

PFSCM Terms & Conditions

PFSCM Terms and Conditions for PPM orders under the wambo.org mechanism

The present Terms and Conditions are governed by the Procurement Services Agreement in relation to the Pooled Procurement Mechanism dated 1 September 2013 signed between the Global Fund to Fight AIDS, Tuberculosis and Malaria and Partnership for Supply Chain Management (the "Global Fund Agreement")

Additional comments: Any relevant comments related to the price quote

Client Incoterm: This is the terms of delivery as requested by the Principal Recipient. Under PPM or RSM there are two main possible Incoterms; Carriage and Insurance Paid to (CIP) or Delivery at Place (DAP).

Principal Recipient's authorized Representative: The Authorized Representative is the individual at the Principal Recipient who is formally authorized to sign off on the Price Quote. It is the Principal Recipient's responsibility to ensure that the Price Quote is only signed by the Authorized Representative.

Client requested delivery date: Date that the Principal Recipient is requesting the products to be delivered at agreed upon delivery point.

Consign to Address: For customs and importation purposes, PFSCM must include name and address of consignee as designated by the Principal Recipient in the Purchase Requisition in wambo.org.

Cost fluctuation buffer: A budget for a refundable charge added to allow for price fluctuations (such as for shipping costs or Currency fluctuation rates) up to 30% (thirty percent) of the freight estimate value.

Date of Price Quote: Price quote issuance date.

Estimated delivery date: Estimated in-country arrival date is calculated based on estimated suppliers and transportation lead times. The quoted Estimated delivery date may change at time of order placement and cannot be guaranteed nor constitute a promise from PFSCM. PFSCM promised delivery date to the PR will be based on suppliers' confirmed lead time at time of order placement and will constitute the date against which PFSCM performance will be evaluated. Any update to the estimated delivery date will be reflected in My Orders. Any major change (up or down) on the estimated delivery date from the Price Quote due to either vendor or transportation delay will be notified by PFSCM to the PR.

Estimated total price: The total cost of items in each line of the Price Quote Form.

Estimated Freight: The estimated costs of transport to the designated delivery location. Actual freight costs will not be known until after final delivery.

Estimated insurance quality assurance & others: Estimated insurance is calculated in accordance with the PFSCM Insurance Policy. The rate is calculated as a percent of the cost of commodities (C) plus freight (F) plus 10% (C&F plus 10%). Actual insurance costs will not be known until after final delivery. Estimated quality control and other costs are established based on estimated quotes received from service providers and will be billed at actual costs.

Estimated total: The total amount and all costs contained herein.

Force Majeure: Any occurrence of natural causes or human agency that is beyond the control of, and could not have been prevented or avoided by the parties, including but not limited to such events as war (whether declared or not), natural disasters, terrorism, invasion, revolution,

insurrection, civil unrest, strikes/labor actions, pirates, or another act of a similar nature of force that is beyond the control of the relevant party.

Funding Mechanism: This block is for PFSCM's purposes only and is used to distinguish between contract vehicles.

Grant number: This is the number of the Global Fund Grant being used by Principal Recipients for the procurement of the commodities as indicated in the Purchase Order into wambo.org.

Import duties and tax: Estimated costs of any import duties and/or taxes that may apply for the importation of goods. Please refer to section 4 below in relation to PR's responsibility.

LI# Line item number: The serial number of the commodities lines.

Mode of Shipment: This block designates whether shipment is planned via road, air, or sea. A change in the mode of shipment will impact the delivery date and the cost of freight. In order to optimize freight costs, PFSCM may shift deliveries initially planned via air to sea/road, where quality, remaining shelf life and timely delivery remain complied with. Note that for RSM, default mode of shipment is air.

Number (#) of amendments post approval: The number of modifications to the Price Quote after its original approval.

Order type: PFSCM specific field that states whether the order is planned, urgent or an order to be managed under the Rapid Supply Mechanism.

PFSCM: acronym standing for Partnership for Supply Chain Management. PFSCM is one of the Procurement service agent servicing the Pooled Procurement Mechanism (PPM)

Price Quote: A price quote is a summary of PFSCM offer in response to a Principal Recipient's Purchase Requisition into wambo.org. It constitutes a legally binding offer by PFSCM to the PR to supply and deliver products. The PR signed the Price Quote confirming acceptance and the Price Quote becomes the Purchase Order which is the legally binding contract.

