STANDARD TERMS AND CONDITIONS OF PURCHASE
("these Terms")
1. Interpretation and Definitions
In these Terms:
"the Contract" shall mean the contract between Pfizer and the Seller consisting of the Purchase Order, these Terms and any other terms specified or referred to in the Purchase Order. The parties agree that any such other terms specified or referred to in the Purchase Order shall take precedence over these Terms in the event of a conflict.
"Goods" and "Services" respectively mean all goods and all services (as applicable) covered by the Purchase Order and/or any part(s) thereof.
“Government Official” includes any NHS healthcare professional, elected or appointed government official and any officer, employee or person acting for or on behalf of any of the following: local or central government; a public body (including international bodies); and a political party or candidate for public office (including election candidates, party members and administrative staff employed by political parties).
"the Purchase Order" means Pfizer's relevant order for the supply of Goods and/or Services by the Seller.
"the Seller" means the supplier named on the Purchase Order.
Unless expressly agreed in writing between the parties, no printed standard terms which may appear on any order confirmation, invoice or delivery note relating to the Goods and/or Services shall be of any effect.
2. Delivery
The Goods and Services shall be delivered and performed on the date(s) specified in the Contract. If the Goods and/or the Services are not so delivered or performed on or before the due date, or if it becomes clear the Goods and/or the Services cannot be delivered on or before that date, Pfizer may terminate the Contract in whole or in part without prejudice to any of its other rights under the Contract.
Unless otherwise specified in the Contract, the Seller shall pay all shipping, packing, crating and cartage charges associated with the delivery of the Goods and Services.
Pfizer shall, on reasonable notice, allow the Seller such access to its premises and shall provide such facilities as the Seller may reasonably require in order to perform the Services. The Seller shall ensure that, to the extent the Services are to be performed at Pfizer's premises, the Seller's employees and representatives observe all health and safety, security and other requirements which Pfizer may reasonably impose. The cost of any necessary safety induction training will be borne by the Seller.
3. Quality and Inspection
3.1 The Seller warrants that:
(i) the Goods and Services shall be free from liens and defects, shall be of satisfactory quality, shall conform to any specifications, drawings, samples or other descriptions submitted to or specified by Pfizer and shall be suitable for Pfizer's intended purposes to the extent that such purposes are known or should reasonably be known to the Seller;
(ii) it will carry out the Services and provision of the Goods promptly, with reasonable skill and care and in accordance with all applicable laws, regulations and with such requirements as Pfizer may from time to time
reasonably impose;
(iii) provision of the Goods and/or Services will not infringe the rights of any
third party.
3.2 All Goods supplied hereunder are to be shipped subject to Pfizer’s
examination and right of rejection for a reasonable time after delivery,
notwithstanding prior payment, if not as warranted herein, or if not in
conformity with Pfizer’s specifications or, if no specifications are given by
Pfizer, with standard specifications.
4. Passing of Property and Risk
The property and risk in Goods shall pass to Pfizer when the Goods are
delivered to it.
5. Contract Price and Payment
Unless otherwise expressly agreed in writing, the price for the Goods and
Services stated in the Contract shall be fixed and shall include all tax costs
(except VAT), expenses and charges (including delivery and insurance)
chargeable in respect of the Goods and/or Services. Unless otherwise agreed
in writing, payment for the Goods and/or Services shall occur within forty five
(45) calendar days of receipt of a correct and properly drawn VAT invoice by
Pfizer.
6. Termination/ Rejection
6.1 Pfizer may postpone or cancel delivery and/or performance by written
notice given to the Seller at any time before delivery and/or performance, and
Pfizer shall reasonably reimburse Seller for all costs and expenses
reasonably and directly incurred as a result of such postponement or
cancellation that cannot be mitigated
6.2 If the Seller defaults in any of its obligations under the Contract, becomes
insolvent, has a receiver appointed over its business or is compulsorily or
voluntarily wound up or if Pfizer bona fide believes that any of such events
may occur Pfizer shall be entitled, at its discretion without prejudice to any
other remedy, to suspend performance of or terminate the Contract. In the
event of termination Pfizer may keep possession of any Goods and may enter
any premises of the Sellerto recover Goods and/or any other items belonging
to Pfizer.
6.3 Without prejudice to any other remedy, if the Seller breaches any of the
terms of the Contract, Pfizer may, at its election:
(i) Reject and return the Goods in whole or in part at the Seller's cost within
a reasonable time after delivery notwithstanding prior payment (risk in the
Goods shall revert to the Seller upon such rejection);
(ii) Permit the Seller to repair or reinstate the Goods or re-perform the
Services so that they conform with the Contract;
(iii) Carry out or have carried out at the Seller's expense such work as is
necessary to conform the Goods and/or Services to the Contract
6.4 In view of the damage that may be caused to Pfizer’s business by
association with any unethical behaviour, Pfizer shall be entitled to end the
Contract immediately by written notice to the Seller if clause 12 is breached
or if Pfizer discovers that improper payments are being or have been made to
any Government Official by or on behalf of the Seller (whether in connection
with the Contract or not).
