

UNICEF TERMS & CONDITIONS

DEFINITIONS

1. The following terms have the following meanings, unless otherwise stated:
 - 1.1 Agreed Products means personal protective equipment (“PPE”)¹, oxygen equipment, specific diagnostic tests, and other goods as may be agreed in writing between UNICEF and Global Fund from time to time from the UNICEF Supply Catalogue, and is displayed on the wambo.org platform, through the wambo.org catalogue.
 - 1.2 Eligible Buyer means Principal Recipients, sub-Recipients and other buyers registered on wambo.org and notified in writing by the Global Fund to UNICEF, as being an eligible buyer and financed in whole or in part by the Global Funds through Grant Funds, or by the Eligible Buyer as applicable.
 - 1.3 e-PO means the electronically generated order through wambo.org following the acceptance of a UNICEF Offer which contains the details of the Agreed Products.
 - 1.4 Grant Funds means funds received directly or indirectly by an Eligible Buyer from Global Fund and administered in accordance with the terms of the relevant grant agreement
 - 1.5 Procurement Services means the activities undertaken by UNICEF on behalf of the Eligible Buyer for the purchase of Agreed Products where such Supplies are required for purposes related to UNICEF activities and consistent with the aims and policies of UNICEF.
 - 1.6 Procurement Services Agreement means the documents that make up the agreement between UNICEF and the Eligible Buyer for the procurement of the Agreed Products which consists of the UNICEF Offer and the “e-PO” generated following the acceptance of the UNICEF Offer.
 - 1.7 Request for Procurement Services also referred to as a Requisition in wambo.org, means a request submitted through wambo.org by the Eligible Buyer for provision of Procurement Services which will reference the Agreed Products and the respective requested quantities and quality assurance standards.

¹ “PPE” shall mean equipment designed and manufactured to be worn or held by a person for protection against one or more risks to that person's health or safety. COVID-19 related PPE include, but are not limited to, such items as apron protection, coveralls, gloves, face shield, respirator, masks, gowns and protective goggles.

- 1.8 Supplies means Agreed Products and related supplies, equipment and services provided by UNICEF in response to a Request for Procurement Services.
- 1.9 Services means supply-related or management services provided by UNICEF and executed through Procurement Services.
- 1.10 UNICEF Offer² means the response through the Price Quotation to an Eligible Buyer's Requisition which shall include the proposed cost of the Supplies, delivery (freight), insurance, any other related Services, UNICEF's handling charge and a contingency buffer and UNICEF's Terms and Conditions.
- 1.11 Warehouse Items means goods and equipment held in inventory in UNICEF Supply Division Warehouses.
- 1.12 Wambo.org means the Global Fund's online platform for the procurement of quality assured health products and other products needed for Global Fund principal recipients and other eligible buyers including recipients that receive Global Fund administered grant funds in accordance with the terms of the relevant grant agreement (the "Grant Funds") directly or indirectly from the relevant principal recipient registered on the wambo.org platform, to meet health program needs in the fight against HIV/AIDS, tuberculosis, and malaria.

PROCUREMENT SERVICES TO BE OFFERED

2. UNICEF will offer Procurement Services to the Eligible Buyer in respect of Agreed Products subject to the Terms and Conditions set out herein. UNICEF represents and warrants that these Terms and Conditions are not and will not be less favorable than those offered to other buyers under its Procurement Services framework.
3. The Eligible Buyer undertakes to ensure that all Agreed Products procured in accordance with the Procurement Services Agreement are for use in connection with activities and projects that promote the health or well-being of children or populations.

² By issuing the UNICEF Offer, UNICEF confirms it has verified, as at the date of the UNICEF Offer, that the quantities and quality standards of the Agreed Products will be met in accordance with the Requisition.

REQUESTS FOR PROCUREMENT SERVICES

4. An Eligible Buyer who requires Procurement Services from UNICEF will submit a Requisition/Request for Procurement Services through wambo.org, and by so doing, warrants that it is eligible to procure the Agreed Products indicated in the Request for Procurement Services. If UNICEF accepts the Request for Procurement Services, a UNICEF Offer as defined in Section 1.10 will be made to the Eligible Buyer. The contingency buffer included in the UNICEF Offer will cover price and currency exchange rate fluctuations. An unused buffer or an unused share thereof is refundable.
5. In the event that an Eligible Buyer accepts a UNICEF Offer, an e-PO will be generated from wambo.org which will constitute a legally binding agreement between UNICEF and the Eligible Buyer.