Price Quote expiry date: Date until when the Price Quote is valid.

Principal Recipient (PR): Principal Recipient means the person that is the principal recipient of a Grant made by the Global Fund, also referred to as Client; or per international incoterm definitions, the Principal Recipient may also be referred to as "The Buyer".

Procurement Services Agent or PSA: Procurement Service Agent (PSA) means a Procurement Services Agent selected by the Global Fund to act as an agent on behalf of Principal Recipients in the procurement of Health Products through wambo.org. Partnership for Supply Chain Management, Inc. (PFSCM) is a selected PSA.

Product code: Category number for product.

Product description: The generic name of the product (s) the Principal Recipient wishes to procure.

PSA procurement fee: The PFSCM procurement fee is expressed as a percentage of the total price of commodities (excluding customs/duty taxes, transport and insurance) based on the rates negotiated with the Global Fund.

PSA Authorized Representative: The Authorized Representative is the individual at PFSCM who is formally authorized to sign off on the Price Quote. It is the PSA's responsibility to ensure that the Price Quote is only signed by the Authorized Representative.

Purchase Order: Purchase Order means an agreement between the Procurement Services Agent and a Principal Recipient for the procurement and delivery of products.

Quantity Quoted: The quantities of the product(s) the Principal Recipient wishes to procure as indicated in their Purchase Requisition into wambo.org.

Quoted unit price: The price negotiated by Global Fund with respective manufacturers under the Global Fund Framework Agreements or where those do not exist, the unit price based on a solicitation to suppliers by PFSCM.

RSM Premium Fee: where applicable, the RSM premium fee is calculated as 5% of the cost of commodities. This surcharge is applicable for all RSM orders in addition to the prevailing PSA Procurement Fee and is used by the Global Fund to fund inventory of products made available under RSM Vendor Management Inventory (VMI).

Rapid Supply Mechanism (RSM): A mechanism that enables the Global Fund to respond quickly to imminent shortages, stock-outs, or treatment disruptions of certain product categories faced by Principal Recipients (PRs). Eligibility to access RSM is authorized by the Global Fund.

Ship to Address: The location for the delivery of the product(s) as designated by the Principal Recipient in their Purchase Requisition into wambo.org. Ship to Address can also be referred to as Designated Delivery Point.

Total shelf life: means the period from the date of manufacture of the relevant product to the expiry date (as specified by the manufacturer), during which full compliance of the products with the manufacturer's standards is guaranteed by the manufacturer. The WHO Prequalified or Stringent Regulatory Authority approved shelf life reference and in some instances the product specific batch expiry date will be reflected on the Price Quote.

Vendor: Vendor collectively means wholesalers, suppliers, distributors, and/or manufacturers of Health Product(s); in some cases the name of the vendor will appear on the Price Quote.

Wambo.org purchase requisition no: This is the number that the wambo.org system automatically assigns to the purchase requisition.

General Terms and Conditions

- This Price Quote (PQ) has been established by PFSCM based on the Purchase Requisition information entered into Wambo.org by the Principal Recipient and forwarded to PFSCM by the Global Fund for quote.
- The Price Quote (PQ) and referenced terms and conditions shall constitute a legally binding offer by the PFSCM to the Principal Recipient (PR) to supply and deliver products. It shall be subject to the terms applicable to ordering into wambo.org and where applicable, it shall also be subject to the terms of the PR's Letter for Registration for Participation in the Pooled Procurement Mechanism (PPM). Principal Recipients confirm acceptance of the Price Quote by approving it into wambo.org; Principal Recipients that do not recognize electronic approvals in wambo.org as legally binding shall, in addition to the electronic approval into Wambo.org, attach a signed copy of the Price Quote into wambo.org. In the latter case, the copy of the PQ manually signed by the PR will constitute the legally binding agreement between the PR and PFSCM. In other cases, the electronic Purchase Order (e-PO) transmitted by wambo.org constitutes the legally binding agreement between the PR and PFSCM. . Where this agreement conflicts with The Global Fund Agreement, the terms and conditions in The Global Fund Agreement will take precedence. The Price Quote shall be valid for the period of (fourteen) 14 calendar days or as otherwise stated in the PQ.
- Compliance with Quality Standards. The Procurement Services Agent shall ensure that only Health Products that are in compliance with the quality standards established as articulated

in the Guide to the Global Fund Policies on Procurement and Supply Management of Health Products and that are consistent with the applicable Global Fund Quality Assurance Policies (<http://www.theglobalfund.org/en/procurement/quality/>), as stipulated in The Global Fund Agreement, are procured and supplied to the Principal Recipient.

