

Terms of Sales and Delivery



- 1. Constantia Flexibles** Constantia Flexibles ("CF") means Constantia Flexibles Holding GmbH (FN 253030d) together with all its affiliates wherever located. Seller is an affiliate of CF.
- 2. Governing terms and conditions** These Terms of Sales and Delivery ("Terms") together with Seller's Offer ("Offer") and/or Seller's Confirmation of an Order ("Order Confirmation") and/or any Separate Agreement ("Special Agreement") (eg Sales Agreement, Supply Agreement and/or Supplementary Conditions and Annexes constitute the entire agreement ("Agreement") between the Seller and the Buyer with respect to the supply of CF-products ("Products"). All other terms, conditions and warranties are excluded above all any other terms contained in documents of the Buyer.
- 3. Offers and orders** All CF/Seller's offers are without engagement. Orders are subject to confirmation by the respective company of CF. Buyer is deemed to have accepted the Offer including these Terms if Buyer places an order for the products specified, and is deemed to have accepted the Agreement if Buyer accepts delivery or makes payment for the Products.
- 4. Tolerances on quantity** For all Products, the Seller shall be entitled to deliver above or below the quantity ordered for sales by quantity:

quantity	percentage rate
0 - 4,999 m2:	50%
5,000 - 9,999 m2:	30%
10,000 - 30,000 m2:	10%
above 30,000 m2:	5%

The tolerances on quantity are effective for the total quantity ordered as well as for any partial delivery.
- 5. 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%.
- 6. Scope and form of delivery** For the scope of delivery as well as quality and specification of all Products Seller's Order Confirmation shall exclusively be is authoritative. If Buyer has not given special instructions, (which have been accepted by Seller) the order shall be carrier out with the materials used regularly in the trade in accordance with customary manufacturing processes.
- 7. EAN/GS1-Code** Seller shall not be liable for any consequences that arise from defects in film masters or in similar material that is provided by 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 Seller, together with the absence of a standardised measuring and reading technique, the Seller does not grant any warranties with respect to the EAN/GS1 code – in particular not with regard to readings at checkout tills. Buyer shall indemnify Seller and hold it harmless against any claims relating to the use of the EAN/GS1-Code.
- 8. Samples and drawings** If Buyer provides Seller with samples, drawings, etc it is the sole responsibility of Buyer that such samples, drawings, etc do not infringe any third party intellectual property rights. Buyer will indemnify and hold harmless Seller against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by Seller in respect of any claim or action that the use of samples, drawings, etc provided by Buyer infringes the intellectual property rights of any third party. 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 storage of the materials mentioned above ends one year after their latest use.
- 9. 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 Buyer has financially contributed to their creation.

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10. Packaging material Buyer agrees to hold Seller harmless in respect of any duty (financial or otherwise) to take back packaging material.

Buyer agrees to dispose of packaging material at its own cost.

11. 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 Seller's invoice unless included in the base price and will be reimbursed by Buyer. If the Sale/Delivery can not be invoiced in EURO, 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 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 contracting parties undertake to renegotiate the prices. If no reasonable agreement can be reached, the Seller reserves the right to terminate the Agreement unilaterally. If Buyer cancels the order, Seller will invoice to Buyer full costs of the raw material it reserved for the order plus all additional cost incurred for the preparation of the order.

12. Invoicing and payment Seller shall submit invoices to Buyer's Accounts Payable department upon each delivery or partial delivery of Products and Buyer shall pay for such products within 30 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 4 percent above the 6 months' EURIBOR (or such higher rate as may be applicable or customary in the relevant domestic market if this Agreement is subject to such domestic law, other than the one provided for by these terms). Higher interest may be claimed if Seller actually had to pay or could (have) earned such higher interests. Invoices shall be in duplicate and shall include purchase order number, listing of Products,

dates of shipments, quantities, prices and extended totals. Seller may require Buyer to provide security for and in the amount of the purchase price.

13. Delivery The period of delivery starts as of the date on which the Buyer has received Seller's Order Confirmation. To the extent Seller cannot meet the delivery dates for reasons other than Force Majeure, Buyer has to require Seller to declare whether Seller wants to cancel the order or whether Seller wants to deliver within a reasonable period. Unless Seller gives this declaration within a reasonable period, Buyer may cancel the order. In no case (other than cases of Buyer's intentional conduct) Buyer has the right to hold Seller liable for damage possibly arising therefrom. Partial as well as early deliveries by Seller are permitted. Should the Products not be accepted by Buyer upon delivery, Seller has the right to unload and/or warehouse the Materials appropriately at the expense of Buyer. Deliveries delayed due to incorrect, incomplete instructions and/or instructions changed at a later date can never be the responsibility of Seller and can in no case lead to a default. Additional costs arising from such cases have to be borne by Buyer. Should dispatch be impossible for reasons not attributable to Seller, all risks (including but not limited to the risk of loss or destruction) shall pass over to Buyer upon receipt of the report of Seller's readiness to dispatch. Unless otherwise agreed to, delivery of the Materials by Seller shall take place DDU (place of destination specified in Offer, Order Confirmation and/or Agreement) [INCOTERMS 2000 shall apply) unless otherwise agreed in writing.

