

PFSCM Terms & Conditions

PFSCM Terms and Conditions for orders placed under the Global Fund Pilot Program: Extending the Benefits of PPM to Current Principal Recipients (PRs) using Domestic Funding through wambo.org (the “Pilot Program”)

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

Buyer: Buyer means the Principal Recipient that is participating to the Global Fund Pilot Program: Extending the Benefits of PPM to Current PRs using Domestic Funding through wambo.org, also referred to as Client.

Buyer’s Authorized Representative: the Buyer who is formally authorized to sign off on the Price Quote (either on paper or, if the Buyer indicates that electronic approvals are considered legally binding, by approving the Price Quote in wambo.org). It is the Buyer’s responsibility to ensure that the Price Quote is only signed or approved by the Authorized Representative.

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

Client requested delivery date: Date that the Buyer 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 Buyer 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 Buyer 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 Buyer.

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 during the financial reconciliation process after goods are delivered.

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.

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 Buyer'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.

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 or urgent.

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 PFSCM's offer in response to a Buyer's Purchase Requisition in wambo.org. It constitutes a legally binding offer by PFSCM to the Buyer to supply and deliver products. The Buyer signs or electronically approves the Price Quote, confirming acceptance, and the Price Quote becomes the Purchase Order, which is the legally binding contract between the Buyer and PFSCM.

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

Purchase Order expiry date: When a Purchase Order is first issued, PFSCM will create an invoice for the Buyer's review and upfront payment. The Buyer, which may be the Buyer or a third-party payer on behalf of the Buyer, will have 30 calendar days to pay the invoice, after which time the prices quoted in the Purchase Order cannot be guaranteed, and PFSCM may reconfirm or reissue the Purchase Order at its discretion.

Principal Recipient (PR): means the person that is the principal recipient of a grant made by the Global Fund.

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 Buyers 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 Buyer 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 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 a legally binding agreement between the Procurement Services Agent and a Buyer for the procurement and delivery of products.

Quantity Quoted: The quantities of the product(s) the Buyer wishes to procure as indicated in their Purchase Requisition in 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.

Ship to Address: The location for the delivery of the product(s) as designated by the Buyer in their Purchase Requisition in 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 Buyer 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 the PFSCM to the Buyer 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 Buyer's Application Letter to the Pilot Program and its associated annexes. Buyers confirm acceptance of the Price Quote by approving it in wambo.org; Buyers that do not recognize electronic approvals in wambo.org as legally binding shall, in addition to the electronic approval in wambo.org, attach 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 Buyer and PFSCM, is transmitted by wambo.org. With the exception of all specific provisions related to the Pilot Program's dedicated transaction process described herein, and Section 8 of the Global Fund Agreement (Section 8: Terms and Conditions of Payment, which is not applicable under these Terms and Conditions), where these Terms and Conditions conflict 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. The Purchase Order shall be valid for a period of 30 calendar days, after which, if payment has not been received, the prices cannot be guaranteed and a new PQ, PO and invoice may need to be issued.
- 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 (<https://www.theglobalfund.org/en/sourcing-management/quality-assurance/>), as stipulated in The Global Fund Agreement, are procured and supplied to the Buyer.
- The Buyer will request goods in compliance with the Global Fund's Quality Assurance Policies. In addition, the Buyer must provide all required registration requirements, waiver requirements, label requirements and anything else that is necessary for the movement of goods into the country. The Buyer understands that without a complete list of the aforementioned documentation, the delivery of the requested goods may be disrupted. The Buyer shall provide that information as part of the onboarding process for

wambo.org. Prior to delivery of goods, PFSCM will provide to the Buyer 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 Buyer will ensure all duty and tax waivers required for product importation and use in country are in place to adhere to local tax requirements.

