the Buyer upon each delivery or partial delivery of Products and the Buyer shall pay for such Products within 30 calendar days after the invoice date, which is fixed in detail in the Order Confirmation or in the Agreement. From maturity the Buyer shall owe default interest amounting to 8 percent above the respective 6 months' base interest rate applicable to the currency agreed upon within the respective contract (if there is no relevant base interest rate the Seller may use another interest rate which comes closest to such base interest rate). Higher interest may be claimed if the Seller actually had to pay or could have earned such higher interest. The Buyer agrees to bear all expenses related to the recovery of a receivable, such as, in particular, collection expenses or other costs required for taking appropriate legal action.

The Buyer has a right to set-off only if the Buyer's counterclaims have been established as legally binding or if acknowledged in writing by the Seller. Invoices shall be in duplicate and shall include purchase order number, listing of Products, dates of shipments, quantities, prices, and extended totals. The Seller may require the Buyer to provide security for and in the amount of the

purchase price.

## 15. Delivery

The period of delivery starts as of the date on which the Buyer has received the Seller's Order Confirmation. To the extent the Seller cannot meet the delivery dates for reasons other than force majeure, the Buyer has to require the Seller to declare whether the Seller wants to cancel the Order or whether the Seller wants to deliver within a reasonable period. Unless the Seller gives this declaration within a reasonable period, the Buyer may cancel the Order. In no case (other than cases of the Seller's intentional conduct) the Buyer has the right to hold the Seller liable for damage possibly arising therefrom. Partial as well as early deliveries by the Seller are permitted. Should the Products not be accepted by the Buyer upon delivery, the Seller has the right to unload and/or warehouse the materials appropriately at the expense of the Buyer. Deliveries delayed due to incorrect, incomplete information from the Buyer and/or subsequently changed information from the Buyer can never be the responsibility of the Seller and can in no case lead to a default of the Seller. Additional costs arising from such cases have to be borne by Buyer. Should dispatch be impossible for reasons not attributable to the Seller, all risks (including but not limited to the risk of loss or destruction) shall pass over to the Buyer upon receipt of the report of the Seller's readiness to dispatch. Unless otherwise agreed upon in writing, delivery of the materials by the Seller shall take place ex works (EXW) [INCOTERMS 2010 shall apply].

## 16. Taking delivery of the goods

It is the obligation of the Buyer to take delivery of the Products without undue delay. The Buyer is not entitled to reject delivery of the Products for immaterial defects or for tolerances on quantity according to Section 5 of these Terms. Should the Buyer refuse to take delivery of the Products on the grounds of immaterial defects or on the grounds of tolerances on quantity according to Section 5 of

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these Terms, the Products are deemed to have been duly delivered.

## 17. Warranty, notice of defects, liability

Subject to the conditions set out below the Seller warrants: a) that the Products are in accordance with the specifications provided in the Agreement at the time of delivery; b) that the Products comply with all relevant and applicable legal requirements at the time of delivery; and c) that adequate and customary packaging is used. Unless otherwise agreed in writing the Seller does not warrant: a) that the Products comply with any other legal requirements in force in any other country; b) the merchantability or fitness of the Products for any particular use, purpose or filling; c) extraordinary light resistance of the printing colour used on the Products; or d) any defect in respect of the GS1 – code or any other code attached to the Products by the Seller at the request of the Buyer; the Seller grants a warranty period of 6 (six) months or the shelf life of each Product, whichever ends earlier. The warranty period shall start as of the date of delivery. The Seller's liability to recourse according to Sec 933 b ABGB (Austrian Civil Code) ends 6 months after the date of delivery. If a defect in workmanship or Product is found within the warranty period of 6 (six) months after the date of delivery, the Seller shall, at its option, repair, or replace such Product, or refund the purchase price of such non-conforming Products to the Buyer. The Buyer will request a prior approval from the Seller to process any rework or screening or destruction of goods due to the defective Product.

The above warranty is given by the Seller subject to the following conditions: a) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Seller's approval and b) the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products (i) has not

been paid in full by the due date for payment and (ii) has not been received by the Seller. The Buyer is not entitled to withhold payments. While the Seller is otherwise released from the obligation to perform, the Buyer is obligated to inform the Seller within 14 days after delivery - in any case of hidden defects 14 days after discovery of such defects - in writing and by way of sufficient additional documentation of any claims, in particular of defects, but also of damage and the Buyer is further obligated to give the Seller or a third person authorized by the Seller the opportunity to carry out an inspection of the products objected to and to make a report in writing. The Buyer carries the burden of proof for all requirements of a claim, especially for the defect itself, for the time at which the defect is found, and for the timeliness of a complaint.

