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PURCHASE ORDERS

PO [INSERT PO NUMBER] January 4, 2013

«PA_NAME_»

CONTRACTUAL PROVISIONS FOR PURCHASE ORDERS FOR DAP SHIPMENTS (Incoterms 2010)

**[INSERT NAME OF SUPPLIER] [INSERT FULL ADDRESS] Telephone: Email:
FOR THE PURCHASE OF ANTI-TUBERCULOSIS (TB)
MEDICINES**

For «PA_NAME_»

First name Last name, Team Leader

For [INSERT NAME OF SUPPLIER]:

[INSERT NAME OF AUTHORISED SIGNATORY]/[INSERT TITLE]

Queries to: First name Last name, email address

ITB/Reference: «ITB_REFERENCE_PA_NAME__GDF_YEAR»

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GENERAL PROVISIONS

1 PRE SHIPMENT INSPECTION

1.1 This requirement is subject to a pre shipment inspection, which will be conducted by [INSERT NAME AND CONTACT DETAILS OF INSPECTION AGENCY]. The inspection agent shall receive a copy of this Purchase Order, and the Contractor must give them a minimum of 5 working days written notice of the date when the goods will be available for inspection, with a copy to «PA_NAME_».

1.2 Failure to inform «PA_NAME_» in a timely manner will result in delays in delivery, and the Contractor will be held responsible for such delays and liable for payment of liquidated damages in accordance with the terms stipulated in this Purchase Order.

1.3 No shipment shall take place unless and until the Contractor has received an inspection certificate from the inspection agency, confirming that the goods are accepted for shipment. Only «PA_NAME_» will communicate the same to the Contractor. **Failure to adhere to this requirement will result in rejection of the consignment, and imposition of liquidated damages.**

1.4 In the event that the consignment is rejected, the Contractor will be liable to pay the costs of all further testing and inspections required until it is accepted. These costs will be deducted from the Contractor's invoice.

2 BATCH TESTING

2.1 Purchase orders may be subject to batch sampling and testing by a pre-qualified independent laboratory [INSERT NAME AND CONTACT DETAILS OF INSPECTION AGENCY].

3 CONSIGNEE AND FORWARDING INSTRUCTIONS

3.1 Consignee Details: Addresses and contact details are annexed to the Purchase Order.

3.2 The Contractor shall notify «PA_NAME_» and GDF's representative immediately in writing when:

a) Shipping details are known/confirmed, and at least 7 days prior to actual delivery; b) There is any delay in respect of the agreed delivery date.

For the purpose of this purchase order, contact details of «PA_NAME_» and GDF's representative are:

GDF's representative:

Erulappa Nadar National Consultant (Procurement and Drug Facility)

Email: thanaraje@who.int

3.3 The consignment shall be sent via reliable road transportation, and shall be delivered from 9.00am to 5pm only. In the event of any deviation to transportation, this shall be communicated in advance and in writing to «PA_NAME_» and GDF's representative.

Partial deliveries are not acceptable unless clearly agreed to in writing by «PA_NAME_» and GDF and as stated in this Purchase Order.

4 INVOICING INSTRUCTIONS AND PAYMENT

4.1 The Contractor shall submit invoices to [INSERT NAME, ADDRESS, EMAIL AND TELEPHONE DETAILS OF GDF PROCUREMENT AGENT] for all Goods ordered and delivered Goods in the quantities invoiced, namely:

a) Itemised invoice (original and 1 copy); b) Packing list (original and 1 copy); c) Where sampling, batch testing and/or pre shipment inspection has been conducted, a copy of the testing and pre shipment inspection certificate; d) For DAP deliveries, clean on board airway bills/bills of lading or other usual shipment documentation (3 originals). e) Delivery note signed by the consignee

4.2 Unless otherwise authorized by «PA_NAME_», a separate invoice must be submitted in respect of each Purchase Order issued and the Contractor shall ensure that all invoices:

a) Are submitted in English; b) Are payable in **USD** c) Refer to the Purchase Order number; d) Provide clear and specific details of the Goods that have been provided pursuant to a specified Purchase Order number; e) Clearly state the deliveries that they cover.

4.3 Provided that the Contractor has performed its obligations pursuant to this Purchase Order and to the satisfaction of «PA_NAME_» and GDF, and has submitted to «PA_NAME_» invoices and other supporting documentation required, «PA_NAME_» shall, unless otherwise specified in the Invitation to Bid or this Purchase Orders, make payment within 45 days receipt of the payment documentation specified in 4.1.

4.4 Payments for the Goods shall be deposited into the Contractors bank account as specified in the invoice(s).

4.5 «PA_NAME_» shall not pay any charge for late payment unless expressly agreed to in writing.

