

General Purchasing Conditions

Version January 2019



1. Constantia Flexibles

Constantia Flexibles (“CF”) means Constantia Flexibles International GmbH and its affiliated companies world-wide. The Purchaser is either CF itself or an affiliated company of CF as defined in sec. 15 of the Austrian Stock Corporations Act (“AktG”).

2. Applicable terms and conditions

2.1. These General Purchasing Conditions shall apply to all orders, goods orders, delivery orders or purchases (collectively “orders”) of CF unless expressly otherwise agreed in writing. In any case, carrying out an order on the part of the Contractor shall be deemed acceptance of these General Purchasing Conditions.

2.2. Any terms and conditions stipulated by the Contractor shall be deemed recognized by CF only if they are in accordance with these General Purchasing Conditions and with any special ordering conditions, or if they are acknowledged in writing by CF before the order is carried out or delivery is made.

2.3. These General Purchasing Conditions shall also apply to any future orders, deliveries or purchases even if no specific reference is made to them in any such transaction.

3. Orders and acceptance of orders

3.1. CF reserves the right to revoke an order if the Contractor fails to accept the order in writing within eight working days from receipt.

3.2. Only written orders shall be binding. Any orders placed orally or by phone shall be valid only if subsequently acknowledged by CF in writing. The same shall apply to oral collateral agreements or modifications of contracts. Subject to prior agreement in writing, email or fax may

be used for placing orders and calling off ordered goods for shipment, and for modifying or amending orders or call-offs.

3.3. CF does not pay any compensation for visits or for preparing offers, projects, or the like.

3.4. CF may demand modifications of the object of delivery even after concluding the contract to an extent reasonably acceptable to the Contractor. In any such modification of a contract the effects on both parties must be duly taken into account, in particular with respect to additional or reduced costs and the dates of delivery.

3.5. Customary clauses shall be construed according to the latest version of the Incoterms in force at the respective time.

4. Social integrity

The Parties expressly declare their intent to use their best efforts to comply with the following principles with respect to their services and the services of their subcontractors:

The Parties respect and accept the cultural and social diversity of all nations and societies, support the fundamental right to freedom of association and the right to negotiations for collective bargaining agreements, stand up for the prohibition of any form of forced labor, human trafficking, and slavery, and for the abolition of any exploitation by child labor, they respect the right to adequate salaries, guarantee compliance with the applicable national regulations on working hours, and ensure a safe and healthy working environment for their staff (based on the Universal Declaration of Human Rights).

The Parties further undertake to take the required measures to avoid actions detrimental to the economy such as bribery

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and corruption.

5. Code of Conduct for Suppliers and Subcontractors

The Contractor shall adhere to the Code of Conduct for Suppliers and Subcontractors issued by CF, in the current version as amended and as published from time to time on the homepage of CF (<http://www.cflex.com>) (the "**Code of Conduct**") and shall ensure its implementation.

The Contractor shall further use its best efforts to promote and request the compliance with the Code of Conduct by the Contractor's suppliers and subcontractors.

CF reserves the right to audit the Contractor for compliance with the Code Of Conduct at any time and without prior notice in accordance with the Code's terms; such audit to be conducted either by CF itself or through third parties mandated for such purpose by CF.

In case of any breach of these obligations by the Contractor, CF may, In addition to any other rights and remedies CF may have, terminate all existing contractual relations with the Contractor and rescind any existing contracts or orders thereunder.

6. Prices, shipping, packing, acceptance of goods

6.1. The prices agreed upon are fixed prices and any supplementary claims of whatever nature shall be excluded. Unless otherwise agreed upon, these prices shall include the costs of packing, transport, and transport insurance up to the shipping address or place of use specified by CF, as well as the costs of customs clearance and customs duties, however exclusive of import turnover tax.

6.2. If no price is stated in an order by CF, the price stated in the Contractor's acknowledgement of order shall be deemed agreed upon only upon express recognition in writing by CF.

6.3. In case of contracts with contractors having their registered office (seat) in a country of the EURO zone, the official national currency of the contractor shall be deemed the currency agreed upon in the contract.

