

USE OF BIOLOGICAL MATERIAL AGREEMENT

MATERIAL

For the purpose of this agreement (which shall be made up of these terms and the order form completed by the recipient), original material consists of live cultures of marine or freshwater micro-algae from Cawthron Institute Culture Collection (CICCM). The term material includes the original material as indicated in the order form and its replications and derivatives produced by the recipient.

USE OF MATERIAL

The recipient acknowledges and agrees that it is simply paying for a right to use the material in accordance with this agreement. The original material is made available to the recipient for the sole purpose of the research described by the recipient in the recipient's Order Form. The recipient warrants and undertakes that it will not deal with any material or associated data obtained (or any intellectual property therein) in a way that would limit or affect its ability to comply with the terms of this agreement.

The recipient shall not transfer or release the material or any compounds, mixtures or their derivatives from cultures of the material to any third party without Cawthron's written permission and only on and subject to the terms agreed by Cawthron (on a case by case basis).

The recipient shall comply with all directions, instructions and guidelines of Cawthron regarding the use, handling, storage and destruction of the materials (including any instruction to cease the use of and/or destroy the materials (or any part thereof) where continued use may place or be likely to place Cawthron in breach of any of its existing legal or contractual obligations).

RESERVATION OF TITLE

Title to ownership of the material (and all intellectual property therein) shall at all times remain the property of Cawthron and the making available of the material to the recipient shall not be interpreted as granting the recipient any rights or title in or to the material except as expressly provided for in this agreement.

PUBLICATION

The recipient shall promptly notify Cawthron of the results arising from the recipient's research undertaken using the materials.

The recipient shall not (and shall ensure that no other person) publish any information arising out of or in relation to the research without first having provided a copy of such information to Cawthron. Any such publication shall acknowledge the source of the materials.

DISCLOSURE

The recipient shall promptly disclose to Cawthron any invention or discovery arising from the research with the material which could be commercially useful or patentable. Should an invention or discovery, or any commercially useful product arising as a result of the research conducted by the recipient undertaken using the material, the parties will discuss in good faith on the terms and conditions of the exploitation of the results, provided that Cawthron may prohibit any disclosure or exploitation of such invention or discovery if such disclosure or exploitation would or may be likely to place Cawthron in breach of any of its existing legal or contractual obligations.

The recipient shall, immediately upon receipt of a request from Cawthron, provide such access as is reasonably requested by Cawthron to any materials in the possession of the recipient, documentation (including research) relating to (or arising as a result of the use of) the materials, and any representatives of the recipient who have been involved in the research or may otherwise have had access to the materials.

TERM OF AGREEMENT

The term of this agreement is three years from the date of the Order Form or until the research referred to in Clause 2 is completed, whichever date is earlier.

Unless otherwise expressly agreed in writing by Cawthron, upon termination of this agreement, the recipient shall destroy any unused material and shall provide certification to Cawthron (in a form requested by Cawthron) that such destruction has taken place.

All provisions of this agreement that by their nature should survive termination of this agreement (including clauses 3, 4, 5 and 7) shall survive and continue after expiration or termination of the agreement.

WARRANTY AND INDEMNITY

Cawthron does not warrant to the recipient the suitability of the original material for the recipient's requirements and expressly excludes all warranties, representations or promises (whether express, implied, statutory or otherwise) in respect of the materials to the fullest extent permitted by law. The recipient acknowledges that it relies upon its own judgment for the use for which the recipient intends.

The recipient indemnifies Cawthron against any loss, cost (including legal costs), liability or claim suffered or incurred by Cawthron which may arise as a result of or in connection with the recipient's use of the material or failure to comply with the terms of this agreement.

DISPUTE RESOLUTION AND GENERAL

This agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Agreement. The parties acknowledge that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the sale of a right to use the materials under this agreement.

In the event of any dispute or disagreement between the parties arising out of this agreement, they agree that they shall first endeavour to resolve the dispute by way of good faith negotiation between representatives of each party with appropriate seniority. If the parties are unable to resolve the dispute by way of good faith negotiation within a reasonable period of notification by one party of the dispute, the parties shall endeavour to resolve the dispute by way of mediation before an agreed mediator, or failing agreement as nominated by the President for the time being of the New Zealand Law Society. In the event that the dispute is not resolved by mediation then the parties shall resolve the difference by arbitration pursuant to the provisions of the Arbitration Act 1996.

The recipient shall not assign or transfer any of its rights under this agreement without the prior written consent of Cawthron.