

Welcome to CellBank Australia ("CellBank"), and thank you for your interest in purchasing Cell Lines from us. CellBank is a repository specialising in the growth, quality control, storage and distribution of Cell Lines. CellBank operates as a not-for-profit facility and aims to recover costs from sales of products and services. We value your business and our goal is to make your purchasing experience as smooth as possible. These are the terms and conditions under which we sell Cell Lines. By submitting a Purchase Order, you agree to be bound by these terms and conditions.

CELLBANK AUSTRALIA STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In these Standard Terms and Conditions, unless the context otherwise requires:

"**Acceptance Period**" means, in relation to any Material, the period commencing on the date on which CellBank surrenders possession of that Material for delivery to the Recipient and ending on the date which is thirty (30) days later.

"**Accepted Purchase Order**" means Purchase Orders accepted in accordance with clause 2.2.

"**Accession**" means to include a Cell Line within a collection of Cell Lines, by:

- (a) allocating it a unique identifier (known as an accession number or catalogue number);
- (b) collecting information regarding that Cell Line's provenance and behaviour;
- (c) making the information referred to in paragraph (b) available to Recipient; and
- (d) performing cell culture and quality control processes required to produce sufficient vials or flasks for distribution of that Cell Line.

"**Agreement**" means the agreement between CellBank and the Recipient for the transfer of Material comprising, in decreasing order of priority to the extent of any inconsistency:

- (a) any Special Terms;
- (b) these Standard Terms and Conditions;
- (c) Quotes;
- (d) Accepted Purchase Orders; and
- (e) Invoices.

"**Business Day**" means a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney, NSW, Australia.

"**Cell Line**" means a defined population of cells, derived from a single source, which has been maintained in culture for an extended period of time.

"**Depositor**" means the party who made the deposit of Material in question with CellBank and if the Material was deposited with a third party or third parties before ultimately being deposited with CellBank, each one of those depositors.

"**Derivatives**" means, in relation to a Cell Line, cells arising from the continued growth of that Cell Line, and which have been modified in any way.

"**GST**" has the meaning given to that term by the GST Law.

"**GST Law**" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended) and any regulation made under that Act.

"**Indemnified Parties**" means CellBank, the Depositor and the directors, officers, representatives and agents of these parties.

"**Information**" means information that CellBank has relating to the Material in question.

"**Intellectual Property Rights**" means any rights in respect of trade marks (whether registered or not), get up or trade dress, brands, logos, service marks and trade names, all rights in or to any patent, copyright, database rights, design (whether registered or not) or other design right, utility model, moral right, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

"**Invoice**" means an invoice issued by CellBank pursuant to clause 2.2.

"**Loss**" means:

- (a) any claim, demand, remedy, requisition, objection, suit, injury, damage, loss, liability, action, proceeding, right of action or claim for compensation;
- (b) a valid request, direction, notice, demand, requirement, condition (including condition of an approval) or order from an authority that requires anything to be done or not be done; or
- (c) any reasonable cost (including legal costs on a solicitor and client basis), charge, expense, outgoing, payment or other expenditure of any nature.

"**Material**" means each sample of Cell Lines that the Recipient wishes to purchase and which is identified as part of an Accepted Order, and its Replicates, further Derivatives and any Products derived from the Cell Lines, which upon creation automatically becomes the subject of the Agreement.

"**Price**" means the amount paid or payable by the Recipient to CellBank for the Material, as identified in the Accepted Purchase Order as otherwise agreed between the Recipient and CellBank.

"**Product**" means a substance derived from a Cell Line that can be purified or handled separately, including DNA, RNA and antibodies.

"**Purchase Order**" means a request by the Recipient for Material to be supplied by CellBank and includes an acceptance of a Quote.

"**Quote**" means any quotation from CellBank to the Recipient in relation to Material.

"**Receiving Individual**" means any individual, employed by or otherwise representing the Recipient, who accepts a Quote or places a Purchase Order with CellBank for any Material on behalf of the Recipient, during the Term.

"**Receiving Laboratory**" means a single laboratory of the Recipient where the Receiving Individual will conduct research using the Material the subject of an Accepted Purchase Order and does not include any other laboratories of the Recipient.

"**Replicates**" means, in relation to a Cell Line, cells arising from the continued growth of that Cell Line, which display behaviour consistent with the original material from which they were derived.

"**Repository**" means a facility specialising in the collection and appropriate maintenance of cells in various formats, including as Cell Lines, for subsequent distribution to third parties.

