

## **PFSCM TERMS & CONDITIONS**

### **Terms and Conditions for PPM orders under wambo.org mechanism**

The Outsourced Services Agreement to Support the Implementation of the Global Fund's Pooled Procurement Mechanism effective as of 1 September 2019 signed between the Global Fund to Fight AIDS, Tuberculosis and Malaria (the "Global Fund") and Partnership for Supply Chain Management (PFSCM) (the "Global Fund Agreement") governs the present Terms and Conditions.

**Accelerated Order Management for the procurement of COVID-19 products (AOM)** A mechanism set up by the Global Fund to allow for the procurement of COVID-19 diagnostic products by Principals Recipients under terms and conditions defined in the Order Form for Procurement of COVID-19 Diagnostic Products, agreed by the Principal Recipient. Unless extended by the Global Fund, the AOM will be available until 30 June 2021.

**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 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/approved by the Authorized Representative.

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

**Cost Fluctuation Buffer:** A budget for a refundable charge added to allow for cost fluctuations (such as for shipping costs or currency fluctuation rates) up to 30% (thirty percent) of the freight estimate value or up the amount approved by the Global Fund.

**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 Supplier 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.

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PFSCM's Quality Management System has been certified to ISO 9001:2015 Quality Management System Standard by UL DQS Inc. Ref Registration # 10012936 QM15.



JSI is the parent company of PFSCM

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**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 products (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 during the financial reconciliation process after products are delivered.

**Estimated Total:** The total amount of the Price Quote 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/labour 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. This makes reference to the type of funding being used for a Price Quote, e.g., PPM, self-funded, AOM, etc.

**Grant number:** This is the number of the Global Fund Grant being used by Principal Recipients for the procurement of the products 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 products.

**LI#** Line item number: The serial number of the products 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: RSM shipments have air as a default Mode of Shipment.

**MyOrders:** PFSCM online portal for PRs to track and trace orders and confirm deliveries.

**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, an order to be managed under the Rapid Supply Mechanism or under the accelerated order management (AOM) process.

**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 (PQ):** A price quote is a PFSCM offer in response to a Principal Recipient's Purchase Requisition into wambo.org. It constitutes a legally binding offer by PFSCM to the Principal Recipient 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 between the PR and PFSCM.

**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 Fee:** The Procurement Fee is expressed as a percentage of the total price of products (excluding customs/duty taxes, transport and insurance) based on the rates negotiated with the Global Fund.

**Procurement Services Agent or PSA:** Means a procurement services agent selected by the Global Fund to act as an agent on behalf of Principal Recipients in the procurement and delivery of health products. 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 Authorized Representative:** 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 approved/signed by the PSA Authorized Representative.

**Purchase Order:** Purchase Order means an agreement between PFSCM and a Principal Recipient for the procurement and delivery of products.

**Purchase Requisition:** Purchase Requisition means a request from the Principal Recipient or the Global Fund in wambo.org specifying the required products, quantities and requested delivery dates. In response to the Purchase Requisition, PFSCM will provide a Price Quote to the Principal Recipient.

**Quantity Quoted:** The quantities of the product(s) the Principal Recipient wishes to procure as indicated in the 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 products. This surcharge is applicable for all RSM orders in addition to the prevailing 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 in the 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.