PAYMENT

6. Upon receipt of the e-PO, and if the e-PO is financed with Grant Funds, UNICEF will invoice through wambo.org and the Global Fund shall pay such invoice on behalf of the Eligible Buyer. If the e-PO is not financed with Grant Funds, UNICEF will submit an invoice in wambo.org and the Eligible Buyer will make advance payment directly to UNICEF of the amount as set out in the Procurement Services Agreement. Confirmation of transfer and confirmation of receipt of the advanced payment will be recorded through the applicable wambo.org invoice approval process. The Eligible Buyer is solely responsible for payment to UNICEF and the fulfilment of any contractual obligations or any other liabilities under the Procurement Services Agreement.
7. No e-PO will be acted upon by UNICEF until the payment due has been made.
8. The Eligible Buyer will be liable for payment of (a) price increases resulting from the difference between prices given in the UNICEF Offer and actual prices to be paid by UNICEF to the selected supplier(s) or service provider(s), including variations in freight costs, as well as currency exchange fluctuations or other incidental costs, and (b) any subsequent increase in UNICEF's handling fee. Any price increases will be reflected through an e-PO change process in wambo.org. Similarly, the Eligible Buyer will be credited in the case of cost decreases. For Warehouse Items the provisions of this clause apply in the sense that prices are set and updated in regular intervals by UNICEF.

PROCUREMENT SUBJECT TO UNICEF'S PROCEDURES

9. Supplies and Services will be procured in accordance with UNICEF's rules, regulations, and procedures for procurement and financial regulations and rules. On a case-by-case basis, UNICEF may entrust execution of the Procurement Services Agreement to United Nations partner agencies, which shall apply their respective procurement and financial rules and regulations.

DELIVERY OF SUPPLIES

Shipment and Insurance

10. The Eligible Buyer or its nominated representative will be the consignee of the Supplies. UNICEF will not serve as consignee of the Supplies. UNICEF will arrange for shipment of the Supplies to the port of entry designated by the Eligible Buyer and as agreed in the Procurement Services Agreement. UNICEF or UNICEF's designated freight forwarder will send copies of relevant shipping documents and required product quality assurance documents (bill of lading, Air Way Bill, Certificate of Analysis, etc.) to the consignee. UNICEF shall inform the Eligible Buyer of any potential or actual delivery delay as soon as UNICEF obtains information on such delay.
11. All Supplies will be delivered on Carriage and Insurance Paid (CIP) (INCOTERMS 2020) to the port of entry designated in the Procurement Services Agreement, unless otherwise agreed to between UNICEF and the Eligible Buyer in the Procurement Services Agreement. If UNICEF agrees to self-insurance by the Eligible Buyer, UNICEF will require that the Eligible Buyer produces proof satisfactory to UNICEF that the shipment will be adequately covered by insurance.

Inspection of Supplies Prior to Shipment

12. UNICEF may, on request, make provision for inspection of Supplies prior to shipment. The cost, if any, of such inspection will be set out in the Procurement Services Agreement or an amendment thereto.

Customs Clearance

13. The Eligible Buyer will be fully responsible for reception at the port of entry, customs clearance and distribution of all Supplies, unless otherwise provided for in the Procurement Services Agreement. Irrespective of agreed, exceptional arrangements for UNICEF to provide services related to customs clearance, the Eligible Buyer remains liable for paying any taxes, toll or other duties.

14. UNICEF will not accept the return of Supplies procured for the Eligible Buyer; provided however that in exceptional circumstances and with the prior written agreement of UNICEF, Warehouse Items may be returned to UNICEF, Supply Division, Copenhagen, at the Eligible Buyer's expense.

DELIVERY OF SERVICES

15. Services will be deemed delivered when effected. If UNICEF provides Services and these Services require that the Eligible Buyer obtains or assists with obtaining permits, licenses and other official approvals or that the Eligible Buyer furnishes powers of attorney or other authorizations to UNICEF, the Eligible Buyer shall cooperate in a timely and expeditious manner.