6.4. CF shall be advised of each delivery without delay, by an advice of dispatch breaking down the goods according to type, quantity, weight, batches, and carrier. The expected date of arrival shall also be stated. The order number shall be quoted on any advice of dispatch, bill of lading, invoice, and in any correspondence with CF.

6.5. Any price in excess of the contract price, supplementary claims, as well as delivery of any goods/performance of any services not specified in the contract shall be communicated to CF in due time before starting work, and any of the aforesaid shall be subject to written authorization by CF based on a written offer by the Contractor. Any excess performance (supplementary claims) without prior consent will not be recognized even if the reason for these supplementary claims arising is to be attributed clearly to the customer (e.g. additional costs due to a delay caused by the customer; down/idle times or changes of schedule caused by the customer).

6.6. CF will accept only the quantities or numbers of units explicitly ordered. Any delivery of higher or lower quantities shall be permitted only subject to prior written agreement with CF (and in accordance with the tolerances agreed upon), or shall require explicit approval by CF upon acceptance.

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- 6.7. Unless otherwise agreed upon, goods shall be shipped packed, free to destination, at the Contractor's risk (DDP CF premises, Incoterms 2010). Thus, the risk of any deterioration including the risk of accidental destruction shall remain with the Contractor up to delivery to the shipping address or point of use specified by CF.
- 6.8. The goods shall be packed to commercial standards taking into account the carriers' advice and the applicable provisions of insurance companies. Packing materials shall be used only in quantities required for achieving this purpose. Only environmentally friendly packing materials shall be used. In case of delivery on Euro pallets or other wooden pallets, CF, in accordance with the high standards of the food industry, insists on using pallets that are as good as new.
- 6.9. Packing to commercial standards in paragraph 5.8 means that packing must be safe and suitable for the mode of transport chosen (safe and secure for transportation and handling). Goods shall be packed by the Contractor exercising adequate care and taking into account the transportation risks. Packing slips, inscriptions, etc. (and in any case a delivery note) shall be used to ensure unequivocal identification of the goods delivered and quick, convenient, and accurate determination of quantities (gross and net weight).
- 6.10. The Contractor's obligation to take back the packing materials shall be subject to the legal provisions.
- 6.11. Any acceptance of deliveries of goods outside the regular delivery hours of CF shall be subject to prior agreement in writing.
- 7. Invoicing, payment, rights of retention, incorrect delivery**
- 7.1. Invoices shall be made out properly to CF in duplicate including any and all pertaining documentation and data after delivery has been made. Any invoices which have not been made out properly shall be deemed received by CF only at the time of correction. Furthermore, the customs tariff number, origin, and VAT-ID must be stated on each invoice.
- 7.2. Payment shall be made as customary in commerce subject to the terms of payment according to the order of CF, based on the date of delivery of goods/provision of services and date of receipt of the invoice.
- 7.3. Payment by CF shall not be deemed recognition that the goods delivered and/or services provided are according to contract.
- 7.4. Where providing materials testing certificates (e.g. works test certificates) has been agreed upon, they shall constitute a relevant component of delivery and, as a rule, shall be sent to CF with the consignment. The term of payment of invoices shall begin upon receipt of the certificates agreed upon at the earliest.
- 7.5. In case of faulty delivery, CF reserves the right to retain payment pro-rata to the value of the faulty part of the delivery until the contract has been performed properly. In any case, acceptance shall not bar any subsequent complaint about defects.
- 7.6. Any additional costs and loss caused by incorrect delivery or by any other non-compliance with the preceding points shall be at the Contractor's expense. This shall also apply to any delivery to a third party designated as receiver by CF.

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7.7. With respect to any goods not delivered according to these conditions, CF will recognize an obligation to make payment only after the persons instructed by CF have determined after a reliable investigation that delivery has been properly made.

8. Offsetting clause

8.1. CF shall be entitled to offset any amounts with and against any mature or not yet mature claims, even future claims, to which CF or any of its affiliated companies as defined in sec. 15 of the Stock Corporations Act is entitled against the Contractor, or which the Contractor may have against any of the aforementioned companies (the Contractor shall be informed on the status of such participating interests upon enquiry).