"**Research Purposes**" means activities undertaken for the advancement of knowledge. It specifically excludes use of any Material, its Replicates, Products and Derivatives for any activity undertaken for commercial gain and any activity involving direct or indirect application in humans, including diagnostic testing and production of substances for end-use in human subjects.

"**Site**" means CellBank's premises at 214 Hawkesbury Rd, Westmead 2145, NSW Australia or any other site that may become CellBank's principal place of business or any other site that may be an auxiliary place of business for CellBank.

"**Special Terms**" means any other terms and conditions which are in addition to or which amend these Standard Terms and Conditions, and which are set out in Schedule 1.

"**Standard Terms and Conditions**" means these standard terms and conditions.

“Viable” means, in relation to a Cell Line, that the Cell Line shows evidence of growth and passes those quality control tests normally performed by CellBank to assess viability.

1.2 In the Agreement, unless the context otherwise requires:

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender include the other genders;
- (b) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a party is to a party to the Agreement, and a reference to a party to a document (including the Agreement) includes the party’s executors, administrators, successors and permitted assigns and substitutes;
 - (iv) a recital, clause, paragraph, Schedule, annexure or attachment is to a recital, clause or paragraph of or schedule, annexure or attachment to these Standard Terms and Conditions, and a reference to the Agreement includes any such recitals, Schedules, annexures and attachments;
 - (v) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) provisions or terms of the Agreement or another document, agreement understanding or arrangement include a reference to both express and implied provisions and terms;
 - (ix) time is to local time in Sydney, NSW, Australia;
 - (x) “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (xi) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
 - (xii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (e) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement or any part of it;
- (f) headings do not affect the interpretation of the Agreement; and
- (g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or before the immediately following Business Day.

2. PURCHASE ORDERS, PRICE AND PAYMENT

- 2.1 Any Quote given by CellBank is a mere invitation to treat and does not constitute an offer. Each Quote lapses thirty (30) days after issue but CellBank may vary or withdraw a Quote at any time.
- 2.2 A contract for transfer comes into existence for the relevant Material once written acceptance has been made by CellBank of a Purchase Order or once CellBank has accepted the Purchase Order by its performance.

3. GRANT OF RIGHTS

- 3.1 CellBank grants to the Recipient a revocable, non-exclusive, royalty free, non-transferable licence (with no right to grant sub-licences) to use Material only for Research Purposes and only in the Receiving Laboratory, on and subject to the terms and conditions of the Agreement.
- 3.2 The Recipient undertakes to CellBank that the Recipient will not use Material or its Products and Derivatives in humans. This applies to both direct and indirect applications and includes diagnostic testing and production of substances for end-use in human subjects.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 The Recipient acknowledges that CellBank does not have any Intellectual Property Rights in the Material beyond the right to grant the licence to the Recipient pursuant to clause 3.1 and that CellBank is authorised only to distribute the Material for Research Purposes. If the Recipient requires any other Intellectual Property Rights or other rights in the Material, it is the sole responsibility of the Recipient to obtain such rights from the Depositor.
- 4.2 The Agreement does not grant the Recipient any licence or any right to use Material for any purpose other than those set out in the Agreement.
- 4.3 The Recipient must ensure that the Material and its Products and Derivatives are not distributed to third parties or to any persons other than in the Receiving Laboratory without the prior written consent of the Depositor.
- 4.4 The Recipient must ensure that the Material and its Products and Derivatives are not utilised commercially or involved in the preparation for sale of any biological materials without the Recipient obtaining the Depositor’s prior written consent. Any requests to CellBank by the Recipient for use of the Materials in commercial applications will be referred by CellBank to the Depositor for its consent, but CellBank is under no obligation to arrange such consent. It is specifically agreed between the parties that it is the obligation of the Recipient to obtain such consent of the Depositor.
- 4.5 The Recipient agrees to acknowledge CellBank and the Depositor in all publications and patent applications that make reference to the Material, by referencing the original work of the Depositor, the Material’s full name, the CellBank catalogue number and the fact that the Material came from CellBank.

5. DELIVERY OF MATERIAL

- 5.1 CellBank will package the Material in compliance with applicable shipping laws and regulations and will transport the Material to the Recipient with freight and any insurance prepaid via CellBank’s carrier of choice, all at the Recipient’s cost.
- 5.2 The Recipient is responsible for ensuring that all permits required for receipt of the Material are obtained prior to CellBank arranging delivery.

