

About this Guide

- This Guide is an overview of some key contracting structures typically used in the Supply Chain
- For illustration, this Guide takes the perspective of a "Principal" entity – typically a brand owning driving force behind the product in question
- This Guide outlines two categories of relationship:
 - "Downstream": supply chain by which products reach their final market
 - "Group Purchasing": ways in which multi-entity groups make purchases
- Although, for illustration, this Guide refers to "products" the basic principles it outlines are equally applicable to any supply chain whether deals with any tangible or intangible product or service
- This Guide outlines the key features of each relationship and the key issues those relationships typically raise
- This Guide does not deal with direct or indirect tax or transfer pricing issues [[link](#)]

Distributor

Agent

Commissionaire

Franchisee

Buy/Sell

Buy For

Licence

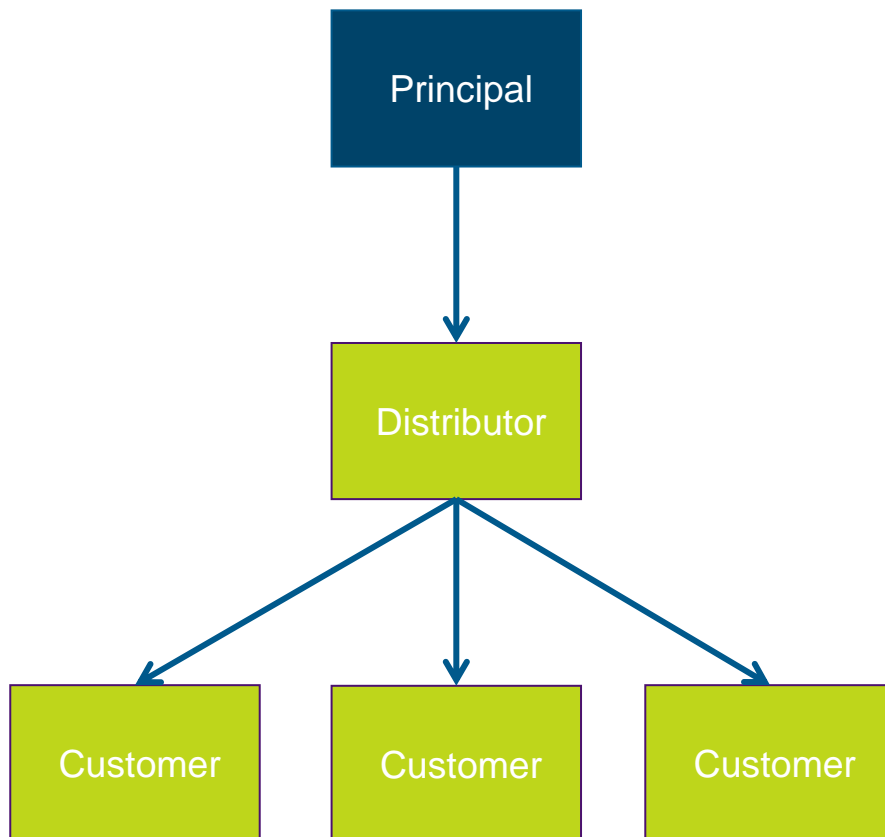
Binding
Framework

Negotiating

Advisory

Downstream Supply Chain Structures

Distributor



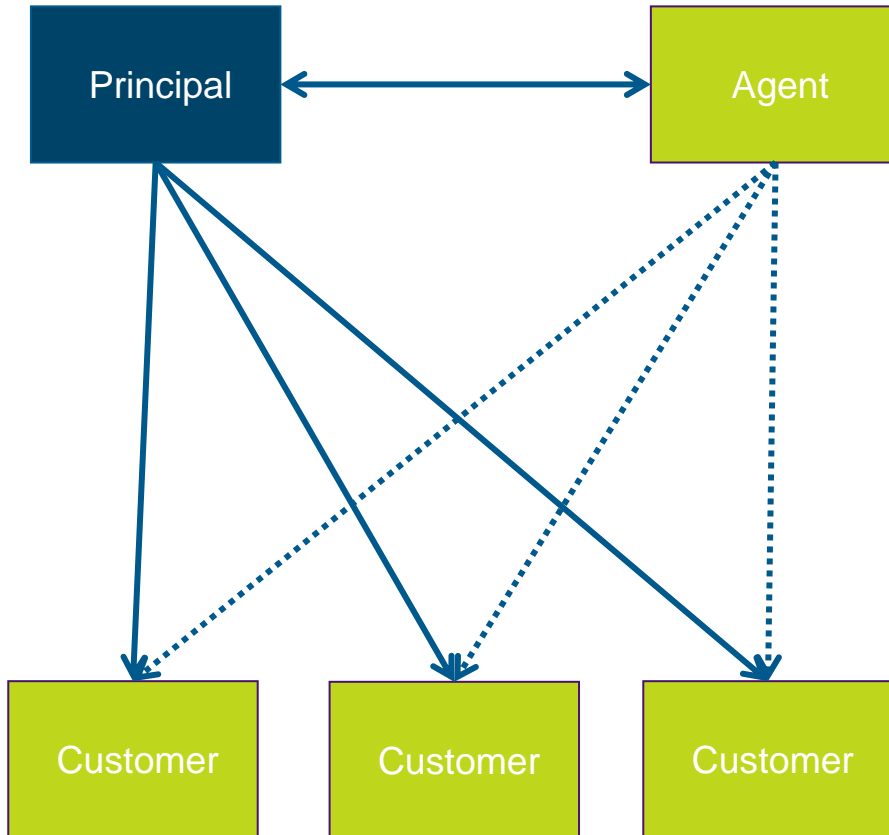
Key Features

- Distributor purchases product from Principal and resells to Customers
- Distributor takes title to product
- Distributor determines price/other terms of sale to Customers (nb restrictions on resale prices may offend competition law)
- Distributor's remuneration is margin between price of purchase from Principal and price of sale to Customer
- Distributor is legal provider of product to Customers so subject to associated licences/regulatory obligations
- Principal has no direct rights against Customers
- Customer has no contractual rights vs Principal – may have non-contractual rights (e.g. if product is dangerous)

Key Issues

- How much risk should Distributor assume; to what extent will risks be backed-off under contract with Principal?
- Does Distributor give or receive exclusivity commitments to/from Principal and does this comply with competition law?
- Will Distributor take possession of product or merely act as a conduit for sale?
- Are protections required against risk of Distributor insolvency?
- Will Distributor take more than "flash" title to Product (i.e. taking title momentarily before passing title to Customer)?

