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<b>Title:</b>	<b>DSMZ GmbH Material Transfer Agreement (Terms &amp; Conditions)</b>			

## § 1 Scope

(1) These Terms and Conditions apply to all contracts with the Leibniz-Institut DSMZ - Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH (Leibniz Institute DSMZ - German Collection of Microorganisms and Cell Cultures), in particular for deposits and orders of the respective product groups, and for all services and the identification of bacteria, fungi, yeasts, viruses and cell cultures by DSMZ GmbH for its customers, unless deviations are expressly agreed in the individual contract for a particular case.

(2) A prerequisite for the establishment of a contract is that the customer is a legal person under civil or public law, or a special fund under public law, and that the customer's business relationship with DSMZ GmbH is part of the customer's commercial or independent activity.

(3) These general business terms and conditions also apply to all future business relationships even if this is not expressly agreed upon separately. We hereby exclude in advance the inclusion of general business terms and conditions of a customer that conflict with or amend our general business terms and conditions.

(4) The term "biological material" as it is used in the following is synonymous with the "genetic resource (GR)" of Directive (EU) No. 511/2014. The term "product" is used in the product catalogue. This is also synonymous. Biological material means DSMZ original material along with its progeny and unmodified derivatives including unmodified derivatives existing within modifications. Unmodified derivatives are substances created by the Recipient which constitute an unmodified subunit or function of the biological material.


## § 2 Contract Definition

(1) Our product catalogue including the prices is non-binding and subject to change without notice.

(2) By submitting an order the customer makes a binding offer to buy (Section 145 of the German Civil Code (BGB)) that can be accepted by DSMZ GmbH within 14 days. The terms of timing for patent deposits are established by the Budapest Treaty.

(3) After an offer to buy is received via the online shop, the customer receives an automatically generated e-mail confirming that the order has been received. This confirmation of receipt does not constitute acceptance. A contract is not concluded with the confirmation of receipt.

(4) Acceptance of the offer by DSMZ GmbH is by means of an express written statement or in text form, or by means of actual delivery or performance of a service. Written acceptance of an order

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is considered in due time if it takes place within 14 days and is coincident with issuing of the invoice.

### **§ 3 Transportation**

(1) Delivery and services are CPT (Incoterms 2020). With the transfer of the biological material to the freight carrier, the risk of accidental deterioration and accidental loss passes to the customer.

(2) DSMZ GmbH handles packaging and transportation at the customer's expense unless otherwise agreed. The mode of dispatch and route are chosen by DSMZ GmbH unless otherwise agreed. DSMZ GmbH only obtains transportation insurance with written a request from the customer.

### **§ 4 Delivery date**

The delivery dates provided in the order confirmation are not binding for DSMZ GmbH. All delivery commitments and services are adapted to the behaviour of the biological material, subject to the condition of adequate and timely supply to DSMZ GmbH and the finding at the discretion of DSMZ GmbH that the delivery is usable and otherwise permitted.


### **§ 5 Delivery terms and conditions**

(1) With the establishment of the contract, the customer assumes responsibility for the proper and legally compliant handling of the biological material. The customer must ensure that the biological material received is processed by adequately trained qualified personnel and in an adequate laboratory environment.

(2) The customer affirms familiarity with all relevant biological, microbiological, chemical and/or radioactive safety standards as well as the specific practices, equipment, facilities and regulations.

(3) Deliveries and services are subject to various national and international provisions, in particular infection protection law, genetic engineering law and arms control law. The customer is required to inform himself of the provisions of the above-mentioned laws as well as any recent or relevant updates to these laws. The customer assumes sole responsibility for compliance with the applicable laws. DSMZ GmbH assumes no liability for legal violations or breaches of duty by the customer. Inquiring about current national regulations such as import restrictions is also the responsibility of the customer. If import documents are required, the customer is obligated to provide these to DSMZ GmbH unsolicited and in a timely manner.