FINAL ACCOUNT

16. After shipment of all Supplies and/or delivery of Services, and recording of all expenses incurred, UNICEF will prepare a statement of account covering the total cost of the Procurement Services, and shall include any variation in cost, including penalties, if any, and credits due to decreases in price or quantities of Supplies / scope of Services. The statement of account will be attached to the final zero value invoice to be submitted in wambo.org, which will trigger the "Purchase Order Closure" process.
17. The statement of account will be expressed in United States Dollars. The United Nations operational rate of exchange (<https://treasury.un.org/operationalrates/OperationalRates.php>) shall apply to all currency conversions.
18. In the event that the statement of account indicates a balance in favor of the Eligible Buyer, UNICEF will raise a credit note in wambo.org prior to submitting the final statement of accounts and zero-value invoice in wambo.org. In the event that the statement of account indicates a deficit in the funds deposited with UNICEF and the buffer was not sufficient to cover this deficit, UNICEF will raise an e-PO change request through wambo.org prior to the final statement of accounts and zero value invoice being submitted in wambo.org. If the e-PO is funded by Grant Funds, the additional amount will be paid in line with Section 8. In the case that the e-PO is not funded by Grant Funds, the Eligible Buyer will, within thirty (30) days from notification by UNICEF, make the additional payments to the same bank account and in the same currency as the original deposit was made in order to settle the account.

WARRANTY; LIABILITY

19. UNICEF is liable for executing Procurement Services requests with reasonable diligence. Beyond this commitment, UNICEF does not assume liability, express or implied, written or oral, with regard to delivery delay, loss or damage, value, freedom from fault or infringement of Supplies, product quality, efficiency, characteristics, suitability or usefulness, and third-party Services. For delivery of Services with own resources, UNICEF does not assume liability except where arising from gross negligence, misconduct or intent. UNICEF's total liability, in any event, shall not exceed the order value of the procurement services with respect to which a claim is made. In no event shall UNICEF be liable for incidental, indirect, consequential or immaterial losses or damages, or for lost revenues or profits.
20. To the extent legally possible, UNICEF will pass on to the Eligible Buyer any warranty offered, minimum shelf life assurance (for pharmaceuticals and vaccines), and liability entered by the supplier or service provider, and shall ensure that all contracts between UNICEF and manufacturer(s), supplier(s), seller(s), shipper(s) or insurer(s) include provisions covering product liability claims.
21. All claims related to any defect in quality or other non-conformity of Supplies or for any loss or damage shall be handled directly by the Eligible Buyer with the original manufacturer, supplier, or insurance underwriter. UNICEF will provide to the Eligible Buyer any assistance that the Eligible Buyer may reasonably request to assert such claims.
22. To the extent that any non-conformity arises, UNICEF shall ensure that any defect or non-compliance with the Procurement Services Agreement relating to an Agreed Product (each a "Non-Conforming Product") that it becomes aware of shall be reviewed in accordance with UNICEF's internal procedures, and as appropriate, promptly notified to the Eligible Buyer, with a copy to Global Fund in writing in cases involving a Grant Funded Eligible Buyer. The outcome and report of such review shall be promptly provided to the Eligible Buyer, with a copy to the Global Fund in cases involving a Grant Funded Eligible Buyer.
23. UNICEF accepts no liability for any third-party claims arising out of or in connection with its performance under a Procurement Services Agreement. The Eligible Buyer will indemnify, deal with, defend and hold UNICEF harmless in connection with any third-party claim or other cause of action arising out of or related to the Procurement Services Agreement.
24. The majority of UNICEF contracts with suppliers and manufacturers contains a

clause on liquidated damages, allowing collection of lump-sum damages from the supplier / manufacturer for a delay in delivery. Wherever possible to execute and claim liquidated damages, the received amount will be paid out to the Eligible Buyer. Where there is no liquidated damages provision in long-term arrangements with suppliers / manufacturers, UNICEF will undertake best efforts to include such a provision in relevant Purchase Orders to be placed on behalf of the Eligible Buyer. Where long-term arrangements with suppliers are not available and commodities must be procured through public bid, UNICEF will include a liquidated damages clause in bidding documents, unless this is not advisable for the commodity concerned, in which case UNICEF shall coordinate with the Eligible Buyer accordingly before placing the bid.

TERM, TERMINATION, AMENDMENT

25. The Procurement Services Agreement shall be effective from date the e-PO is generated and received by UNICEF through wambo.org and shall remain valid until the obligations of both parties have been completed or unless terminated by either party for cause upon seven (7) calendar days' notice to the other party.
26. An Eligible Buyer who elects to terminate a Procurement Services Agreement without cause after UNICEF has placed an order with a manufacturer or supplier of the Agreed Products will be responsible for any costs, including any penalties imposed by the original manufacturer / supplier of the Supplies, resulting from the termination. UNICEF will refund to the Eligible Buyer, sums prepaid after offsetting the amount with the costs referred to above.
27. The Procurement Services Agreement may be amended only through an e-PO change requests in wambo.org, which will require approval by the Eligible Buyer and by UNICEF in wambo.org. The Eligible Buyer will be responsible for any costs, including any penalties imposed by the original manufacturer / supplier of the Supplies or service provider, resulting from an amendment entered into at the Eligible Buyer's request. Equally, UNICEF will credit the Eligible Buyer with any cost savings.
28. In the event of termination of a Procurement Services Agreement, the Parties shall take the necessary steps to ensure that the activities carried out under the Procurement Services Agreement are brought to a prompt and orderly conclusion. Notwithstanding the foregoing, pending fulfillments of orders under a Procurement Services Agreement between UNICEF and an Eligible Buyer shall be fulfilled by UNICEF, and paid for by the Eligible Buyer.