5 PACKING LIST

5.1 All markings must be reflected in the packing list to be completed at time of requesting inspection. The packing list shall also indicate the manufacturing batch number and cross-reference to the carton numbers. Packing lists are to be issued in accordance with the Purchase Order.

6 TAX EXEMPTION CERTIFICATE

6.1 The WHO/GDF will provide the Customs Duty Exemption Certificate/Excise Duty Exemption Certificate to the contractor for the products along with the Purchase Order. The contractor shall specifically indicate in this regard the exact details that such exemptions are needed for the finished Pharmaceutical Products and/or for the API that might be needed for manufacture of such finished Pharmaceutical Products proposed to be covered under such purchase orders.

CONTRACTUAL PROVISIONS

1 CONTRACTOR'S OBLIGATIONS

1.1 The Contractor shall provide the goods specified in this Purchase Order, to «PA_NAME_» in accordance with provisions of «PA_NAME_»/GDF Invitation to Bid, the Contractor's offer and the provisions of this Purchase Order.

1.2 The Contractor acknowledges that the goods shall conform to the specifications and the prices specified in this Purchase Order.

1.3 The Contractor shall acknowledge receipt of this Purchase Order by signing and returning the Purchase Order acknowledgement within 5 working days of its receipt. The Purchase Order acknowledgment also confirms the date the goods will be ready for pre-shipment inspection.

1.4 In the event that the Contractor considers it cannot substantially comply with the terms of this Purchase Order -because of limited quantities of stock or inability to meet the specifications, before proceeding to make a partial delivery of the goods, the Contractor shall seek further written instructions from «PA_NAME_».

1.5 The Contractor shall accept changes to or cancellations of Purchase Orders provided that reasonable written notice is given by «PA_NAME_» in the circumstances, and no production costs have been incurred by the Contractor.

1.6 The Contractor shall cover all costs related to the return and replacement of goods including any shortages notified on delivery and following receipt and inspection, if such goods are not accepted by «PA_NAME_» due to poor quality or workmanship/non-compliance with technical specifications. Goods returned to the Contractor shall be recorded as credits «PA_NAME_» and replacements shall be delivered promptly.

1.7 The Contractor undertakes to provide to «PA_NAME_» information, upon request, regarding the date of receipt of this Purchase Order, as well as detailed delivery status, costs to be charged and payments made by «PA_NAME_» or pending.

1.8 The Contractor shall be responsible for providing all the necessary personnel, equipment, materials and supplies and for making all necessary arrangements for the performance of its obligations under this Purchase Order.

1.9 The Contractor acknowledges that time shall be of the essence in performance of the Purchase Order, and it shall use its best endeavours to abide by the delivery period(s) as stated herein, provided however, that where the Contractor does not meet the delivery period(s) «PA_NAME_» shall be entitled to give the Contractor notice of its intention to cancel the Purchase Order unless goods are delivered within a reasonable and specified time frame.

2 DELIVERY

2.1 The Contractor shall deliver the goods DAP (INCOTERMS 2010) to the consignees indicated in the annex to this Purchase Order, in accordance with the quantities and other instructions specified herein. All risks of loss or damage to the goods shall remain with the Contractor until physical delivery takes place in accordance with the Purchase Order.

2.2 Deliveries shall be made as per instructions in «PA_NAME_» Purchase Orders. The Contractor shall indicate the guaranteed minimum lead time for delivery for each item offered (subject to quantities), from receipt of the order to delivery to consignee.

2.3 At the time of pre shipment inspection and in the case of orders placed DAP, the Contractor is required to contact the consignees requesting issuance of the appropriate Road Permit. In this application the Contractors are required to indicate the exact quantity, nomenclature and packaging (i.e. number of 20'containers, number and sizes of crates, number and tonnage of trucks etc.) of the products in the outbound consignments. Each Road Permit is only valid for one truck.

2.4 Even though a Road Permit may have been received, it is necessary, prior to final dispatch that the Contractor gives the consignees adequate notice at the earliest and a maximum notice of 15 days. Consignees must confirm their readiness to «PA_NAME_» to accept the goods in their stores before the Contractor may dispatch the goods.

2.5 In case of orders placed DAP, on delivery of the goods, the competent authority of the consignees will sign a Delivery Note prepared by the Contractor and presented by his driver (lorry receipt).

2.5 The Contractor acknowledges that any inspection and/or verification of the goods, by the «PA_NAME_» , does not involve the operational and functional status of the goods.

3 SHIPPING INSTRUCTIONS DAP

3.1 The Contractor shall, in good time to meet the delivery date(s) specified in the Purchase Order, arrange delivery by the most direct, economical and advantageous route to the delivery destination.