(4) If an official permit is required, delivery takes place only after submission of the same. For products in Risk Group 2 within Germany for example, delivery takes place exclusively subject to the customer's official permit to work with pathogens pursuant to Section 44 of the Infektionsschutzgesetz (IfSG; "Act dealing with the prevention and control of infectious diseases in

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man”) unless an exception applies pursuant to Section 45, Paragraph 2, No. 1 or No. 3 (Section 52 IfSG). The biological and genetic engineering Risk Group is published (but not legally binding) in the current catalogue on the DSMZ GmbH website and in the product identification. In any case DSMZ GmbH recommends handling the product according to methods for containment level 2.

## § 6 Prices


- (1) The prices listed in our product catalogue are net of the handling fee, VAT as required by law and the respective shipping costs.
- (2) For patent and safe deposits and for services, the prices in effect at the time of invoicing apply, where applicable plus VAT as required by law.
- (3) The price may increase for products approved for commercial use on a case-by-case basis (see Section 10).

## § 7 Payment terms and set-off

- (1) All products and services are invoiced based on the prices in effect when the order is received.
- (2) Delivery to new customers shall only be made against advance payment.
- (3) All invoices are payable immediately with no deductions, quoting the invoice number, by bank transfer to the account of DSMZ GmbH:  
Account holder:  
Leibniz-Institut DSMZ-Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH  
Bank:  
Braunschweigische Landessparkasse / Norddeutsche Landesbank Girozentrale  
IBAN: DE22 2505 0000 0002 0392 20  
SWIFT: NOLADE2H  
or by [credit card](#).
- (4) Meeting the purchase price payment obligation by deduction is only permitted for the customer if the counter-claims are legally established, undisputed or recognised by DSMZ GmbH. Furthermore, the customer is only entitled to exercise a right of retention insofar as the customer’s counterclaim arises from the same contractual relationship.

## § 8 Product quality

- (1) The customer is aware that the characteristics of the biological material are such that it is provided solely for immediate use. A reclamation must therefore be made within five working days.

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(2) The customer is also aware that the services and products involve biological materials. These can have hazardous characteristics and may be subject to quality fluctuations that are beyond the control of DSMZ GmbH.

(3) The high quality standards of DSMZ GmbH support the availability of pure, viable and authentic biological material. All quality guarantees require an express written declaration. DSMZ GmbH does not guarantee the shelf life or durability of the products and services in any way. Public information about the characteristics of the products and services in the publication of DSMZ GmbH and other publications does not constitute a guarantee.

(4) In addition to the general terms and conditions, the following terms and conditions apply for:

a. Patent and safe deposits

In case of patent and safe deposits, DSMZ GmbH assumes no responsibility for the accuracy of information provided by the depositor. Biological material deposited for patent purposes or safe deposit reasons as well as all corresponding documentation is handled as strictly confidential. DSMZ GmbH handles the deposited biological material with due diligence. Nevertheless, viability cannot be guaranteed.

The provisions of the Budapest Treaty apply for patent deposits.

b. Services

Service provision is strictly confidential. After the completion of the work, the supplied biological materials and resulting cultures are destroyed. DSMZ GmbH does not guarantee the viability or the authenticity of the supplied organisms or material. No liability is assumed for the results of the services and the resulting consequences for the customer.


Information and results can be submitted only to the signing customer. The client is entitled to the rights to the results.

## **§ 9 Liability**

(1) DSMZ GmbH in accordance with the applicable legal regulations assumes unlimited liability for damages due to the loss of life, physical injury or the impairment of health due to an intentional or negligent breach of duty by DSMZ GmbH or its agents.

(2) DSMZ GmbH in accordance with the applicable legal provisions is liable for itself, its employees and agents insofar as a delivery date agreed in writing on a case-by-case basis is not met (default in delivery), or damages are based on an intentional or grossly negligent breach of duty or the culpable violation of an essential contractual obligation (cardinal obligation) by DSMZ GmbH.