8.2. The Contractor agrees that any security provided to CF shall also serve for securing the claims to which the companies mentioned in the preceding paragraph 7.1 are entitled against the Contractor. On the other hand, any security provided to these companies by the Contractor shall also serve for securing the claims of CF against the Contractor no matter on what legal ground such claims have arisen.

9. Dates of delivery, default of delivery, force majeure

9.1. The dates of delivery agreed upon shall be binding. Deliveries shall be deemed timely if the goods are received by the receiving center or point of use specified by CF or accepted successfully by the time agreed upon.

9.2. If the Contractor becomes aware of the fact that it will not be in a position to deliver goods or finish services or any part thereof in due time, it shall advise CF forthwith stating the reasons and ex-

pected duration of the delay. Notwithstanding the aforesaid, CF shall be entitled to deduct from the Contractor's credit balance or demand payment of a stipulated penalty of 2 % of the total contract price per working day or fraction thereof, however not more than a maximum of 20 % of the total price of the order regardless of whether the default is due to the Contractor's fault, and such penalty shall not be subject to mitigation by a judge. This shall not affect the right to raise additional claims for damages or the right of withdrawal from the contract (paragraph 8.4).

9.3. In case of default of the Contractor, and regardless of whether this is due to the Contractor's fault, CF reserves the right to immediate substitute performance at the Contractor's expense.

9.4. In case of default of delivery and after a reasonable grace period to be granted by CF having lapsed without delivery being made, CF shall be entitled at its election to either claim damages for nonperformance or to withdraw from the contract. In case a fixed-date purchase has been agreed upon, no grace period needs to be granted.

9.5. The Contractor may invoke failure on the part of CF to supply documents only if it has reminded CF of the obligation to supply such documents and has not received them within a reasonable period of time.

Force majeure and labor disputes shall relieve the Parties from the obligation of performance for the period of interruption and within the scope of its effects. The Parties are obliged to use reasonable efforts to provide the necessary information without delay and to adjust their obligations to the changed circumstances according to the principle of good faith.

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- 9.6. CF shall be released from the obligation to accept the ordered goods/services in their entirety or in part and may withdraw from the contract if and to the extent that, due to the delay caused by force majeure or labor disputes, the goods/services cannot be used any more by CF when taking into account commercial aspects.
- 9.7. In case of premature delivery, CF reserves the right to return consignments at the Contractor's expense. If goods are not returned after premature delivery, the goods shall be stored by CF or a warehouse keeper instructed by CF at the Contractor's risk. CF reserves the right to invoice any additional costs incurred in this respect, such as warehousing and insurance costs, and to make the respective payments at the due date agreed upon.
- 9.8. Part deliveries shall be permitted only if stipulated in the contract. In case of part shipments agreed upon, the remaining quantity shall be specified. Any additional costs incurred in this respect shall be borne by the Contractor.
- 10. Fault management and quality management**
- 10.1. In the event that CF detects any faulty or damaged parts in a consignment, CF will complain about the consignment by submitting an inspection report covering inter alia the type and scope of faults. As a rule, the goods complained about will be returned with a simultaneous request to make a replacement delivery without delay. In exceptional cases - taking into account all circumstances, including but not limited to costs, deadlines, and capacities - the following measures may be agreed: sorting out or re-work by the Contractor, acceptance with or without repair based on an exceptional release, downgrading for another use, disposal or scrapping.
- 10.2. Upon receipt of the inspection report (paragraph 9.1), the Contractor shall submit a report on the cause of faults as well as the corrective action taken (product, process, and QM System) to CF without delay. The same shall apply after having received evaluations of complaints and re-work, any other reports on faults in products, complaints by customers or corresponding feedback from the market.
- 10.3. The Contractor shall mark the goods delivered in such a way that they can be permanently recognized as the Contractor's products.
- 10.4. The Contractor shall perform adequate quality assurance in terms of type and scope according to the latest state of technology, and shall furnish proof thereof to CF upon request. The Contractor shall enter into an adequate quality assurance agreement with CF if considered necessary by CF.
- 11. Safety regulations**
- 11.1. The Contractor shall comply with the safety regulations and instructions of staff (in particular of the safety coordinator) on the premises of CF without any exception. In the course of activities on the premises of CF, the Contractor shall comply with the generally applicable safety regulations (laws, ordinances, standards, etc.) in order to rule out any harm or damage of whatever nature being caused to the staff and equipment of CF.
- 11.2. Smoking and use of fire and naked light are prohibited in the plants of CF. The Contractor shall strictly comply with these prohibitions and instruct its staff to this effect.
- 11.3. Work involving heat, such as welding, cutting, grinding, etc., shall be performed only after having obtained a permission slip for work involving the



danger of fire. The prescribed safety measures and period of validity shall be strictly complied with.