Agent



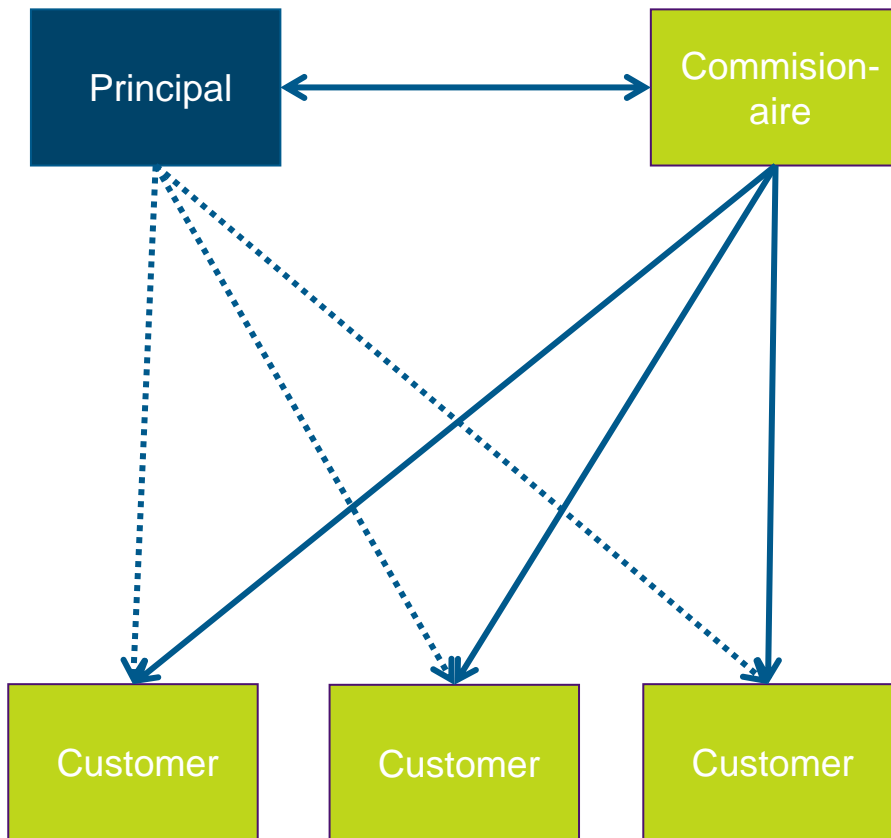
Key Features

- Agent is authorised by Principal to sell product to Customers on behalf of the Agent
- Agent does not take title to product
- Principal not Agent determines price/other terms of sale to Customers (n.b. Principal can authorise Agent to negotiate)
- Agent's remuneration is commission paid by Principal
- Principal is legal provider of product to Customers so subject to associated licences/regulatory obligations
- Agent's regulatory obligations limited to any specific rules applicable to intermediaries
- Principal has no direct rights against, and liabilities to, Customers

Key Issues

- Will Agent act in own name or that of Principal (n.b. if agency not disclosed to Customers, Customers have rights vs Agent)
- What is scope of Agent's authority; should it have any authority to negotiate terms and/or select Customers without reference to Principal?
- Does Agent give or receive exclusivity commitments to/from the Principal and does this comply with competition law?
- Do particular rules protecting the positions of agents and/or principals apply in the relevant circumstances?