(3) When other damages are based on simple negligence, the liability of DSMZ GmbH for the violation of an essential obligation (cardinal obligation) is limited to the damages typical for the contract that were reasonably foreseeable at the time the respective contract was concluded and routinely correspond to the purchase price of the biological material.

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(4) Any further liability, especially for damages due to improper use of the goods or for damages due to force majeure, is excluded; liability pursuant to the Produkthaftungsgesetz (ProdHaftG, Act dealing with product liability) and for malice and/or based on guarantees remains unaffected.


(5) DSMZ GmbH assumes no responsibility for the loss of viability of the biological material due to irradiation, other adverse effects during transportation or delays. Consulting with the customs or postal authorities of the respective transit and destination countries in case of impending adverse events is the responsibility of the customer.

### **§ 10 Scope of use/contract penalty**

(1) The customer pledges to accept the restrictions on permitted use from the country of origin listed in the catalogue under "Restrictions" (see also Section 6). The customer pledges to pay a contract penalty in case of intentional, culpable infringement. The contract penalty as with commercial use (Paragraph 4) is EUR 1,000. DSMZ GmbH has the right to assert possible additional claims for damages. In this case the contract penalty is offset against the asserted claim for damages. The customer has the right to provide proof that no violation has occurred.

**(2) The use of the products is limited solely to the facilities of the customer and enterprises to which they are affiliated (see Section 15 German Stock Corporation Act). The customer is the end user. Transfer to third parties is prohibited, except for legitimate exchange pursuant to Section 3. "Third Parties" are companies not affiliated with the customer (see Section 15 German Stock Corporation Act). Exceptions on a case-by-case basis require the written consent of DSMZ GmbH and, where applicable, the written consent to all third-party terms of use. DSMZ GmbH assumes no liability for transfers to third parties. The customer obligates itself to pay a contract penalty in case of intentional, culpable transfer to third parties. The contract penalty as with commercial use (Paragraph 4) is EUR 1,000. DSMZ GmbH has the right to assert possible additional claims for damages. In this case the contract penalty is offset against the asserted claim for damages. The customer has the right to provide proof that no violation has occurred.**

(3) Unless excluded by a supplemental, depositor-provided Material Transfer Agreement (MTA; see Section 6) to the contrary, the transfer of microorganisms and cell cultures within the scope of a legitimate exchange as defined in the ECCO core MTA is permitted. This refers to the transfer of material between scientists at the same laboratory or between researchers working on a non-commercial joint project at various institutes. The partner may only use the material for the non-commercial joint project. The partner is obliged to comply with these General Terms and Conditions in the same way as the original customer. The legitimate exchange also includes the exchange of material between public collections (BRCs) for the purpose of depositing. The transfer of material to a receiving public collection/BRC requires that the collection has similar conditions to those of the DSMZ GmbH.

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**(4) Any commercial use of the material is excluded. Commercial use of products that are not regulated by the Nagoya Protocol is when the products are used directly for the purpose of profit generation or for a patent application. Internal use for quality control and as reference material is not a commercial use, unless the tests are performed for product approval and listed accordingly in reports for approval. Products of the plant viruses department intended for virus diagnostics and consisting of antibodies, serological positive controls or nucleic acid extracts are exempt. For orders of microorganisms or plant viruses, commercial use is possible on a case-by-case basis with the consent of DSMZ GmbH management. For material regulated by the Nagoya Protocol, the customer is required to adhere to the conditions in the (PIC/MAT) document associated with the material. See paragraphs 1 and 6 of this section for related restrictions and fines. The customer obligates itself to pay a contract penalty in case of intentional culpable or unapproved commercial use. The contract penalty is EUR 1,000 corresponding to the full cost price of own isolation. DSMZ GmbH has the right to assert possible additional claims for damages. In this case the contract penalty is offset against the asserted claim for damages. The customer has the right to provide proof that no violation has occurred.**

(5) If the customer publishes research results, the publication of the original investigator and collection number (DSM number; ACC number; NC number; AS number; RT number; PC number; PV number) and DSMZ GmbH as the supplier also have to be included.