6.5 If Pfizer terminates the Contract the Seller shall promptly return to Pfizer
all payments already made for the rejected Goods and/or Services. Where on
termination Pfizer elects to keep or take any Goods, it shall pay an
appropriate pro rata amount reflecting the value of the Goods or Services
taking in to account the breach, but otherwise no compensation shall be
payable to the Seller on termination or rejection
7. Confidentiality
The Seller will not, without Pfizer's prior written consent, disclose to or use to
the advantage (direct or indirect) of any company, firm, body or person(s)
other than Pfizer, any information acquired in the course of the Contract
concerning Pfizer's personnel, research activities, products or other business
operations.
8. Assignment and Sub Contracting
The Seller shall not sub-contract or assign any of its obligations or
rights under the Contract without Pfizer's prior written consent.
9. Free Issue Materials
If Pfizer for the purposes of the Contract issues materials free of charge to the
Seller, such materials shall be and remain the property of Pfizer. The Seller
shall maintain the materials in good order and condition subject to fair wear
and tear. The Seller shall use such materials solely in connection with the
Contract and any surplus materials shall be disposed of or returned as Pfizer
directs. Damage or waste of materials arising from bad workmanship or
negligence of the Seller shall be at the Seller's expense.
10. Inventions
Any invention or discovery (whether patentable or not), copyright, design
right or confidential know-how ("IPR") conceived, produced or reduced to
practice by the Seller in carrying out its duties under the Contract which
relates to Pfizer's business or is based on information or materials provided
by Pfizer shall be Pfizer's exclusive property.
No royalty or other payment will be due from Pfizer in respect of such IPR
and the Seller will at Pfizer's request and expense, assign to Pfizer its title to
any such IPR and to any patent applications made thereon, and will execute
all instruments necessary for the filing and prosecution of patent applications
in any country or any division, continuation or partial continuation thereof or
for any re-issue of any patent issued on any such application.
11. Data Protection
The Seller shall ensure that it, its employees, agents and permitted subcontractors
shall observe the requirements of the applicable Laws in Kenya.
If the Seller is required under the Contract to process on Pfizer's behalf any
personal data relating to Pfizer's customers or any other party, the Seller will
only do so in accordance with Pfizer's instructions and shall take all
appropriate technical and organisational measures to prevent unauthorised
or unlawful processing or accidental loss or destruction of, or damage to,
such data.
12.1 The Seller represents, warrants and undertakes to Pfizer that:
(i) it has the full power, right and authority to enter and perform the Contract
and that it will comply with all relevant laws, regulations, codes of practice,
operating procedures and guidelines and will obtain and maintain all
covenants, licences, approvals and permissions necessary to fulfil its
obligations under the Contract; and
(ii) it will not (directly or indirectly) offer, pay or authorise the offer/ payment
of any money or the giving of anything of value or do any other thing in order
to exert improper influence on any Government Official; and
(iii) it has not (directly or indirectly) in the five (5) years immediately
preceding the Contract offered, paid or authorised the offer/payment of any
money or the giving of anything of value or the doing of anything in order to
exert improper influence on any Government Official; and
(iv) all information provided by it in the Third Party Entity Anti-Corruption Due
Diligence Questionnaire, is complete and accurate.
12.2 The Seller will be deemed to have repeated the above representations,
warranties and undertakings if, during the term of the Contract, it comes
under the control of a Government Official or it becomes aware that any
individual with significant responsibility for performing the Seller’s obligations
hereunder (or a close relative of such an individual), has become a
Government Official.
12.3 During the term of the Contract and for a period of three (3) years
after the final payment from Pfizer has been made under it, the Seller shall
promptly arrange for Pfizer and its auditors to have such access to records
relating to the arrangements covered by this Contract as they may reasonably
require in order to verify the propriety of any payments (including
disbursements, expenses or charges) proposed or made to or by the Seller.
13. General
Pfizer shall not under any circumstances be liable for lost profits or any
indirect or consequential loss of the Seller.
The failure of a party to enforce any provision of the Contract shall not
constitute a waiver nor affect its right to enforce such and every other
provision.
The Seller shall not without Pfizer's written consent advertise, publicly
announce or provide to any other party information relating to the existence of
the Contract or use Pfizer's name in any format for any promotion, publicity,
marketing or advertising purpose.
No variation or alteration of any kind to the Contract can be made except in
writing duly signed on behalf of each party.
A person who is not a party to the Contract shall not have any rights under or
in connection with it.
The Contract shall be governed by and construed in accordance with Kenyan Laws