Commissionaire



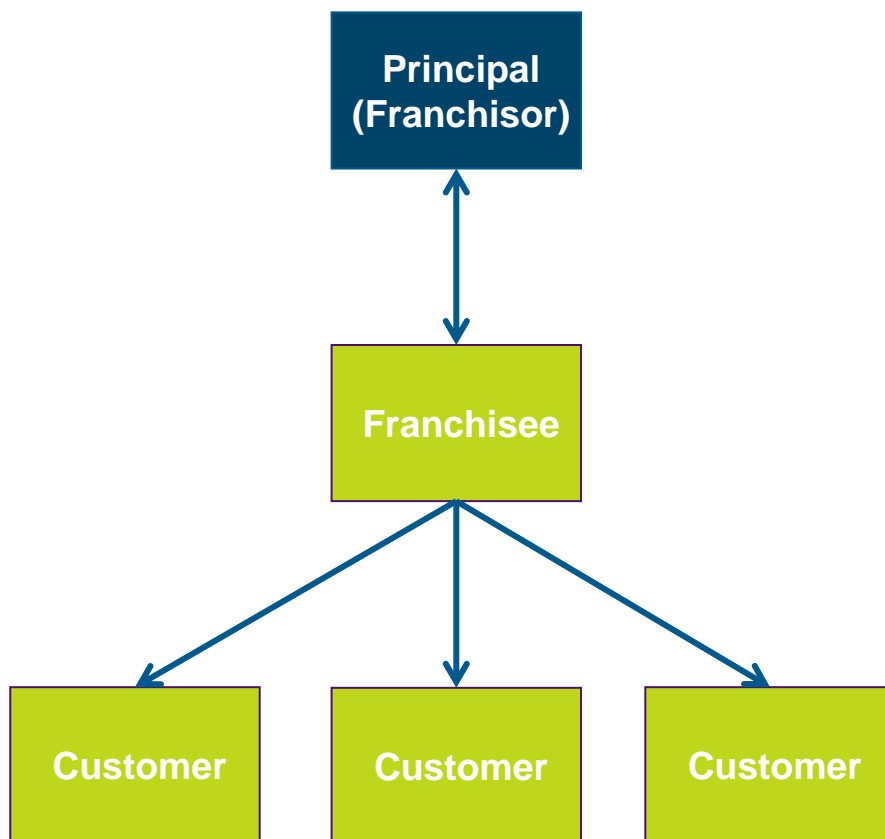
Key Features

- Commissionaire is authorised by Principal to sell product to Customers
- Commissionaire does not take title to product
- Principal not Commissionaire determines price/other terms of sale to Customers (n.b. Principal can authorise Commissionaire to negotiate)
- Commissionaire's remuneration is commission paid by Principal
- Principal is legal provider of product to Customers so subject to associated licences/regulatory obligations
- Agent's regulatory obligations limited to any specific rules applicable to intermediaries
- Principal has no direct rights against, and liabilities to, Customers

Key Issues

- Commissionaire not recognised in Common Law jurisdictions (e.g. UK) so there likely to operate as "undisclosed agency"
- What is scope of Commissionaire's authority; should it have any authority to negotiate terms and/or select Customers without reference to Principal?
- Does Agent give or receive exclusivity commitments to/from the Principal and does this comply with competition law?