6. ACCEPTANCE OF MATERIAL

- 6.1 Following receipt of Material, the Recipient must test the Material within the Acceptance Period to confirm whether it is Viable.
- 6.2 If the Recipient determines that the Material is not Viable, it must notify CellBank in writing within the Acceptance Period and CellBank will be liable to the extent required by clause 10.
- 6.3 If the Recipient does not provide a notice to CellBank pursuant to clause 6.2 during the Acceptance Period, the Material will be deemed to have been accepted by the Recipient as Viable.

7. RISK AND TITLE

- 7.1 Risk in and title to the Material will pass to the Recipient upon the Material being provided to the carrier pursuant to clause 5 for delivery to the Recipient at its address specified in the Agreement or otherwise notified by the Recipient to CellBank in writing from time to time in accordance with any Accepted Purchase Order.
- 7.2 CellBank makes no representations or warranties whatsoever regarding, and is not liable for, any Information provided by the Depositor and included with the Material, except that it is the Information provided by the Depositor in relation to the Material.

8. INSURANCE

With effect from the time that the Material is provided to the carrier pursuant to clause 5 for delivery to the Recipient, the Recipient assumes responsibility for the Material, including product and public liability insurance and any other insurance commonly taken out by other similar institutions that purchase and/or hold Cell Lines.

9. TERM AND TERMINATION

9.1 The Agreement commences upon submission of a Purchase Order to CellBank and shall continue until terminated by either party in accordance with clause 9.2.

9.2 Either party may terminate the Agreement by providing 30 days' written notice to the other party, however the following clauses shall survive the termination of the Agreement – this clause 9.2 and clauses 3, 4, 7, 8, 10, 11 and 12.

10. LIABILITY AND INDEMNITIES

10.1 To the maximum extent permitted by law and notwithstanding any other provision of the Agreement, the Indemnified Parties are not liable to the Recipient in respect of any indirect, consequential or special loss, loss of revenue or loss of profit howsoever arising whether under contract, in tort, in equity, under statute or otherwise.

10.2 The Recipient agrees that the Indemnified Parties have not made any representations as to any matter, fact or thing that is not expressly provided for in the Agreement and CellBank does not give any warranty or guarantee except to the extent required by law. In particular, the Recipient acknowledges that before transfer, to the Recipient, CellBank may or may not have tested the Material to determine whether the Material is Viable.

10.3 Nothing in the Agreement is to be read or applied so as to exclude, restrict or modify any or all of the consumer guarantees to the extent implied by the *Competition and Consumer Act 2010* (Cth) and which cannot be excluded, restricted or modified by that Act.

10.4 Notwithstanding any other provision of this Agreement, in the event that CellBank is liable to the Recipient for breach of contract, tort, statute or otherwise in relation to Material, then to the extent permitted by law, CellBank's liability will be limited to the amount paid to CellBank by the Recipient for that Material but if CellBank's liability is for breach of a consumer guarantee implied by the *Competition and Consumer Act 2010* (Cth) in relation to a supply of goods under this Agreement, CellBank's liability is limited, at CellBank's option, to:

- (a) the cost of replacing the goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the goods repaired.

10.5 The Recipient indemnifies the Indemnified Parties against any contingent or actual Loss incurred by any of the Indemnified Parties arising from or in connection with any breach of the Agreement by, or the negligence of, the Recipient.

11. SAFETY HAZARDS AND VOLUNTARY ASSUMPTION OF RISK

11.1 The Recipient acknowledges that the Material contains an inherent pathogenic risk as biological material and that it is impossible to fully quantify or eliminate such risk. The Recipient agrees to take all necessary and appropriate handling and storage measures to manage any risk associated with the usual hazards of cell cultures. Neither CellBank nor the Depositor will be held liable by the Recipient for the mishandling or inappropriate storage of the Material by the Recipient.

11.2 The Recipient warrants to CellBank that the Recipient is capable and qualified to safely handle and store the Material and to safeguard it from theft and misuse. This includes provision of appropriate containment for its safe handling, as determined by any risks known to be associated with the Material.

11.3 With effect from the time that the Material is provided to the carrier pursuant to clause 5 for delivery to the Recipient, the Recipient assumes all risk and responsibility associated with the receipt, handling, storage, disposal, transfer and use of the Material and its Products and Derivatives, including taking appropriate safety precautions to minimise health or environmental risk in compliance with all applicable guidelines, laws, and regulations.

12. MISCELLANEOUS

12.1 The Agreement will be governed by and construed in accordance with the laws of the State of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

12.2 The Agreement supersedes all prior agreements, arrangements and undertakings between the parties in connection with its subject matter and constitutes the entire agreement between the parties in connection with its subject matter.