12. Guarantee, warranty, complaints

12.1. The Contractor warrants and guarantees that any and all goods supplied / services provided will be in accordance with the latest state of technology, the applicable legal provisions, and the rules and regulations of authorities, professional associations, and specialized associations. In the event that departure from any such regulations is required in any given case, the Contractor shall obtain the written consent of CF. This consent shall not limit the Contractor's warranty obligations. If the Contractor has any doubts with respect to the manner in which CF desires the contract to be performed, it shall inform CF in writing without delay.

12.2. The Contractor undertakes to use environmentally friendly products and processes in the delivery of goods and performance of services to the extent that this is commercially reasonable and technically feasible; this obligation shall also apply in respect of goods and ancillary services supplied and rendered by the Contractor's subcontractors and any third party. The Contractor shall be liable for the environmental compatibility of the products and packing materials supplied, as well as for any consequential damage caused by its failure to comply with the statutory disposal obligations. CF reserves the right to demand a certificate on the goods delivered and proof of the quality management system of the Contractor.

12.3. The Contractor will be notified of any defects in the goods/services forthwith after they have been detected in the course of proper business operations. The obligations to examine and/or complain arising for CF under sections 377 and 378 of the (Austrian) Commercial

Code ("UGB") are expressly excluded. Rather, CF shall be entitled to assert warranty claims for any defect occurring within the warranty period at any time. If any defects are complained about during the warranty period, it shall be assumed that they were already present upon delivery/performance.

The Contractor shall remove any defects, including the failure to achieve guaranteed data or the absence of any warranted characteristics in goods supplied/services provided, which have been complained about during the warranty period without delay after having been requested to do so, free of charge including any ancillary costs, at the election of CF by subsequent improvement or replacement of the defective parts / replacement delivery. In addition, upon occurrence of a defect, CF shall be free to immediately demand a reduction of the price, rescission of the contract, and/or damages pursuant to sec. 933a, sub-sec. 2 of the (Austrian) General Civil Code ("ABGB) in lieu of replacement or improvement of the equipment delivered. Any other claims for damages are expressly reserved, including claims for damages based on nonperformance.

12.4. In case of removal of defects by the Contractor, the warranty period shall restart for the entire delivery/service affected by the defect after acceptance of the improvement by CF.

12.5. If the Contractor fails to comply with its warranty obligation within a reasonable period fixed by CF, CF shall be entitled after a reasonable period which need not be fixed separately to remove the defects and/or damage itself or to have them removed by a third party at the Contractor's expense and risk - without prejudice to the Contractor's warranty obligation. In urgent cases CF may make subsequent improvements itself or have them made by a third party after prior agreement with the Contractor. In



particularly urgent cases, e.g. in order to avoid default or if the Contractor has failed to remove the defects in due time, CF shall be entitled to remove the defects or damage itself at the Contractor's expense without prior notification. Minor defects may be removed by CF without prior agreement and without affecting the warranty obligation of the Contractor. This shall also apply if there is a risk of exceptionally high loss or damage. In any case CF shall be entitled to demand reimbursement by the Contractor of all costs incurred in connection with removing defects.