Franchisee



Key Features

- Franchisee purchases product from Principal and resells to Customers
- Franchisee required to carry on business according to franchise model determined by franchisor
- Franchisee takes title to product
- Franchisee determines sale to Customers subject to franchise model (nb restrictions on Franchisee's prices may offend competition law)
- Franchisee pays "franchise fee" for access to franchise model
- Franchisee's remuneration is margin between price of purchase from Principal and price of sale to Customer
- Franchisee is legal provider of product to Customers so subject to associated licences/regulatory obligations
- Franchisor has no direct rights against Customers
- Customer has no contractual rights vs Franchisor - may have non-contractual rights (e.g. if product is dangerous)

Key Issues

- How much risk will Franchisee assume; to what extent will risks be backed-off under contract with Principal?
- Does Franchisee give or receive exclusivity commitments to/from Principal and does this comply with competition law?
- What requirements will be included in franchise model and what will be level of Franchise fee?

Distributor

Agent

Commissionaire

Franchisee

Buy/Sell

Buy For

Licence

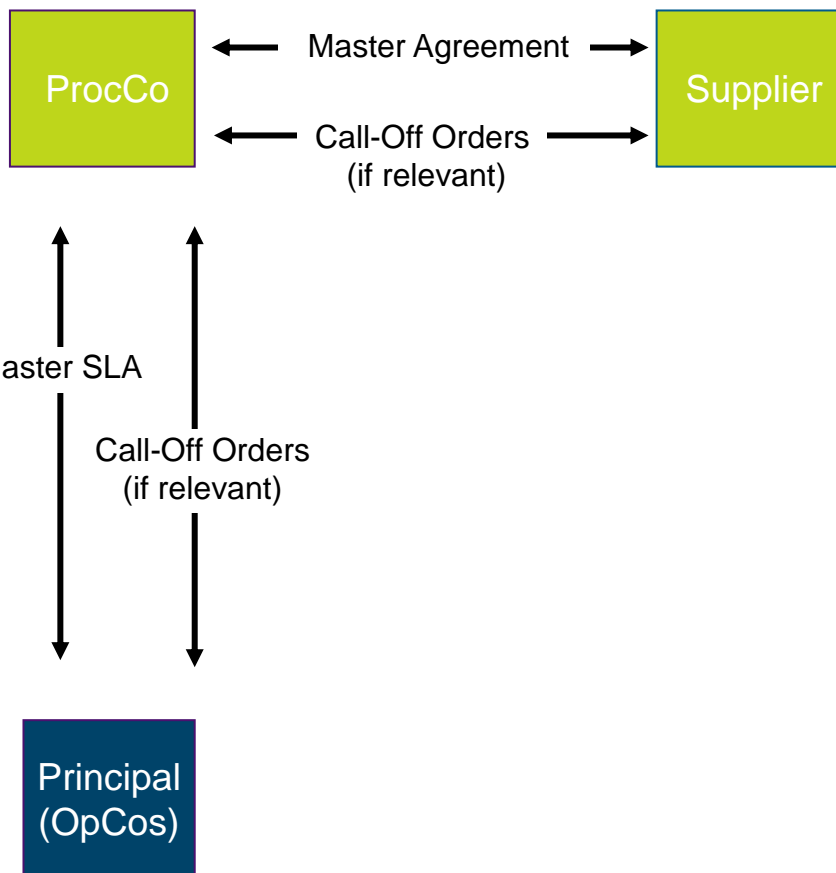
Binding
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Group Purchasing Structures