29. The provisions of a Procurement Services Agreement shall survive any termination, to the extent necessary to permit an orderly settlement of accounts between UNICEF and the Eligible Buyer.

SETTLEMENT OF DISPUTES

30. UNICEF and the Eligible Buyer shall use their best efforts to settle amicably any dispute, controversy, or claim arising out of or relating to a Procurement Services Agreement. Where UNICEF and the Eligible Buyer wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then in force, or according to such other procedure as may be agreed between UNICEF and the Eligible Buyer. Any such dispute, controversy, or claim which is not settled amicably within sixty (60) days after receipt by one party of the other party's request for such amicable settlement, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration rules then in force. UNICEF and the Eligible Buyer shall be bound by an arbitration award rendered as a result of such arbitration as the final adjudication of such dispute. The costs of the procedure shall be shared equally by UNICEF and the Eligible Buyer. The arbitral tribunal shall have no authority to award punitive damages. The Tribunal shall have no authority to award interest in excess of four percent (4%) and such interest shall be simple interest only. As used herein, the term, "UNCITRAL" means the United Nations Commission on International Trade Law."

NO WAIVER OF PRIVILEGES AND IMMUNITIES

31. Nothing contained in or relating to a Procurement Services Agreement, shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations and its subsidiary organs, including UNICEF, whether under the Convention on the Privileges and Immunities of the United Nations, or otherwise, and no provision of a Procurement Services Agreement shall be interpreted or applied in a manner, or to an extent, inconsistent with such privileges and immunities.

GENERAL PROVISIONS

32. Any notice, request or consent required or permitted to be given or made pursuant to the Procurement Services Agreement will be in writing, and addressed and sent by registered mail or confirmed facsimile transmission as follows:

If to UNICEF:

UNICEF, the United Nations Children's Fund
PROCUREMENT SERVICES
UNICEF Supply Division
Oceanvej 10-12
2150 Nordhavn
Copenhagen - DENMARK
Attn: Director
Email: psid@unicef.org

Tel: +45 45 33 55 56

Fax: +45 35 26 94 21

If to the Eligible Buyer:

As indicated in the e-PO and with a copy to the Global Fund.

33. Notices will be deemed to be effective as follows: in the case of registered mail, seven (07) days after posting; in the case of facsimiles, twenty-four (24) hours following confirmed transmission.
34. The Eligible Buyer confirms that no official of UNICEF has received or will be offered by the Eligible Buyer any direct or indirect benefit arising from the Procurement Services Agreement. UNICEF confirms the same to the Eligible Buyer. UNICEF and the Eligible Buyer agree that any breach of this provision is a breach of an essential term of the Procurement Services Agreement.
35. Nothing contained in the Procurement Services Agreement shall be construed as establishing a relation of employer and employee or of principal and agent between UNICEF and the Eligible Buyer.
36. The Eligible Buyer shall not assign or make other disposition of the Procurement Services Agreement or any part thereof, or any of the Eligible Buyer's rights, claims or obligations under the Procurement Services Agreement, except with prior written consent of UNICEF.
37. A party prevented by *force majeure* from fulfilling its obligations shall not be deemed in breach of such obligations. The said party shall use all reasonable efforts

to mitigate consequences of *force majeure*. At the same time, UNICEF and the Eligible Buyer shall consult with each other on modalities of further execution of the Procurement Services Agreement. *Force majeure* is defined as acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

38. UNICEF and the Eligible Buyer shall keep confidential any documents, data or other information furnished to each other. UNICEF and the Eligible Buyer may, however, disclose such information to their subcontractors or partners, as may reasonably be required to execute the Procurement Services, and provided that the subcontractors or partners shall be bound by similar confidentiality requirements. UNICEF may also report on executed transactions in the scope of its periodic reports and publications and make disclosures to the Global Fund where applicable.
39. UNICEF and the Eligible Buyer shall coordinate public relations measures, if any, in regard to their cooperation and also any cooperation involving the Global Fund.