- 12.6. The Contractor shall reimburse CF with respect to any costs incurred for subsequent inspection and sorting out of defective goods. This shall also apply if the defect is detected only after starting to use the goods. Costs of tests or inspections shall be reimbursed in any case if an inspection has shown that defects are present.
- 12.7. The warranty period shall be two years unless expressly agreed otherwise. It shall begin upon delivery of the object of delivery to CF or the third party named by CF at the receiving center or point of use prescribed by CF. The warranty period for devices, machines, plant, and equipment shall commence at the date of acceptance recorded in the written declaration of acceptance by CF. In the event that acceptance is delayed for reasons not to be attributed to the Contractor, the warranty period shall be two years from the date the object of delivery has been made available for acceptance. The warranty period for spare parts shall be two years from installation/putting into operation by CF and shall end four years after delivery at the latest.
- 12.8. Any running warranty period for goods delivered which cannot be put into operation or which have to be put out of operation or cause machine down time at

CF during the investigation and/or removal of a defect shall be extended by the period of interruption of operations. The warranty period for improved or new parts shall re-start upon completion of subsequent improvement or upon acceptance in case an acceptance has been agreed. Acceptance shall be requested in writing if applicable.

13. Damages

The Contractor shall be strictly liable vis-à-vis CF (shall indemnify and hold CF harmless) with respect to any non-compliance with its obligations, covenants, undertakings and warranties hereunder. The Contractor's liability shall cover any direct, indirect, specific, and accidental damage, consequential damage or loss incurred by CF including loss of profit, loss of corporate image, any loss incurred due to a product recall, as well as any loss based on a claim asserted by a third party against CF in connection with a product delivered or service provided hereunder.

14. Product liability

- 14.1. In the event that a claim is asserted against CF for violation of government safety regulations or domestic or foreign product liability laws or regulations due to any defects in a product to be attributed to goods or services provided by the Contractor, CF reserves the right to claim damages from the Contractor to the extent that the subject-matter loss is caused by products supplied by the Contractor. This loss shall also include the costs of a precautionary product recall.
- 14.2. Furthermore, the Contractor undertakes to take out adequate insurance against all risks incurred under contractual and product liability including the risk of recall and to submit the insurance policy to CF for inspection upon CF's request.

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15. Protective rights

- 15.1. The Contractor warrants and guarantees to CF that any and all deliveries are free from third-party intellectual property rights, and in particular that no patents, licenses or other protective rights of third parties will be infringed by the delivery and use of the products delivered.
- 15.2. The Contractor shall indemnify and hold CF and its customers harmless against any third-party claims based on infringement of protective rights, and shall bear all costs incurred by CF in this respect upon first request.
- 15.3. CF shall be entitled to obtain approval to use the delivered goods and services from the holder of any protective rights at the Contractor's expense.

16. Confidentiality and publicity

- 16.1. The Contractor undertakes to treat the information on CF becoming known to it in connection with an order as a business secret to the extent that such information is not generally known or lawfully known to it from another source. In particular, the Contractor undertakes to keep secret the details of the transactions entered into with CF - such as prices, type and number of devices/equipment delivered - vis-à-vis the competitors of CF. This obligation shall also be imposed on any subcontractors.
- 16.2. The Parties shall neither use the name of the other Party in any advertisement nor disclose the existence or the contents of this contract to third parties without prior written permission of the other Party. The obligations set forth in this clause shall survive the expiration or termination of the contract. The Contractor shall not make reference to the fact that it is doing business with CF in its advertising materials without having obtained the prior written consent of CF.

- 16.3. In the event that a Party becomes aware of the fact that any information subject to the obligation of secrecy has been obtained by an unauthorized third party or that any document subject to secrecy has been lost, it shall inform the other Party without delay.

17. Assignment

- 17.1. The Contractor shall not subcontract any order or any relevant parts of an order to a third party without the express written consent of CF.
- 17.2. Claims against CF shall not be assigned unless CF has granted its prior written consent.

18. Termination

Termination of the contract by the Parties shall be possible for the following material causes only and shall require written notice stating the said material causes:

- a) In case of breach of contract by a Party the other Party may terminate the contract after a grace period of two months counted from the date of notification of the infringing party has lapsed without the breach of contract being removed within the said period.
- b) To the extent permitted by law, a Party may terminate the contract in the event of a relevant deterioration of the financial standing of the other Party, in particular in the event of unsatisfied execution upon the assets of the other Party, in the event of the other Party having entered into an out-of-court arrangement with creditors or in the event of a declaration of suspension of payments – each of these events affecting the other Party itself or a personally liable partner of the other Party.
- c) In the event that a petition in bankruptcy against a Party is dismissed for lack of