Buy/Sell



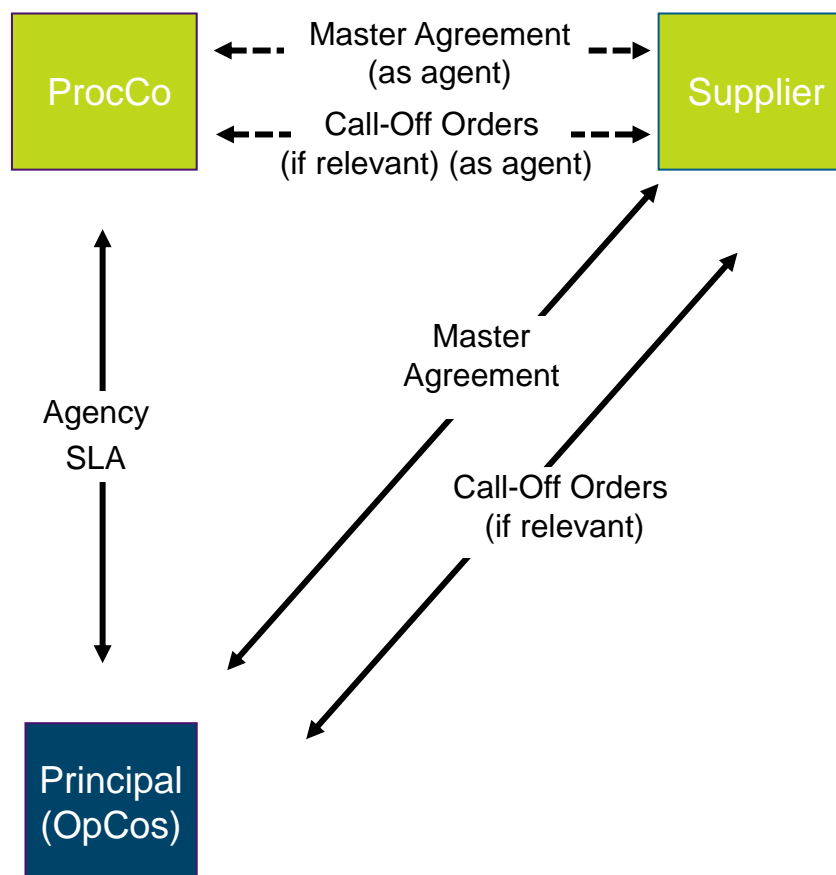
Key Features

- ProcCo enters into all contracts with Suppliers as legal principal
- ProcCo and OpCos enter into "back to back" contracts (i.e., buy services and onward supply them to OpCos)
- OpCos have no direct contracts with Suppliers
- ProcCo and Suppliers agree terms under Master Agreements
- Framework SLA reflects similar principles between ProcCo and OpCos
- Where relevant, Call-Off Orders may reflect specific periodic commitments
- ProcCo will have legal liabilities to both Suppliers and to OpCos
- Framework SLA can be structured to pass risks from ProcCo to OpCos or to leave risk in ProcCo
- ProcCo will make profit/loss determined by margin on resale to OpCos and any losses arising from process

Key Issues

- How much risk should remain in ProcCo?
- What profit margin should ProcCo make (transfer pricing rules will expect profits to reflect level of risk borne)?
- How does ProcCo bind OpCos to its purchasing decisions?
- How to ensure any OpCo claims pass effectively through ProcCo to Supplier?
- VAT/Sales tax analysis required. For goods, delivery method relevant