14. Taking delivery of the goods It is the obligation of Buyer to take delivery of the Products without undue delay. Buyer is not entitled to reject delivery of the Products for immaterial defects. Should Buyer refuse to take delivery of the Products on the grounds of immaterial defects or for whatever other reason, the Products are deemed to have been duly delivered.

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15. Warranty, notice of defects, liability Subject to the conditions set out below 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 legal requirements in force in Austria and the European Union at the time of delivery; and c) that adequate and customary packaging is used. Unless otherwise agreed in writing 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 Seller at the request of Buyer; 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. 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, Seller shall, at its option, repair, or replace such Product, or refund the purchase price of such non-conforming Products to Buyer. Buyer will request a prior approval from 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) 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 Seller's approval and b) Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products (a) has not been paid by the due date for payment and (b) received by the Seller. While Seller is otherwise released from the obligation to perform, Buyer is obligated to inform 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 Buyer is further obligated to give Seller or a third person authorized by Seller the opportunity to carry out an inspection of the products objected to and to make a report in writing. In the event of a dispute as to whether the Products conform to the Agreement, Seller or Buyer shall designate a mutually acceptable independent expert to examine the Materials, and the findings of the expert shall be conclusive and binding on both Parties unless the findings are grossly wrong. The expenses of the expert will be borne by the Seller to the extent the Products are found not to conform and by the Buyer to the extent the goods are found to conform.

Except as expressly otherwise provided in this Agreement Seller shall only be liable under mandatory law. 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 Seller be held liable by any third party, Buyer shall indemnify Seller to the extent that Seller is not liable under this provision.

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

16. 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 commodity which has not been fully paid be passed on to third parties, Seller shall retain the title until the accounts receivable have been paid in full. In such a case Buyer shall be obligated to inform such third party, that Seller has retained title to the commodity delivered to the third party and Buyer hereby assigns to Seller the account receivable resulting from passing on the conditional commodity to such

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

17. Confidentiality and publicity Neither Party may use the other Party's name in advertisements nor otherwise disclose the existence or content of the Agreement to third parties without the other's prior written consent. The obligations stated in this Section shall survive the expiration or termination of the Agreement.

18. 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 agree to 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 un-enforceable provision.

19. Successors and assignees The Agreement shall be binding upon each Party's successors in interest and permitted assignees. Any assignment of rights or transfer of obligations from a Party to a third party shall require the prior written consent of the other (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.

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

a) Seller may terminate the Agreement if the Buyer is in default with a payment under the Agreement by more than 30 days [thus 60 days after the invoice date] without any requirement that 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) In case of insolvency of one Party or in case of suspension of business of one Party (except due to Force Majeure,) the respective other Party may terminate the Agreement and

d) In case of the declaration or institution of bankruptcy, reorganization, liquidation, winding-up or receivership proceedings by or against one Party the respective other Party may terminate the Agreement unless the relevant mandatory bankruptcy law specifically disallows this form of termination.

Upon receipt of notice of termination, Seller shall stop the production of Products and submit to Buyer a written report of the status of all Products. Buyer shall specify which Products shall be delivered and/or which are to be destroyed at Buyer's cost. There shall be no charges for termination of orders for Products not yet produced by Seller. Buyer will be responsible for payment of authorized Products already produced by Seller including work-in-process or components specific to the Products, but not yet invoiced. Authorized materials are those for which Seller has received a purchase order and those, which are based on a forecast calling for delivery within 2 months after the date of receipt of notice of termination.

Either Party may suspend the Agreement by notice to the other in the event Seller is unable to supply the requested quantity of conforming

Products as a result of Force Majeure. When Seller is again able to supply required quantities of Products, Seller shall give 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 Seller being able to supply sufficient quantities of Products, Buyer may elect to terminate the Agreement, with respect to such product that may be affected by such event of Force Majeure.

21. 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. Seller and 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 Seller may commence legal proceedings against 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 Buyer already now accepts jurisdiction of such court and waives any objection in this respect.

22. Arbitration For Agreements where Seller and Buyer do not come from the member states of the European Union or the European Economic Area the following shall apply: All disputes arising out of the 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 in Vienna Austria (Vienna Rules) by one or more arbitrators appointed in accordance with these rules.

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