Except as expressly otherwise provided in the Agreement the Seller is only liable under mandatory law, namely for personal injuries and for intentional or gross negligent damage. The Seller shall not be liable for consequential, special and indirect damage, loss of profit or special loss of either the Buyer or third parties. Should the Seller be held liable by any third party, the Buyer shall indemnify the Seller to the extent that the Seller is not liable under this provision.

The aggregate liability of the Seller under the Agreement for any reason whatsoever shall in no event exceed the total purchase price of the Order. The Parties specifically exclude to challenge the Agreement on grounds of error and *laesio enormis* (disproportionate relationship between value of Product and Price/Consideration).

## 18. Security interest in the goods delivered

Title to the goods shall not pass until the full purchase price, as well as all ancillary costs have been paid in full. Should the goods which have not been fully paid be passed on to third parties, the Seller shall retain the title until the receivable has been paid in full. In such a case the Buyer shall be obligated to inform such third party that the Seller has retained title to the goods delivered to the third

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party and the Buyer hereby assigns to the Seller the receivable resulting from passing on the conditional goods to such third party. The Buyer undertakes to record in the Buyer's books the assignment of this receivable to the Seller, as soon as the assignment has been effected, stating the amount and the statutory basis of the receivable, the debtor, the assignee and the date of the assignment. The Buyer shall also be obligated to prove upon request that the above recording in the Buyer's books has been effected accordingly in all cases. Should the Buyer's customer insist on a prohibition of assignment, the Buyer shall inform the Seller forthwith to this effect. To the extent that the Buyer cannot provide sufficient other securities for the Seller's claims, the Seller shall be entitled to prohibit the resale of the conditional goods to the third party. The reservation of title shall be in no way impaired if the Materials/Products have already been installed, commingled or processed. In the case of fixed installation, commingling, and/or processing, the Seller shall at a minimum acquire co-ownership of the new object at the ratio of the value of the Products supplied by the Seller. The Buyer shall be obligated to indicate any pledges or other attachments and executions by third parties upon the conditional goods or the claims to his ownership assigned to the Seller and the prolonged reservation of title and to inform the Seller promptly in writing. The costs for asserting the Seller's property right shall be borne by the Buyer. To the extent that the Seller makes use of its reservation of title, the Seller shall have the right to take back the delivered Materials/Products and the corresponding transport costs shall be borne by the Buyer. In such case the Buyer shall waive any defense of disturbance of possession. The Buyer shall use its best efforts to assist the Seller or a third party named by the Seller to realize the reservation of title and assignment.

## 19. Data Protection

The handling of the business relationship between the Seller and the Buyer is supported

on both sides by a data processing system. Accordingly, the data of the other Party or the client (address, products supplied, quantities, prices, payments, cancellations, etc.) are recorded and saved in an automated file. The other Party is hereby notified that such data will be saved.

## 20. Merger, modification and waiver

The Agreement constitutes the entire Agreement between the Parties, there being no warranties, representation or conditions of any kind or nature between the Parties except as set forth therein. The Agreement - including this clause - cannot be modified, changed, waived, substituted or discharged orally, except by a writing signed by the Party against whom enforcement of the change, modification, waiver, substitution, or discharge is sought. No waiver by either Party, whether express or implied, of any provision of the Agreement or any breach of default of either Party shall constitute a continuing waiver of such provision or a waiver or any other provision of provisions of the Agreement, and no such waiver by either Party shall prevent such Party from enforcing any and all provisions of the Agreement, or from acting upon any subsequent breach of default of the other Party, under any provisions of this Agreement. If any court or administrative body of competent jurisdiction shall find any provision of this Agreement to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties shall attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## 21. Successors and assignees

The Agreement shall be binding upon each Party's successors in interest and permitted assignees. Any assignment of rights or trans-

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fer of obligations from the Buyer to a third party shall require the prior written consent of the Seller (which consent shall, however, not be unreasonably withheld). Notwithstanding the foregoing, the consent of the other Party shall not be required for a Party to assign its rights or transfer its obligations under this Agreement to an affiliated company or to a third party that acquires all or substantially all of the assets of the Party or controlling interest in the equity of the Party. Such assignment or transfer becomes valid upon written (including FAX or email) notification to the other Party. The Buyer, however, explicitly accepts an assignment or transfer of rights and/or receivables against him from CF or the respective Seller for purposes of refinancing. The Seller is therefore entitled to assign its receivables against the Buyer for purposes of refinancing.