- The Principal Recipient will request goods in compliance with the Global Fund's Quality Assurance Policies. In addition, the Principal Recipient must provide all required registration requirements, waiver requirements, label requirements and anything else that is necessary for the movement of goods into the country. Principal Recipient understands that without a complete list of the aforementioned documentation, the delivery of the requested goods may be disrupted. The PR shall provide that information as part of the on-boarding process into wambo.org. Prior to delivery of goods, PFSCM will provide to the Principal Recipient all documents required for the importation and customs clearance of the products (e.g. airway bill, bill of lading, packing list, certificate of analysis, certificate of origin, and any other documents required to comply with country import requirements) as specified on the Purchase Order. The PR will ensure all duty and tax waivers required for product importation and use in country are in place to adhere to both local and Global Fund tax requirements. Any deviations from Global Fund QA policy or duty and tax requirements require written approval by the Global Fund.
- PFSCM will be notified of PR's Price Quote approval by means of an electronic Purchase Order released by the Global Fund upon their review directly into wambo.org. The receipt of an electronic Purchase Order constitutes both instructions to proceed on order placement and confirmation from the Global Fund to proceed up to the ceiling amount of the signed Price Quote. PFSCM proceeding is contingent on a copy of the signed price quote provided by the PR as an attachment into wambo.org.
- PFSCM is responsible for placing the orders set forth in the PQ, in conformance to the Global Fund's sourcing strategy, pursuant to a Framework Agreement or as otherwise agreed within the scope of The Global Fund Agreement; further, PFSCM is responsible for managing the execution of the orders; notifying the PR and the Global Fund of the applicable estimated delivery date, arranging cost effective shipping and insurance against risk of theft, loss, damage, or destruction to Ship to Address specified in the relevant PQ.
- Once the Principal Recipient has accepted the Price Quote and agreed to the terms and conditions stated herein, the Principal Recipient cannot cancel or amend the order if: a) PFSCM has already placed an order with a Vendor and the Vendor refuses the cancellation or amendment; or b) The products have already been dispatched to the Principal Recipient. On the occasion where an order in process can be cancelled, the Principal Recipient will be responsible for the payment of all applicable cancellation and restocking fees of suppliers and/or freight.

In the event that PFSCM allows the types and/or quantities of products in a Purchase Order to be amended, or in the event of cost increase above the signed PQ value, PFSCM may issue a revised PQ which may replace any previously agreed to shipping dates, unit costs, logistics costs, or product availability and lead time. Any material change (as defined by the Global Fund's Pooled Procurement Mechanism Operational Procedures, as modified from time to time) on product specifications or quantity to an approved Price Quote whether initiated by the PR, Global Fund or PFSCM, will require the issuance of an updated Price Quote by PFSCM and will necessitate the PR's re-approval into wambo.org including a signed copy of the updated Price Quote and issuance to PFSCM of an amended electronic Purchase Order.

In case of non-material change (as defined by the Global Fund's Pooled Procurement Mechanism Operational Procedures, as modified from time to time), the updated Price Quote will not be submitted to the PR for approval but the PR will be notified of the changes.

The Price Quote Estimated Total is a ceiling amount. The Price Quote includes a Cost Fluctuation Buffer in an amount not exceeding 30% of freight costs to cover any unanticipated price fluctuations and/or additional costs that may occur. The Principal Recipient will be billed for actual costs (i.e actual commodity costs, actual freight costs, actual QA/Insurance/Other costs, actual import duties and taxes, and applicable PFSCM Procurement fee) and, where applicable, the RSM fee percentage on the commodities costs. Any cost decreases or any unused amounts from the Cost Fluctuation Buffer will not be invoiced.