**Supplier:** Supplier collectively means wholesalers, subcontractors, service providers, distributors, and/or manufacturers of health product(s); in some cases the name of the supplier 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 in wambo.org by the Principal Recipient or the Global Fund and forwarded to PFSCM by the Global Fund for quote.
- The **Price Quote (PQ)** and these terms and conditions shall constitute a legally binding offer by PFSCM to the **Principal Recipient (PR)** to supply and deliver products. It shall be subject to the terms applicable to ordering in wambo.org and where applicable, it shall also be subject to the terms of the PR's registration letter to the Pooled Procurement Mechanism (PPM)/wambo.org. Principal Recipient's confirm acceptance of the Price Quote by approving it in wambo.org; Principal Recipients that do not recognize electronic approvals in wambo.org as legally binding shall, in addition to the electronic approval in wambo.org, submit a signed copy of the Price Quote in wambo.org. Following acceptance of the Price Quote a Purchase Order, which constitutes the legally binding agreement between the PR and PFSCM, will be issued by wambo.org. Where the Purchase Order, including these Terms and Conditions, 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.** PFSCM shall ensure that only 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 with the applicable Global Fund Quality Assurance Policies (<https://www.theglobalfund.org/en/sourcing-management/quality-assurance/>), as stipulated in the Global Fund Agreement, or the quality assurance requirements as approved by the Global Fund's Board (GF/B42/EDP11) are procured and supplied to the Principal Recipient.
- The requested products must be in **Compliance with Quality Standards**. 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 products into the country. Principal Recipient understands that without a complete list of the aforementioned documentation, the delivery of the requested products may be disrupted. The PR shall provide that information as part of the on-boarding process in wambo.org. Prior to delivery of products, 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 tax requirements set out in the grant agreement between the Global Fund and the Principal Recipient.
- **PFSCM will be notified of the PR's Price Quote approval by means of an electronic Purchase Order released by wambo.org upon Global Fund's review.** 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. For Principal Recipients that do not recognize electronic approvals in wambo.org as legally binding, PFSCM proceeding is contingent on a copy of the signed Price Quote provided by the PR as an attachment in 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 Purchase Order if: a) PFSCM has already placed an order with a Supplier and the Supplier 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 costs to the Supplier(s).
- Any deviations from duty and/or tax requirements, including tax requirements set out in the grant agreement between the Global Fund and the Principal Recipient require written approval by the Global Fund.

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 Notice and Operational Procedures, as modified from time to time) 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 in wambo.org, including a signed copy of the updated Price Quote and issuance to PFSCM of an amended electronic Purchase Order for Principal Recipients that do not recognize electronic approvals in wambo.org as legally binding.

In case of **non-material change** (as defined by the Global Fund's Pooled Procurement Mechanism Operational Notice and 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 may include a Cost Fluctuation Buffer which can be used for potential increases in cost. 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 Procurement Fee) and, where applicable, the RSM Premium Fee percentage on the products 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.
- 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 as defined by the Global Fund.
- The Principal Recipient will be responsible for updating the status of receipt for its products within 14 calendar days of delivery<sup>1</sup> of products to the agreed upon Client Incoterms. The PR will provide these updates in the PFSCM system. For any products that have been delivered with issues/problems, the PR will provide the following information to PFSCM (email correspondence shall also have the Global Fund in copy):
  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, Supplier invoice).
  2. Principal Recipient will have the option to reject the non-conforming products. Where it was established that loss or damage occurred until the products 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 products were delivered fully compliant and in good condition.

PFSCM is responsible for the prompt management of recalls, including providing a detailed report of any recall of products resulting from the procurement of defective products (including products that were refused by the Principal Recipient after visual inspection, testing or otherwise) and the subsequent refund to the Global Fund for any payment for such products, where applicable. In addition, PFSCM is responsible for the prompt replacement of such defective products and/or payment of the costs incurred by the Global Fund and the Principal Recipient in connection with the replacement of such products. Upon communication by PFSCM or the Global Fund, the Principal Recipient shall quarantine products, provide prompt support for traceability purpose and updates of the progress and implications of any recall.

All Supplier's warranties offered to PFSCM shall be passed on to the Principal Recipient.

- PFSCM will regularly submit invoices electronically in wambo.org as costs are incurred. An invoice summary of all costs associated with a particular Purchase Order will be managed by and available in 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.

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<sup>1</sup> Delivery: completion of service as per agreed client incoterm (DAP, CIP).

- 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.

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.

Notes:

- 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.
- Where a Supplier 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.
- For the procurement of COVID-19 diagnostic products only, the Principal Recipient acknowledges and agrees that there may be a few deviations from the regular PPM process, including deviations from these Terms and Conditions. In addition, the Principal Recipient acknowledges and agrees that while the Supplier will use reasonable efforts to supply the COVID-19 diagnostic products, there is no guarantee or representation concerning the availability of the such products. Notwithstanding any agreed delivery dates, the Supplier will retain the right to deliver the COVID-19 diagnostic products as and when they become available, and/or make partial delivery of the COVID-19 diagnostic products and / or no delivery. The Principal Recipient recognizes there may be disruptions to business because of the COVID-19 situation, and in such circumstances, and in the event of a delay or inability of the Supplier and/or PFSCM to supply the COVID-19 diagnostic products, the Principal Recipient will not apply or impose any penalties, nor will the Supplier and/or PFSCM be liable for any costs, compensation or liability associated with any delay or failure to supply the COVID-19 diagnostic products.