(6) Prior Informed Consent (PIC), Mutually Agreed Terms (MAT), Internationally Recognised Certificate of Compliance (IRCC) and/or an additional (depositor-originated) Material Transfer Agreement (MTA) may exist for specific products. Where applicable, the corresponding files are available for downloads in the DSMZ GmbH catalogue (Section "Nagoya Protocol Restrictions"). The customer pledges to download these documents, adhere to the provisions defined therein, and to retain the documents for 20 years after they are last used. If there are subsequent users on a case-by-case basis (see Section 2), the documents must be transferred to them by the customer in full. Violating this obligation constitutes a summary offence that is punishable with a fine of up to fifty thousand Euros (Section 4 des Gesetzes zur Umsetzung der Verpflichtungen nach dem Nagoya-Protokoll und zur Durchführung der Verordnung (EU) Nr. 511/2014 (EU) No. 511/2014; "Nagoya Protocol Implementation Act").

(7) A general check by the DSMZ of third-party rights does not take place. In case of known third-party rights, the customer may only use the product after agreement to those rights imposed by the third party. The corresponding documents will be either available in the catalog or sent to the customer by the DSMZ. In these cases the customer can cancel their order within two weeks.

(8) All biological material from DSMZ GmbH is intended solely for research purposes (with the exception of patent and safe deposit material) and is not for use in humans (including food or cosmetics) or for veterinary or clinical purposes.

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(9) All of our products may only be used in premises used for research purposes, such as laboratories or greenhouses, under the supervision of a technically qualified person.

### **§ 11 Exchange**

The return and/or exchange of delivered biological material is generally excluded.

### **§ 12 Deposits**

(1) Unless otherwise agreed (for example in case of safe or patent deposits), the depositor of biological material agrees that the material can be deposited in the public collection.

(2) If no agreements to the contrary have been established (for example in case of safe or patent deposits), DSMZ GmbH is permitted to disseminate the biological material to customers without notifying the depositor.

(3) DSMZ GmbH reserves the right to add biological material deposited for the purpose of publication to the public catalogue after four years even if no publication has taken place.


(4) The depositor affirms that the information provided at the time of depositing, in particular the CBD or Nagoya-related information (such as the collection location and date as well as the submitted documents and documentation such as Prior Informed Consent [PIC] and Mutually Agreed Terms [MAT] or Internationally Recognised Certificate of Compliance [IRCC] and Material Transfer Agreement [MTA]), is truthful and was provided in all conscience. DSMZ GmbH reserves the right to assert claims for damages against the depositor in case of wilfully incorrect information.

(5) The documents submitted to DSMZ GmbH with the biological material for the public collection (PIC, MAT or IRCC and MTA) will be made available for public download. The collection location and date may also be published in the catalogue.

### **§ 13 Amendments and modifications**

(1) DSMZ GmbH reserves the right to stop the availability of products without prior notice or to adapt their delivery terms.

(2) When biological material is ordered with the specification of a non-DSMZ culture collection number, DSMZ GmbH will deliver the corresponding culture according to the strain history of the organism with a DSM-numbered product.

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## **§ 14 Choice of law and jurisdiction**

- (1) The laws of the Federal Republic of Germany apply to the entire contractual relationship between DSMZ GmbH and the customer.
- (2) The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- (3) The jurisdiction of all disputes arising from or in the context of the contractual relationship between the customer and DSMZ GmbH is the registered office of DSMZ GmbH (Braunschweig).

## **§ 15 Severability clause**

Should individual provisions of this contract be ineffective or infeasible, or become ineffective or in-feasible after the contract is concluded, the effectiveness of the contract shall otherwise remain unaffected. The ineffective or infeasible provision shall be replaced by an effective and feasible provision that, in effect, comes as close as possible to the economic intent pursued by the parties to the contract with the ineffective or infeasible provision. The preceding provisions also apply in case of gaps in the contract.