12.3 Should any part of the Agreement be or become invalid, that part will be severed from the Agreement and that invalidity will not affect the validity of the remaining provisions of the Agreement.

12.4 The Agreement may be varied, amended or extended only by the written agreement of the parties.

12.5 No waiver of any breach of the Agreement or of any of the terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed.

12.6 All duties, taxes or other imposts payable on the Agreement or payable in the course of fulfilling the Agreement will be borne by the Recipient.

12.7 The parties will bear their own legal costs in connection with the Agreement.

12.8 Any notice or other communication required to be given under the Agreement will be in writing to the facsimile, email or physical address of the party last notified to the other party and will be deemed to have been given or received:

- (a) on the third day following posting if sent by mail;
- (b) on delivery if delivered by hand, unless that delivery is made on a day which is not a Business Day, or after 5.00pm on a Business Day, in which case that notice or communication is taken to be given or received at 9.00am on the next Business Day; or
- (c) when sent with confirmed answer back if sent by facsimile or email.

12.9 Neither party will, without the prior written consent of the other party, transfer or assign any of its rights or obligations under the Agreement.

12.10 CellBank holds the benefit of any release, indemnity or any other provision of the Agreement expressed to be for the benefit of any of the Indemnified Parties on trust for those Indemnified Parties.

12.11 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by the Agreement.

12.12 Any indemnity in the Agreement is independent and survives termination of the Agreement. Any other term which by its nature is intended to survive termination of the Agreement survives termination of the Agreement.

12.13 CellBank holds the benefit of each indemnity, promise, covenant, warranty and obligation in the Agreement made by, or of, the Recipient which is expressed to be for the benefit of the Depositor on trust for the Depositor.

12.14 Except where the Agreement expressly states otherwise, the Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

12.15 The Agreement may be executed in counterparts. All executed counterparts constitute one document. The Agreement may be executed by either of the parties by duly executing a counterpart and forwarding a copy of the signed counterpart to the other party.

SCHEDULE 1: SPECIAL TERMS AND CONDITIONS OF SALE

1. To the extent that any Material transferred under the Agreement are Cell Lines supplied to CellBank by the European Collection of Cell Cultures, as operated by Public Health England, the provisions in Schedule 2 and Schedule 3 will apply to the transfer of those Cell Lines under the Agreement and the Recipient agrees to be bound by such terms.

SCHEDULE 2: ECACC STANDARD TERMS AND CONDITIONS OF SALE (Effective from 1 April 2013)

FOR THE PURPOSES OF THESE TERMS AND CONDITIONS:

“**Culture Collections**” shall mean the Public Health England acting through its operating division the Culture Collections;

“**Materials**” shall mean any culture, microorganism or their derivatives listed on the Culture Collections website or in any published catalogue or brochure.

“**Product**” shall mean any or all of Materials or Services supplied by the Culture Collections.

“**Recipient**” shall mean an individual authorised employee of the Employer.

“**Employer**” shall mean the employer of the Recipient.

“**Services**” shall mean any Service listed on the Culture Collections website or in any published catalogue or brochure.

“**Third Party**” shall mean any third party not bound by these terms and conditions.

