

2. USE OF MATERIALS, INTELLECTUAL PROPERTY MATTERS AND THE CBD

- (a) Nothing in this AGREEMENT grants RECIPIENT any rights under any patents, propriety, intellectual property, or other rights with respect to the MATERIAL.
- (b) RECIPIENT agrees to acknowledge NCIMB and any contributor indicated by NCIMB as the source of the MATERIAL in any and all publications and patent applications that reference the MATERIAL. Except as required by the preceding sentence, RECIPIENT may not otherwise use or permit others to use NCIMB's name, trademarks or unique catalogue numbering system, without the advance written consent of NCIMB.
- (c) RECIPIENT shall indemnify NCIMB, to the extent permitted by law, against any claims made against NCIMB by third parties relating to any patent or other proprietary rights of such third parties and also against any claims or liabilities arising as a result of breach of Sections 1 or 2 of this MTA. This includes, without limitation, any claims relating to, the receipt, handling, storage, transfer, disposal, use and any misuse or other wrongdoing with respect to Material transferred hereunder.
- (d) If the RECIPIENT desires to **use the MATERIAL or MODIFICATIONS for defined COMMERCIAL PURPOSE(S), it is incumbent upon the RECIPIENT**, in advance of such use and providing that their Country of origin is a signatory to the Convention on Biological Diversity (CBD), **to negotiate in good faith with the DEPOSITOR or appropriate authority in the DEPOSITOR's country of origin, the terms of any benefit sharing in compliance with the CBD.**

3. LIMITED WARRANTY OF MATERIAL

- (a) NCIMB hereby represents and warrants, that the MATERIAL shall be viable and pure upon shipment from NCIMB, and for a period, from NCIMB's shipment, of ninety (90) days for freeze dried cultures and fourteen (14) days for active cultures (the "Warranty Period"). The primary remedy for breach of this warranty is replacement by NCIMB of the MATERIAL free of charge if lack of viability or purity is reported upon receipt or within the applicable Warranty Period. Any claim against the Warranty will have to be justified to NCIMB's satisfaction. Any expiration date specified on the MATERIAL shipment documentation does not constitute a warranty.
- (b) Goods damaged or goods partially lost in transit must be reported to NCIMB within 3 days of receipt of the goods and goods which fail to appear must also be reported to NCIMB within 14 days of either notification of dispatch or receipt of invoice.
- (c) In exceptional circumstances, and at the discretion of NCIMB, the RECIPIENT may obtain a credit or full refund if the PROVIDER fails to supply a viable replacement of any MATERIAL sold.
- (d) Disclaimer of warranties. Except as expressly provided in this AGREEMENT, there are no representations or warranties by NCIMB or its DEPOSITORS with respect to the MATERIAL, express or implied, including without limitation, any implied warranty of authenticity, typicality, title, safety, merchantability, or fitness for a particular purpose. Neither NCIMB nor its DEPOSITORS makes any representation or warranty that use of the items will not infringe any patent, copyright, trademark or other proprietary right of third parties nor as to the accuracy or correctness of the data.
- (e) The use or implied use of the term EQUIVALENCY, in terms of strains purporting to be directly equivalent to strains in other culture collections, refers only to strains whose historical records show or imply, to the best of our knowledge, that these strains share a common history and source.

NCIMB may, at its discretion, provide technical assistance and information with respect to the MATERIAL as well as other products and procedures associated with use of the MATERIAL. NCIMB

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makes no warranties of any kind, express or implied, with respect to the technical assistance or information provided. It is the RECIPIENTS responsibility to assess the technical assistance and information in consideration of the use, selection, application or suitability of the items purchased. In placing an order with NCIMB, it is assumed the RECIPIENT has the facilities, knowledge and technical skills required to culture the strain or strains supplied.

4. LIMITATION OF LIABILITIES

- (a) RECIPIENT recognises the potential hazard of utilising the MATERIAL, the experimental nature of the MATERIAL and understands that the taking of appropriate precautions to minimise any health risk becomes fully their responsibility upon receipt of the MATERIAL. Neither NCIMB nor any authorized supplier of NCIMB cultures is liable for any damages or injuries resulting from receipt and/or improper, inappropriate, negligent or other wrongful handling or use of the MATERIAL.
- (b) Similarly, neither NCIMB nor any authorized supplier is liable from any misidentification, misrepresentation, lack of title, safety, variation of typicality of the MATERIAL supplied. Neither NCIMB nor its authorized suppliers will be liable to the RECIPIENT or the RECIPIENT's institution or any of its employees, representatives, or agents for any loss, claim or demand made by the RECIPIENT or the RECIPIENT's institution or such persons made against RECIPIENT or the RECIPIENT's institution by any other party, due to or arising from the use of the items by RECIPIENT, except to the extent permitted by law when caused by the gross negligence or wilful misconduct of NCIMB.
- (c) Neither NCIMB nor any authorized supplier shall have any liability to you or your institution for any consequential (including lost profits), incidental, indirect, special, economic or punitive damages arising out of, or based upon the transactions contemplated by this AGREEMENT or the subject hereof, even if NCIMB has been advised of the possibility of such damages.
- (d) The exclusive remedy against NCIMB (including any agent) for any losses or damage of any kind whatsoever, whether in contract, tort or otherwise, shall be, at NCIMB's discretion, including refund of the fee paid to NCIMB for such MATERIAL or other item or replacement of the MATERIAL.

5. SHIPPING

- (a) NCIMB will package the MATERIAL for shipping in accordance with local, national and international safety regulations (including IATA regulations).
- (b) The RECIPIENT is responsible for ensuring that all permits required for the RECIPIENT to receive its order are obtained and that sufficient proof of such permits can be provided to NCIMB if requested. If special processing or packaging or shipment is necessary or is requested by the RECIPIENT, a special processing fee will be charged. If the MATERIAL is lost or damaged during shipment, NCIMB will investigate the circumstances and at its discretion, replace such MATERIAL, including storage media, at no additional charge, provided that the RECIPIENT has reported thawed, damaged or lost shipments immediately to the applicable airline or freight forwarder and notified NCIMB promptly upon discovery thereof (See "NCIMB conditions of sale").

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6. MISCELLANEOUS

- (a) Certain contributors of MATERIAL to NCIMB have requested, and NCIMB has agreed, that they will be notified of the identity of transferees of MATERIALS hereunder. RECIPIENT acknowledges that nothing prohibits NCIMB from identifying RECIPIENT as a transferee of MATERIALS hereunder.
- (b) RECIPIENT understands and accepts that, NCIMB may refuse further sales of its products should RECIPIENT wilfully violate the terms of this AGREEMENT.
- (c) The RECIPIENT may not assign or otherwise transfer this AGREEMENT or any rights or obligations under this AGREEMENT, whether by operation of law or otherwise. Any attempted assignment or transfer will be void and have no force or effect. This Agreement, including all documents incorporated herein and in conjunction with NCIMB's Conditions of Sale, constitutes the entire AGREEMENT between NCIMB and RECIPIENTS with respect to all MATERIALS and supersedes all previous AGREEMENTS or representations. NCIMB may revise this Agreement at any time.
- (d) This Agreement shall be construed and enforced in accordance with and governed by the laws of Scotland, UK.
- (e) Conditions of Sale are available on our website: www.ncimb.com
- (f) Payment and banking details are printed on our Invoices and Proforma Invoices.

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