Buy For



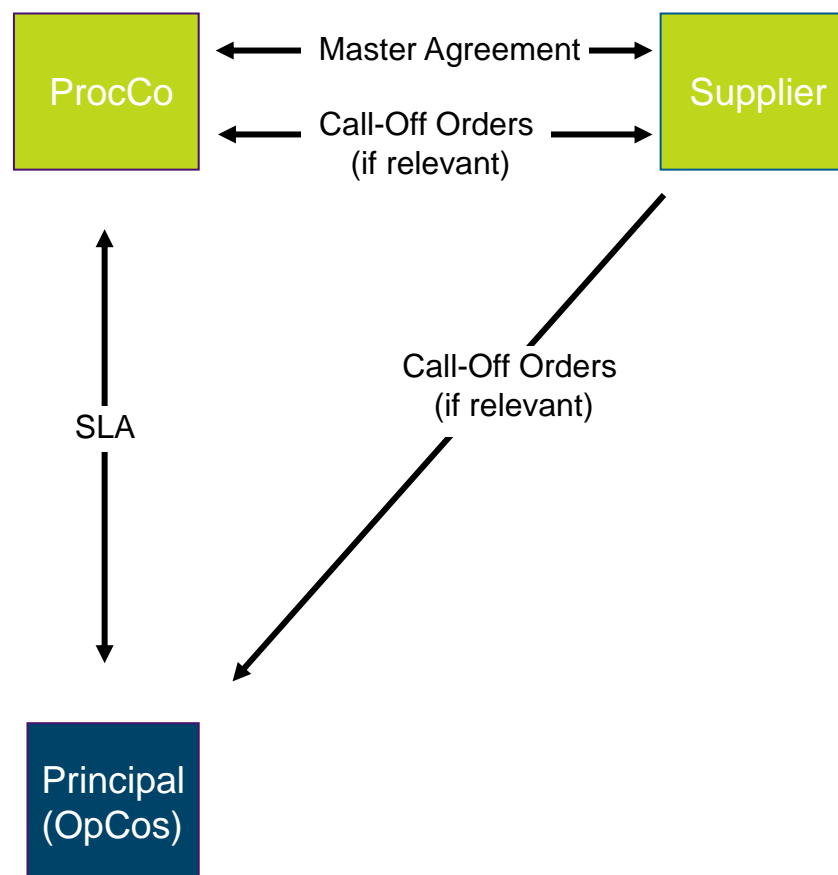
Key Features

- ProcCo enters into all contracts with Suppliers as legal agent of the OpCos
- OpCos appoint ProcCo as their agent to enter into agreement under Agency SLA
- OpCos have all legal rights/obligations under contracts with Suppliers
- ProcCo does not have its own legal rights and obligations
- Master Agreement contains overarching commitments and overall legal terms and conditions
- Where relevant, Call-Off Orders may reflect specific periodic commitments
- Risks automatically vest in OpCos – no substantive risks for ProcCo
- ProcCo paid a commission by OpCos

Key Issues

- How much authority to bind OpCos should OpCos delegate to ProcCo?
- At what point must OpCo management approve commitments?
- How does ProcCo give Master Agreement commitments (e.g. OpCos' collectively spend €X) as agent of individual OpCos?
- VAT/Sales tax analysis required. For goods, delivery method relevant
- Transfer pricing assessment of commission level

