

MATERIAL TRANSFER AGREEMENT (“MTA”)

Terms and conditions applicable to the use, handling, supply, distribution, sale, and any disposition of the material

DEFINITIONS

- a. COLLECTION: BCCM™ / Collection
- b. RECIPIENT: See purchaser on invoice and user on delivery note if different of purchaser.
- c. DEPOSITOR: natural or legal person who deposits ORIGINAL MATERIAL in the custody of the COLLECTION
- d. RESEARCH GROUP: Entitled scientists working in a same laboratory, or contractually bound to work on the same research topic.
- e. MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include MODIFICATIONS. The description of the MATERIAL being transferred is on delivery note and invoice.
- f. ORIGINAL MATERIAL: what was supplied to the COLLECTION by the DEPOSITOR.
- g. PROGENY: Unmodified descendant from the ORIGINAL MATERIAL, such as cell from cell, or organism from organism.
- h. UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT which constitute an unmodified functional subunit of the MATERIAL.
- i. MODIFICATIONS: Substances created by the RECIPIENT using the MATERIAL, which are not ORIGINAL MATERIAL, PROGENY or UNMODIFIED DERIVATIVES, and which have new properties.
- j. LEGITIMATE EXCHANGE: The transfer of the MATERIAL within the Research Group. LEGITIMATE EXCHANGE also includes the transfer of MATERIAL between named culture collections/ biological resources centres for accession purposes, provided that further distribution by the receiving culture collections / biological resources centre is under MTA provisions compatible and equivalent as those in place at the supplying collection.
- k. COMMERCIAL USE: the use of the MATERIAL for the purpose of profit. COMMERCIAL USE shall include the sale, leasing, exchange, license, or other transfer of MATERIAL for profit purposes. COMMERCIAL USE shall also include uses of MATERIAL to perform service activities or research activities for profit purposes.

TERMS AND CONDITIONS

1. The COLLECTION is willing to transfer the MATERIAL to RECIPIENT and to grant RECIPIENT a limited non-exclusive license to use the MATERIAL under the terms and conditions specified in this Material Transfer Agreement.
2. The RECIPIENT shall not sell, lease, license, lend, supply, distribute or otherwise transfer the MATERIAL to any others, save those involved in LEGITIMATE EXCHANGES.
3. The RECIPIENT agrees that the MATERIAL is to be used under the responsibility of the RECIPIENT, in compliance with all applicable laws and regulations.
4. Subject to the terms and conditions of this Agreement and any statutory, regulatory or other restriction imposed by law, RECIPIENT may use the MATERIAL in any lawful manner for research, teaching or quality control purposes. Any COMMERCIAL USE of the MATERIAL requires the prior written authorization of the COLLECTION. Such approval will not be unreasonably withheld.
5. The RECIPIENT agrees to mention the COLLECTION, the COLLECTION's catalogue number referring to the MATERIAL and the provenance of the MATERIAL in all publications, as recommended by the code of conduct MOSAICC and the TRUST system (1), taking into account national laws implementing the Nagoya Protocol to the Convention on Biological Diversity, and the TRIPS article 29 as to the conditions on patent applicants concerning invention disclosure.
6. Use of the MATERIAL may be subject to intellectual property rights. No express or implied licenses or other rights are provided herein to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights.
7. It is the RECIPIENT's sole responsibility to obtain any intellectual property licenses necessary for the use of the MATERIAL. The RECIPIENT agrees, in advance of such use, to negotiate in good faith with the intellectual property rights owner(s) to establish the terms of a commercial license; taking also into account specific national laws implementing the Nagoya Protocol.
8. The use of the MATERIAL may be subject to specific restrictions which are mentioned in the catalogue description for the particular MATERIAL and are hereby acknowledged by RECIPIENT.
9. The COLLECTION will process, package and ship the MATERIAL in accordance with applicable laws and regulations. RECIPIENT is responsible for ensuring that all permits required for RECIPIENT to receive its order are obtained.
10. Any MATERIAL delivered pursuant to this MTA is understood to be experimental in nature and may have hazardous properties. The MATERIAL is to be used with caution and prudence. The COLLECTION makes no representations and extends no express or implied warranties, including any warranty of merchantability or fitness for a particular purpose, or that the use of the MATERIAL does not or will not infringe any patent, copyright, trademark, or other proprietary rights.
11. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages, which may arise from its use, storage or disposal of the MATERIAL.
12. The COLLECTION will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, arising from the use of the MATERIAL by the RECIPIENT, except to the extent caused by the wilful misconduct of the COLLECTION.
13. Neither this Agreement nor any rights or obligations contained herein are assignable, whether by operation of law or otherwise, without the prior written consent of the COLLECTION.
14. The version of the MTA applicable to any MATERIAL ordered by the RECIPIENT shall be the version in effect at the time of order placement, as it can be found on the BCCM website <http://bccm.belspo.be/>.
15. Belgian laws, with exclusion of its conflict of law provisions, shall govern this Agreement. Belgian laws will pre-empt any conflicting or inconsistent provisions in this Agreement. The Brussels Courts are competent to judge any conflict arising out of this Agreement (2).

(1) For more information see MOSAICC and TRUST at <http://bccm.belspo.be/projects>

(2) For distribution outside the European Union Article 15 is not applicable and is replaced by the following provision: .Any dispute or controversy in relation to, in connection with or resulting from this Agreement that cannot be solved amicably between the parties shall be subject to the jurisdiction of the appropriate national court of the party who would be the prospective defendant in legal action on the issue. The choice of law shall be that of said appropriate national court. Either party may bring proceedings for an injunction in any jurisdiction