- PFSCM will be responsible for the timely delivery of products to the Principal Recipient's Ship to Address as specified in the PQ or per updated lead time as communicated by PFSCM upon supplier's confirmation at time of order placement except for (a) delays caused by Force Majeure Events (b) delays in the importation and customs clearance of the products (as applicable) that are outside PFSCM's control (c) delays in delivery caused by sampling and testing conducted according to the Global Fund's policies (d) delays outside PFSCM's and its suppliers'/agents' control.
- PFSCM will be responsible for the loss or damage of the products while within its care, custody, and control until the Ship to Address as specified to the PQ as per the agreed incoterm. The Principal Recipient will be responsible for the costs of storage, handling, and transportation from the designated delivery point onward. The Principal Recipient is responsible for obtaining all necessary clearances and authorizations from the relevant national authorities of the country in which the product(s) is being imported and for paying fees, levies, demurrage charges and duties required in connection with such importation. PFSCM will not be responsible for any delays resulting from the non-availability of these clearances and authorizations.
- Upon delivery of all items quoted in the Price Quote, PFSCM will manage data entry into Price and Quality Reporting (PQR) for all orders placed through wambo.org.
- The Principal Recipient will be responsible for updating the status of receipt for its products within 14 calendar days of delivery to the agreed upon Incoterms. The PR will provide these updates via wambo.org. For any products that have been delivered with issues/problems, the PR will provide the following information to PFSCM (email correspondence shall also be in copy to the Global Fund) :
 1. Issue a written notice to PFSCM regarding any variance together with supporting documentation that may be used to verify the statements made in the notice (e.g. photographs, packing list, vendor invoice).
 2. Principal Recipient will have the option to reject the non-conforming products. Where it was established that loss or damaged occurred until the items are delivered as per the agreed Incoterm, the Principal Recipient may obtain a full refund or prompt replacement at PFSCM's sole expense.
 3. Failure to provide a written claim within the 14 calendar days shall constitute acceptance that the goods were delivered fully compliant and in good condition.
- PFSCM will regularly submit invoices electronically into wambo.org as costs are incurred. An invoice summary of all costs associated with a particular purchase order will be managed by and available into wambo.org.

- Both PFSCM and the Principal Recipient will keep confidential all information designated as such unless compelled by the Global Fund or by applicable law. However, there will be no obligations of confidentiality or restrictions to the extent that the receiving party can demonstrate that any part thereof was a) known to it prior to any disclosure by the disclosing party b) was in the public domain at the time of disclosure by the disclosing party c) becomes part of the public domain through no fault of the receiving party or d) becomes available to the receiving party from a third party not in breach of any legal obligation of confidentiality.
- All disputes will be resolved in accordance with The Global Fund Agreement. If any dispute, controversy or claim arises out between the PR and PFSCM, the parties agree that before submitting such dispute, controversy or claim to arbitration as set out in the paragraph below, representatives of each party shall, for a period of 30 calendar days after notice of such matter is formally submitted to either of such representatives in writing, attempt in good faith to negotiate the resolution of the matter. The parties shall inform the Global Fund of such dispute, controversy or claim.

Subject to the amicable resolution described in the paragraph above, any dispute, controversy or claim between the parties shall be finally settled by arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules at present in force. There shall be one arbitrator. The appointment authority for such arbitrator shall be the International Chamber of Commerce International Court of Arbitration. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English.

- Patents – The PR will not order any product that violates national or international laws and regulations governing the patent protection of pharmaceutical products or other health products as applicable.

Since January 1, 2005, developing countries have been required to implement the agreement on Trade Related aspects of Intellectual Property Rights (TRIPS) into their national legislation, and must therefore provide patent protection for pharmaceuticals. Until 2016, Least Developed Countries may, but are not required to, provide such patent protections. If a medicine is under patent in a country, importing governments have options under some circumstances to allow the importation and use of a generic version of such a medicine pursuant to Articles 30 and 31 of TRIPS, the Doha Declaration and related decisions. Governments are encouraged to obtain assistance from the WHO and WTO on these issues.

By signing this Price Quote, the Principal Recipient assures PFSCM that this procurement complies with national and international laws and regulations governing the patent protection of pharmaceutical products and other health products as applicable.

The Principal Recipient states that it is authorized under TRIPS and other laws regarding the patent protection of pharmaceuticals, to import and distribute for use generic versions of the pharmaceutical products or other health products as applicable, listed in the Price Quote.

- Note: Should there be a variation of not more than 2% in the manufactured quantities for a particular order, then the lower or higher quantity will be supplied, reflected in the shipping documentation and invoiced. Short falls will be short closed.
- Note: Where a manufacturer can only supply in full cartons due to GMP requirements, the quantity supplied will be adjusted to the nearest carton size, reflected in the shipping documentation and invoiced. Short falls will be short closed.