Third Party Rights/Licence



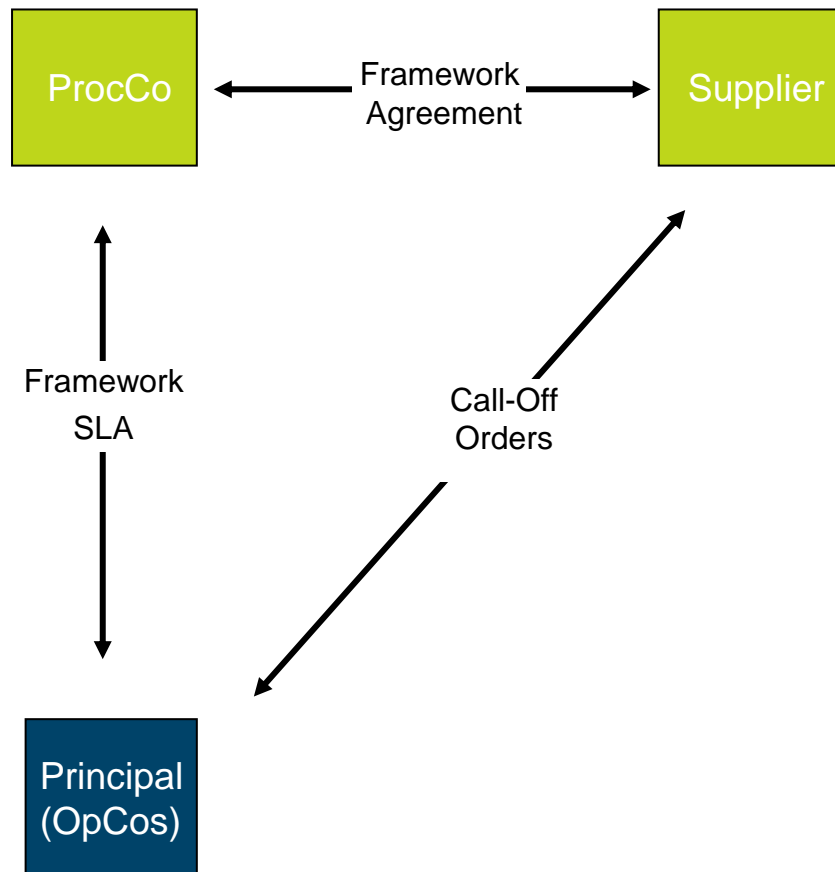
Key Features

- ProcCo enters into all contracts with Suppliers as principal
- ProcCo agrees all terms
- ProcCo pays all charges to Supplier
- OpCos receive benefits (e.g. rights to use IPR or access services) and have direct enforceable rights against Supplier
- OpCos have no obligations to the Supplier
- ProcCo undertakes all obligations including payment and any indemnities etc
- ProcCo and OpCos enter SLA - recharges appropriate costs and gets back-to-back indemnities as appropriate
- Risks vest in ProcCo except to the extent passed on to OpCos
- ProcCo paid a commission by OpCos via recharges

Key Issues

- Is deal principally acquisition of rights/benefits or are there substantive obligations?
- Which risks should sit within ProcCo and which passed on to OpCos?
- On what basis is ProcCo remunerated? Is this in line with Transfer Pricing
- VAT/Sales tax analysis required. For goods, delivery method relevant

Binding Framework



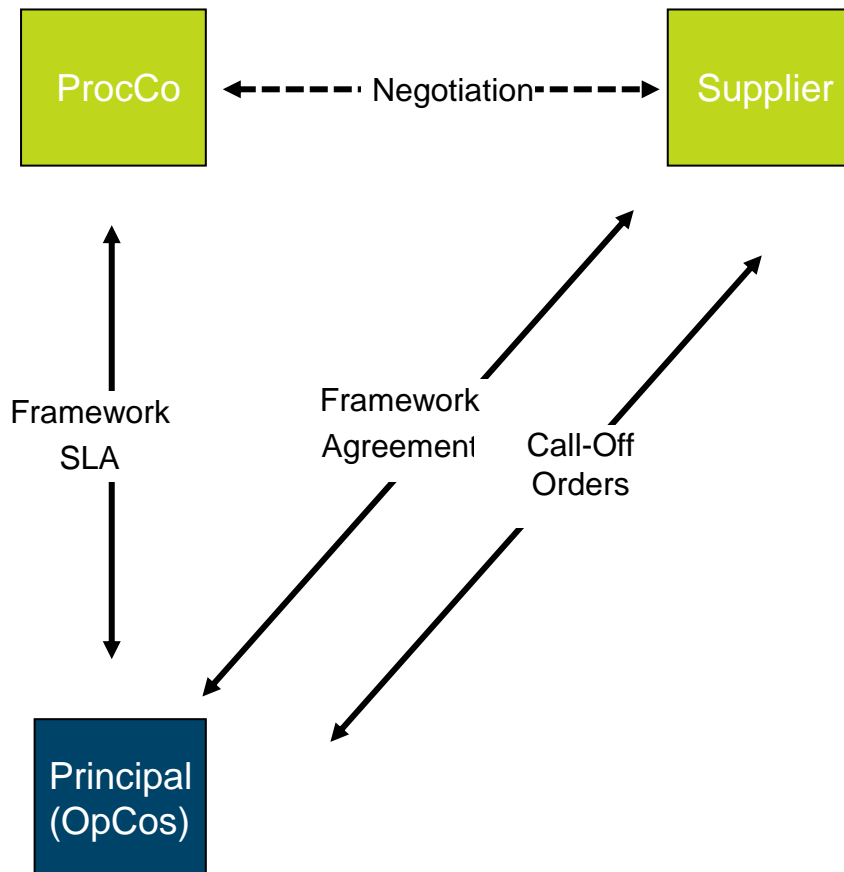
Key Features

- OpCo's agree a scope of "authority" for ProcCo under Framework SLA
- ProcCo negotiates a Framework Agreement setting out group wide commitments (e.g. spend/price)
- ProcCo enters into Framework Agreement as principal
- ProcCo accepts "commitment" risks under Framework Agreement but "back-to-backed" under Framework SLA (if within SLA authority)
- OpCos enter into Call-Off Contracts (i.e., actually purchase the services from suppliers)
- OpCos have all legal rights/obligations under supply contracts
- ProcCo has no liability for the services
- ProcCo paid a commission by OpCos