1. The Recipient hereby confirms that he/she is authorised to receive the Product(s) for and on behalf of the Employer and has sufficient authority to bind the Employer to these standard terms and conditions.
2. The Recipient shall use the Products, and any progeny, derivatives or products thereof (collectively 'Derivatives') for research purposes only. Notwithstanding the foregoing, in no event shall the Products or Derivatives be directly or indirectly applied to human subjects.
3. Unless otherwise agreed by the Culture Collections, the Products and Derivatives shall not be incorporated into any service or product for sale, or utilised in the commercial provision or production of any service or product for sale. For the sake of clarification genomic or plasmid nucleic acids from all of the Culture Collection's cultures or microorganisms shall be included as Derivatives.
4. The Recipient, or any representative of the Employer, shall not distribute the Product(s) or Derivatives to any external organization or to any third party. The Employer shall not distribute the Product(s) or Derivatives to any affiliated or associated organization without the Culture Collections' prior written consent.
5. The Culture Collections is the rightful owner or custodian of the Products and Derivatives and all intellectual property rights subsisting therein, shall rest in the Culture Collections or its third party depositor. No licence is granted to the Recipient or the Employer, except that specified in clause 2.
6. The Culture Collections warrants that all Products supplied conform in all material respects with their specification as set out by the Culture Collections. If the Culture Collections receives written notice from the Recipient of any breach of this warranty within thirty (30) days of receipt of the Product by the Recipient or, in the case of non-delivery of Product, within thirty (30) days of the agreed scheduled date of delivery, then the Culture Collections shall, at its sole discretion, replace any Products found to be in material non-conformity with their specification or refund the cost of such Products to the Recipient. This warranty is only valid if the Recipient ensures that the Product has been stored or processed according to the specifications detailed on the data sheet provided with the product. The Recipient hereby agrees to the method of shipment and associated conditions of shipment for each specific Product and specified Incoterms as outlined on the Culture Collections website at the time of placing the order.
7. The Culture Collections shall have no liability to the Recipient or the Employer in the event that the Products and/or Derivatives infringe any intellectual property right of a Third Party and all warranties relating thereto whether expressed or implied, by statute or at common law, are hereby excluded.
8. The Recipient shall indemnify the Culture Collections and its directors, officers, representatives and agents as well as the original depositors of the Products with the Culture Collections, against all loss, actions, costs, claims, demands, expenses and liabilities which the Culture Collections or the said depositors may incur, either at common law or by statute, in respect of death or personal injury or in respect of any loss or destruction of or damage to property (except to the extent that the foregoing is as a result of any negligence on the part of the Culture Collections) which occurs in connection with the Recipient's use of the Products and/or Derivatives (or that of the Employer, where the Recipient is an individual).
9. The Recipient shall, prior to receipt of the Products, ensure compliance with all national regulations for the import and storage of the Products and shall indemnify and hold the Culture Collections harmless from any non-compliance with such regulations.
10. The Recipient warrants that it is capable and qualified to safely handle and store the Material and to safeguard it from theft and misuse. This includes provision of appropriate containment for its safe handling, as determined by any risks known to be associated with the Material.
11. The Recipient acknowledges that Material can potentially harbour infectious agents and assumes all risk and responsibility associated with the receipt, handling, storage, disposal, transfer and use of the Material and its Products, including taking appropriate safety precautions to minimise health or environmental risk in compliance with all applicable guidelines, laws and regulations.
12. The Recipient shall indemnify the Culture Collections against any and all loss, actions, costs, claims, demands, expenses and liabilities incurred by the Culture Collections and/or the aforesaid depositors, by reason of any breach of these terms and conditions.
13. In any publication making reference to the Products and/or Derivatives, due acknowledgement shall be given of the source of the Products (quoting the Culture Collections' catalogue reference number) and that accurate reference is made to the work of the original depositor.
14. These terms and conditions shall constitute a contract between the Culture Collections and the Recipient which shall be governed by English law and all questions in any way affecting or arising out these terms and conditions shall be subject to the non-exclusive jurisdiction of the English courts to which the parties hereby submit, except that Public Health England may apply for interim relief in any court of competent jurisdiction. These terms and conditions may be changed by the Culture Collections without notice at any time.
15. In addition to these terms and conditions, the Culture Collections may impose further terms and conditions upon the supply of a particular Product. Should the Culture Collections seek to do so, the Culture Collections shall provide the Recipient with details of these additional terms and conditions either upon request for, or receipt of, an order from the Recipient. Such additional terms and conditions shall, upon acceptance by the Recipient, and in addition to those terms and conditions set out above, be deemed to be incorporated into the relevant supply contract.
16. This version of the Culture Collections' Terms and Conditions of Supply replaces all previous versions.

SCHEDULE 3: DAFF CONDITIONS OF USE

The Australian Department of Agriculture, Fisheries and Forestry (DAFF) regulates the import of Cell Lines into Australia. Cell Lines supplied by the European Collection of Cell Cultures are imported into Australia under permits issued to CellBank by DAFF. All permits are issued with post entry requirements.

1. The Recipient undertakes to CellBank that the Recipient will limit use of the Material to in vitro laboratory studies or in vivo use in laboratory organisms only. Laboratory organisms are those defined in the following list and must be contained under laboratory or animal house conditions: guinea pigs, hamsters, mice rabbits, rats or micro-organisms.
2. The Recipient acknowledges that the use of the Material in all other animals (e.g. chickens, sheep, cattle, etc) and plants is not permitted.
3. The Recipient undertakes to CellBank that the Recipient will use the Material in accordance with the current AS/NZS 2243 Safety in Laboratory standards and Office of Gene Technology Regulator (OGTR) requirements.