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- estate to cover the costs of proceedings or such proceedings are discontinued for lack of estate, the other Party may terminate the contract with immediate effect.
- d) If after initiating insolvency proceedings against the assets of a Party the administrator in bankruptcy or trustee - or the Party itself if it is entitled to manage its own affairs - fails to provide within a reasonable period adequate security or advance payment for all fees and claims originating after the opening of insolvency proceedings, the other Party may terminate the contract with immediate effect.
- e) If in the course of insolvency proceedings against the assets of a Party the court orders to close down the business, the other Party may terminate the contract with immediate effect.
- 18.1. If a Party becomes insolvent or over-indebted within the meaning of sections 66 and 67 of the (Austrian) Insolvency Code ("*Insolvenzordnung*") or a comparable provision under the laws of another country, the affected Party shall inform the other Party that this situation has occurred forthwith; in any case, the other Party shall be informed before filing a petition in bankruptcy.
- 18.2. In case of contracts with contractors having their registered office (seat) in a country of the EURO zone, CF may terminate the contract with immediate effect if the country where the contractor has its registered office leaves the EURO zone.
- 18.3. Upon receipt of the notice of termination, the Contractor shall discontinue manufacturing the products and submit a written status report on all products to CF. CF will state which products shall be delivered and which products shall be destroyed at the expense of CF. No charge shall be payable for the cancellation of orders for products which have not yet been manufactured.
- 18.4. In the event that the Contractor is not in a position to supply the requested quantity of ordered products due to Force Majeure, both Parties may exonerate themselves from their obligations with respect to the affected products by notifying the other Party. As soon as the Contractor is again in a position to supply the requested quantity of products it shall inform CF of this situation forthwith, and the Parties will mutually agree the date of re-starting deliveries and materials purchases. However, if any such interruption continues for more than three months without the Contractor being in a position to supply the products in sufficient quantities, CF shall be free to terminate the entire contract.

19. Final provisions

- 19.1. Unless otherwise explicitly agreed upon, the place of performance of the delivery obligation shall be the shipping address or point of use specified by CF.
- 19.2. The contract including this provision of contract shall not be changed, modified, replaced or annulled orally but only by written notice which shall be signed by the Party against which such a change, modification, contracting out, replacement or termination may be enforced.
- 19.3. Neither an explicit waiver nor a tacit waiver by any Party of any provision hereof nor a breach of contract nor default on the part of a Party shall constitute a permanent waiver of this provision or a waiver of any other provision(s) hereof, and any such waiver by a Party shall not prevent this Party from enforcing any and all provisions of the contract or from taking any action based on any future breach of contract by the other Party under the provisions hereof.

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19.4. In the event that any provision of this contract is found to be invalid or unenforceable by a court of competent jurisdiction or by a competent administrative authority, this shall not affect the validity and enforceability of the remaining provisions hereof, and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect. The Parties shall attempt to replace any invalid or unenforceable provision with a valid and enforceable provision coming as close as possible to the economic, legal and commercial objectives of the invalid or unenforceable provision.

20. Applicable law and place of jurisdiction

The contract shall be subject to Austrian substantive law, excluding its conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.

With respect to contracts where both parties have their registered office in a member state of the European Union or European Economic Area, the Contractor and CF agree that any suits and proceedings arising in connection with the contract and/or with the contractual relationship between the Parties hereunder shall be subject to the exclusive jurisdiction of the courts of law having subject-matter jurisdiction in the first district of Vienna, Austria.

Notwithstanding the aforesaid, CF may initiate legal proceedings against the Contractor in any other court in any country, state or territory in which the Contractor has a business establishment or to which the products are delivered or where the products are sold or located, and the Contractor recognizes the jurisdiction of any such court already at this point and waives any objection in this context.

21. Arbitration

With respect to contracts where either the Contractor or a CF company or both parties have their registered office in a country which is neither a member state of the EU nor of the European Economic Area, the following shall apply: Unless otherwise agreed upon in writing, any disputes arising out of or in connection with this contract or with respect to its validity or invalidity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Austrian Federal Economic Chamber (Vienna Rules) by one or more arbitrators appointed in accordance with these rules. The place of arbitration shall be Vienna 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.