Key Issues

- How much authority is given to ProcCo under SLA?
- How does ProcCo give Master Agreement commitments (e.g. OpCos' collectively spend €X) and "back to back" to individual OpCos?
- VAT/Sales tax analysis required. For goods, delivery method relevant
- Transfer pricing assessment of commission level

Negotiating Framework



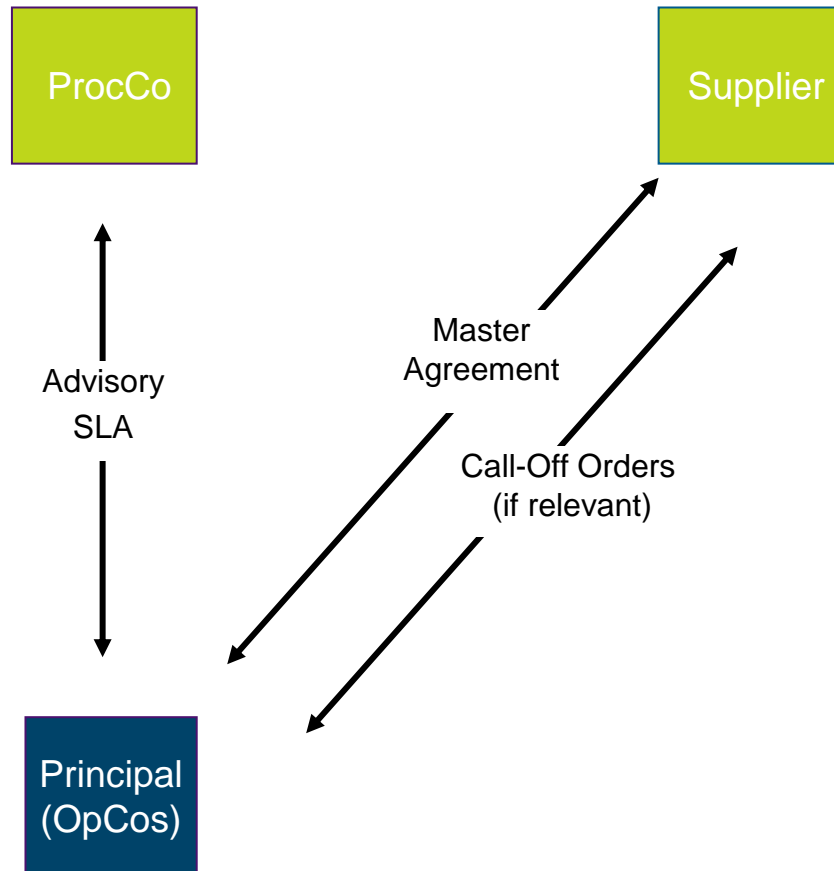
Key Features

- ProcCo consults with OpCos and negotiates framework terms with Suppliers reflecting OpCo requirements
- ProcCo presents agreed framework agreement to OpCos
- OpCos enter into Framework Agreements (separately or jointly)
- Where relevant OpCos place Call-Off Orders (separately or jointly)
- OpCos have all legal rights/obligations under contracts with Suppliers
- ProcCo does not have its own legal rights and obligations
- Risks automatically vest in OpCos – no substantive risks for ProcCo
- ProcCo paid cross charge by OpCos reflecting value of negotiating role

Key Issues

- Does ProcCo add real value?
- What cross charge is appropriate and aligned with any applicable Transfer Pricing requirements?
- VAT/sales tax analysis required. For goods, delivery method relevant

Advisory



Key Features

- ProcCo acts as a centre of excellence
- ProcCo gather market intelligence and technical expertise for the benefit of the group
- OpCos engage ProcCo as an advisor Advisory SLA
- OpCos negotiate and enter into all Master Agreements (and, where relevant, Call-Off Agreements)
- ProcCo does not engage in any supplier-facing negotiations
- ProcCo does not enter into any contracts or have any legal rights and obligations with Suppliers
- OpCos may pay ProcCo small cross charge reflecting advisory work
- Risks automatically vest in OpCos – no substantive risks for ProcCo

Key Issues

- Does ProcCo add real value?
- What cross charge is appropriate and aligned with any applicable Transfer Pricing requirements?
- VAT/sales tax analysis required. For goods, delivery method relevant

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