3.2 The delivery date is understood to be the date of delivery to the destination. Any impediment to delivery must be advised in writing to «PA_NAME_» as soon as the impediment is known and prior to the delivery date.

3.3The Contractor shall notify «PA_NAME_» of the full shipping details and a copy of the packing list as soon as these are available.

4 PACKING AND PALLETIZATION

4.1 The Contractor shall ensure that the goods are packed and labeled in accordance with the instructions provided in the RNTCP Technical Specifications, here as Annex A, and as outlined in the ITB.

4.2 The Contractor warrants that the cost for such packing is included in the cost offered for the Goods.

5 DOCUMENTATION AND IDENTIFICATION

5.1 The Contractor shall, at its own risk and expense, obtain any export license or other official authorization and carry out all customs formalities necessary for the exportation of the goods. All documents should clearly indicate the GDF reference number and «PA_NAME_» Purchase Order number and destination.

5.2 The following must be clearly marked in compliance with the RNTCP Technical Specifications, here as Annex A, and your ERP/WHO PQ/SRA approval:

- a) All cases, outer cartons;
- b) Inner boxes;
- c) Blister sheets; d) Vials/ampoules.

5.3 The package leaflet must conform with the following:

- a) The product information required by WHO PQP, SRA and/or ERP b) Languages: English

5.4 The markings shall be in text format.

5.5 Case identification as requested on the order must be mentioned on all invoices.

5.6 All markings must be reflected in the packing list to be completed at time of shipment. The packing list shall indicate the manufacturing batch number and cross-reference to the carton numbers. One copy of the packing list must be included with the shipment and another copy shall accompany the shipping documents.

5.7 Goods that do not adhere to packaging, labeling and marking requirements outlined in Technical specs provided for each product with the ITB shall be subject to rejection. In case of any anticipated deviations, please inform GDF/IDA in advance for approvals and not after the goods are presented for PSI.

6 WARRANTIES

6.1 The Contractor shall assign «PA_NAME_» with all manufacturers' warranties, including but not limited to the warranty that the goods shall be free of defects.

6.2 The Contractor warrants to «PA_NAME_» that:

- a) The goods shall be new and factory packed, shall conform to the Purchase Order, and shall be fit for the particular purpose(s) for which they are intended; b) The goods are free from defects in workmanship and materials; c) The goods are contained or packaged in a manner adequate to protect them; d) It has not and shall not enter into any agreement or arrangement that restrains or restricts «PA_NAME_»'s or the ultimate recipient's rights to use, sell, dispose of or otherwise deal with any item in this Purchase Order; e) It has the personnel, experience, qualifications, facilities, financial resources and all other skills and resources to perform its obligations under this Purchase Order; f) Breach of any of these warranties is a breach of a fundamental term of the Purchase Order.

6.3 The warranty period shall commence after «PA_NAME_»'s acceptance of a delivery made by the Contractor under this Purchase Order, and shall terminate 12 months after delivery has been made, or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty required by the Purchase Order.

6.4 If, during the warranty period, the goods or any part thereof purchased under this Purchase Order are found by «PA_NAME_» to be defective or found not to conform with the Purchase Order, «PA_NAME_» may so notify the Contractor in writing and in this event, the Contractor shall, promptly and at its own expense, correct the defect(s) and non-conformity(ies). If defect(s) and non-conformity(ies) cannot be corrected, the Contractor shall, at «PA_NAME_»'s discretion, either replace the defective materials or reimburse «PA_NAME_» promptly.

7 RECALLS

7.1 The Contractor acknowledges that in the event that goods are recalled either by the National Regulatory Authority (NRA) of the manufacturing country, the NRA of the recipient country or the Contractor, after the Clean Report of Findings (CRF) is issued, the bidder shall notify «PA_NAME_» and GDF within 14 calendar days. The Contractor has to provide full details of the reason for the recall and promptly replace, at its own cost, the items with goods that fully meet the requirements of the technical specifications and original purchase orders against which they were supplied, and arrange for collection or destruction of any defective goods.

8 PURCHASE ORDER AMENDMENTS

8.1 No modification of, or change in this Purchase Order or waiver of any of its provisions or additional contractual relationship with the Contractor shall be valid and enforceable against «PA_NAME_» and GDF unless affected by an amendment to this Purchase Order signed by the Contractor and the «PA_NAME_».