## 22. Termination

The Parties may only terminate the Agreement for the following material reasons by written notice specifying such material reasons:

- a) To the extent permitted by law, the Seller may terminate the Agreement if the Buyer is in default with a payment under the Agreement by more than 30 days, without any requirement that the Seller first make a demand for payment.
- b) After the expiration of a grace period of 2 months starting upon written notice if one Party is in breach of the Agreement the respective other Party may terminate the Agreement unless the breach has been rectified in due time.
- c) To the extent permitted by law, either Party may terminate the Agreement if the financial condition of the other Party should substantially deteriorate, especially in the event of unsuccessful enforcement against the assets of the other Party, conclusion of an out-of-court settlement agreement on the part of the other Party, and in the event of declarations of suspension of payment, each with respect to the Party itself or a personally lia-

ble partner of the Party.

d) If an application to open insolvency proceedings with regard to the assets of a Party is refused for lack of cost-covering assets or if such proceedings are suspended for lack of cost-covering assets, the other Party may terminate the Agreement with immediate effect.

e) If after the opening of insolvency proceedings regarding the assets of a Party, the insolvency administrator or the trustee or, if the Party is entitled to self-administration, the Party fails to provide adequate security or advance payment for all charges and claims payable after the opening of insolvency proceedings within a reasonable time period, the other Party may terminate the Agreement with immediate effect.

f) If in the event of insolvency proceedings regarding the assets of a Party, a court should decide to wind up the company, the other Party may terminate the Agreement with immediate effect.

g) In case of contracts with buyers having their registered office (seat) in a country of the EURO zone, the seller may terminate the contract with immediate effect if the country where the buyer has its seat leaves the EURO zone.

In the event of the inability to pay or of over-indebtedness pursuant to Sec 66 and 67 of the Insolvency Act or a similar provision under foreign law, the other Party must be notified of these facts without delay, but in any case before an application is filed. Upon receipt of notice of termination, the Seller shall stop the production of Products and submit to the Buyer a written report of the status of all Products. The Buyer shall specify which Products shall be delivered and/or which are to be destroyed at the Buyer's cost. There shall be no charges for termination of Orders for Products not yet produced by the Seller. The Buyer will be responsible for payment of authorized Products already produced by the Seller including work-in-process or components specific to the Products, but not yet invoiced. Authorized materials are those for which the Seller has received a purchase order and those which are based on a forecast calling for delivery within 2 months after the

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date of receipt of notice of termination.

Either Party may suspend the Agreement by notice to the other in the event the Seller is unable to supply the requested quantity of conforming Products as a result of Force Majeure. When the Seller is again able to supply the required quantities of Products, the Seller shall give the Buyer notice of such fact and the Parties shall mutually agree upon when to resume supply and purchase of Materials. However, should such suspension continue for 3 months without the Seller being able to supply sufficient quantities of Products, the Buyer may elect to terminate the Agreement with respect to such Product that may be affected by such event of Force Majeure.

### 23. Governing law and jurisdiction

The Agreement is governed by substantive Austrian law, excluding its rules of conflict and excluding the United Nations Convention on Contracts for the International Sale of Goods. For agreements where the Seller and the Buyer are incorporated or resident in a member state of the European Union or a member state of the European Economic Area, the Seller and the Buyer agree that any and all actions or proceedings arising in connection with the Agreement and/or the relations of the Parties hereto arising therefrom shall be tried and litigated exclusively in the competent courts located in the First District of Vienna, Austria. Notwithstanding the foregoing the Seller may commence legal proceedings against the Buyer also in any court of any country, state or territory in which the Buyer resides or where the Products are delivered, sold or situated, and in every such case the Buyer already now accepts jurisdiction of such court and waives any objection in this respect.

### 24. Arbitration

For Agreements where either the Seller or the Buyer or both are not incorporated or resident in a member state of the European Union or the European Economic Area the following shall apply: All disputes arising out of or in

connection with this Agreement or relating to its validity or nullity shall – unless agreed otherwise in writing - be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (Vienna Rules) by one or more arbitrators appointed in accordance with these rules. The seat of the arbitral tribunal is in Vienna.

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