- PFSCM will be notified of Buyer's Price Quote approval by means of a Purchase Order released by wambo.org upon Global Fund's review directly into wambo.org. The receipt of a Purchase Order constitutes instructions to proceed with creating an invoice for upfront payment by the Buyer in wambo.org. PFSCM proceeding is contingent on receiving payment from the Buyer, proof of which will be provided by the Buyer as an attachment in wambo.org.
- Although the Buyer remains fully responsible for the payment, there may be instances where a third-party payer will pay on behalf of the Buyer and will transfer the upfront payment directly to PFSCM. In such a case, the Buyer may agree that the invoice be addressed and sent to the third-party payer.
- 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, once the full payment has been received from the Buyer (or a third-party payer on behalf of the Buyer); further, PFSCM is responsible for managing the execution of the orders, notifying the Buyer and the Global Fund of the applicable Estimated delivery date, and 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 Buyer has accepted the Price Quote and agreed to the terms and conditions stated herein, the Buyer 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 Buyer. On the occasion where an order in process can be cancelled, the Buyer will be responsible for the payment of all applicable cancellation and restocking fees of suppliers and/or freight, to be made directly or through a third-party payer on behalf of the Buyer.

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. An additional invoice will be issued to cover the excess costs, and up-front payment will be required for the order to move forward if the invoice exceeds 1,000 USD.

- Any material change¹ to an approved Price Quote, whether initiated by the Buyer, Global Fund or PFSCM, will require the issuance of an updated Price Quote by PFSCM and will necessitate the Buyer's re-approval in wambo.org, including a signed copy of the updated Price Quote where applicable, and issuance to PFSCM of an amended Purchase Order. In case of non-material change², the updated Price Quote will not be submitted to the Buyer for approval, but the Buyer will be notified of the changes.

¹ A *material change* is a change where the cost increase is USD 10,000 and above or represents 5% or more of the total value of the Price Quote (whichever is less). Increases pursuant to the foregoing sentence will be calculated against the price originally authorized by the Buyer and shall not apply with respect to amended prices where the Global Fund has processed increases incrementally or cumulatively. Such thresholds may be amended from time to time by the Global Fund.

² Each of the following shall constitute a *non-material change*: (1) Increases in the price originally authorized by the Buyer in an Price Quote as evidenced by the affirmative consent or signature of its duly authorized

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 Buyer 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). Any cost decreases or any unused amounts from the Cost Fluctuation Buffer will be reflected in the final financial reconciliation and refunded to the Buyer (or third-party payer as applicable and as instructed by the Buyer).

- PFSCM will be responsible for the timely delivery of products to the Buyer'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 by the Buyer (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 Buyer will be responsible for the costs of storage, handling, and transportation from the designated delivery point onward. The Buyer 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.
- The Buyer will be responsible for updating the status of receipt for its products within 14 calendar days of delivery to the agreed upon Incoterms. For any products that have been delivered with issues/problems, the Buyer 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. The Buyer will have the option to reject the non-conforming products. Where it was established that loss or damage occurred until the items are delivered as per the agreed Incoterm, the Buyer 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 submit a financial reconciliation electronically into wambo.org once all costs have been incurred, after which any excess funds will be returned to the Buyer (or the third-party payer as applicable and as instructed by the Buyer) within 30 calendar days of issuance of a credit note.
- In the event of a negative (outstanding) balance, the outstanding amount will be identified with associated payment instructions. The Buyer will be responsible for executing the payment of the outstanding balance to PFSCM within 30 calendar days from receipt of the final invoice, to be made directly by the Buyer or through a third-party payer on behalf of

representative, where such increases amount to no more than Ten Thousand United States Dollars (USD 10,000) or five percent (5%) of the total value of the Price Quote, whichever is less. Increases pursuant to the foregoing sentence will be calculated against the price originally authorized by the Buyer and shall not apply with respect to amended prices where the Global Fund has processed increases incrementally or cumulatively; and (2) Unplanned costs related to importation (e.g., demurrage, container detention, warehousing, etc.) for which there are accruing costs and for which further delays to address the import issue may result in additional costs.

the Buyer. The Buyer or the third-party payer, if applicable, will record its proof of payment in wambo.org. The confirmation will be transmitted to PFSCM through wambo.org, and PFSCM will confirm receipt of funds through an acknowledgement on wambo.org, which will be transmitted to the Buyer (and third-party payer where applicable) and Global Fund Sourcing category manager.

- An invoice summary of all costs associated with a particular purchase order will be available into wambo.org at the time of the PO closure, when all balances due to either the PSA or the Buyer have been settled.
- Both PFSCM and the Buyer 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.
- If any dispute, controversy or claim arises out between the Buyer 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 Buyer 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.

By signing this Price Quote, the Buyer 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 Buyer 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.