9 RIGHTS OF «PA_NAME_» /GDF

9.1 In case of failure by the Contractor to perform under the terms and conditions of this Purchase Order, «PA_NAME_» may, after giving the Contractor reasonable notice to perform and without prejudice to any other rights or remedies, exercise one or more of the following rights:

- a) Procure all or part of the goods from other sources, in which event «PA_NAME_» may hold the Contractor responsible for any excess cost occasioned thereby. In exercising such rights «PA_NAME_» shall mitigate its damages in good faith;
- b) Refuse to accept delivery of all or part of the goods; c) Terminate the Purchase Order; d) For late delivery of goods or for items which do not meet «PA_NAME_»'s specifications and are therefore rejected by «PA_NAME_», claim liquidated damages from the Contractor and deduct 0.2% of the value of the goods pursuant to a Purchase Order per additional day of delay, up to a maximum of 10% of the value of the Purchase Order. The payment or deduction of such liquidated damages, shall not relieve the Contractor from any of its other obligations or liabilities pursuant to this Purchase Order.

10 TERMINATION OF PURCHASE ORDER

10.1 In the event of a breach by one of the Parties, of a provision or provisions of the Purchase Order, the other party may for valid cause, terminate the Purchase Order upon reasonable written notice to the party in default, stating the reason for the termination.

10.2 In the event of a termination of this Purchase Order:

- a) The Contractor shall take immediate steps to cease provision of goods in a prompt and orderly manner and shall not undertake any forward commitments from the date of the termination notice;
- b) The Contractor acknowledges that «PA_NAME_» shall only pay the Contractor for goods satisfactorily provided in accordance with the Purchase, to the date of the termination notice.

11 INDEMNITY

11.1 The Contractor shall indemnify and hold harmless «PA_NAME_», WHO/GDF, Institutions such as but not limited to UNITAID, the Global Fund, and other donors of resources being used to finance and provide the Products, for (i) any third party product liability claim against any Product supplied, (ii) any defects in any Product supplied; or (iii) any non-compliance by the Contractor with any technical requirements applicable to any product supplied. Upon request by «PA_NAME_»/GDF provide evidence of insurance covering the manufacturer's liability.

12 CHILD LABOUR

12.1 The Contractor represents and warrants that neither it, nor any of its affiliates, is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be harmful to the child's health or physical, mental, spiritual, moral or social development.

13 MINES

13.1 The Contractor represents and warrants that neither it nor any of its affiliates is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of mines. The term "mines" means those devices defined in Paragraphs 1,4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.

14 NOTICES

14.1 Any notice to be given to the Parties, shall be sent in writing to:

[INSERT GDF PROCUREMENT AGENT CONTACT DETAILS, EMAIL AND PHONE NUMBER]

in the case of «PA_NAME_», or

[INSERT CONTRACTORS CONTACT DETAILS, EMAIL AND PHONE NUMBER]

in the case of the Contractor, or to such other addresses as the Parties may provide in writing from time to time. Notices shall be effective when received.

14.2 All notices and other communications under this Purchase Order shall be in writing in the English language and shall be delivered either by: (i) personal delivery against signed receipt; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; or (iv) confirmed facsimile or e-mail transmission, addressed to the Party for whom intended at the address shown above.

15 SEVERANCE

15.1 In the event that any provision of this Purchase Order shall be declared by any competent authority to be void or unenforceable by reason of any provision of an applicable law, it shall be deleted and the remaining provisions of the Purchase Order shall continue in full force and effect. The Parties shall agree to replace the invalid provision by a provision that ensures the technical and/or commercial success intended by the Parties in a suitable manner.

16 ADVERTISEMENT

16.1 The Contractor agrees not to make any claims written, spoken or otherwise that misrepresent the status of any of their anti-TB products with respect to the WHO Prequalification Program. Where a Contractor's product is not pre-qualified under this Program and is contracted for supply by «PA_NAME_» on behalf of GDF according to the GDF's Quality Assurance Policy and Procedures and subject to the terms and conditions of this Agreement, the Contractor shall not make any claim as to that product having been pre-qualified by WHO. Only those products listed on the WHO Prequalification Program website under the section: Manufacturers & Vendors whose Tuberculosis medicines have been found acceptable, in principle, for procurement by UN Agencies can be considered WHO Pre-qualified and claimed as such by the Contractor of the product which claim is attributed.

16.2 The WHO Prequalification program may at any time choose to inspect the Contractors' manufacturing site. The site inspections shall be in accordance with the rules and regulations of the WHO Prequalification program.

17 GENERAL TERMS AND CONDITIONS

17.1 The «PA_NAME_» General Terms and Conditions attached shall apply to this Purchase Order. In the case of any inconsistencies, the following order of precedence shall prevail:

- a) The Invitation to Bid
- b) This Purchase order
- c) «PA_NAME_» General Terms and Conditions.

18 ORIGINALS

The present Agreement is drawn up in two originals. «PA_NAME_» and the Contractor will each receive one original.