

Order Form

NCPBPB (04GA04)
Fera Science Ltd.
York Biotech Campus
Sand Hutton
York
YO41 1LZ
United Kingdom
Tel: + 44 (0)1904 462344
Email: ncppb@fera.co.uk
Website: www.fera.co.uk/ncppb

Financial Details

New Customer:	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Registered company name:			
Legal status: (please tick)	<input type="checkbox"/> Public Ltd Company <input type="checkbox"/> Limited Company <input type="checkbox"/> Government <input type="checkbox"/> University		<input type="checkbox"/> Registered Charity <input type="checkbox"/> Partnership <input type="checkbox"/> Other (please define)
European Union VAT number:		Company registration number:	
Invoice Address			
City:			
County:			
Postcode:			
Country:			
Accounts Payable Contact	(The invoice will be emailed to this contact)		
Name:			
Telephone:			
Email:			
Fax:			
Billing Currency (please tick)	<input type="checkbox"/> GBP (£ Pounds Sterling)	<input type="checkbox"/> EUR (€ Euro)	<input type="checkbox"/> USD (\$ United States Dollar)

Shipping details

Name	
Company / Organisation	
Address	
Country	
Post or Zip code	
Contact Details	
Tel:	
Fax:	
Email:	

Order Form

Order Details

Customer Order No.	
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Service	<input type="checkbox"/> Freeze-dried ampoules	<input type="checkbox"/> DNA extracts - crude	<input type="checkbox"/> DNA extracts - Chelex	<input type="checkbox"/> DNA extracts - purified
NCPBP No.	ORGANISM NAME			

If handling/possession of any of the above organisms requires you to hold a current licence or permit, please provide a copy with this Order. Please note that the Order cannot be dispatched without this.

National Collection of Plant Pathogenic Bacteria

MATERIAL TRANSFER AGREEMENT

FERA IS NOT WILLING TO TRANSFER MATERIAL ON ANY TERMS OR CONDITIONS OTHER THAN THE FOLLOWING. RECEIPT OF CULTURES VIA PLACEMENT OF AN ORDER WITH FERA (OR VIA ANY OTHER ROUTE SUCH AS REPLACEMENT UNDER WARRANTY, AS A GIFT OR SIMILAR) CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.

This MATERIAL TRANSFER AGREEMENT (the “**Agreement**”) is entered into on the date of final signature below (the “**Effective Date**”)

By and between

FERA SCIENCE LIMITED (a company incorporated in England and Wales under number 9413107) whose registered office is situated at York BioTech Campus, Sand Hutton, York, YO41 1LZ (“**Fera**”)

and

_____ of _____ (“the “**Recipient**”)

Where each is referred to individually as a “**Party**” and both collectively as the “**Parties**”

WHEREAS:

- A. Fera houses the National Collection of Plant Pathogenic Bacteria (“**NCPPB**”) under licence from the Secretary of State for Environment, Food and Rural Affairs (“**Defra**”).
- B. Recipient wishes to acquire Material (as defined hereinafter) under this Agreement.
- C. Fera is willing to transfer the Material and the Recipient is willing to receive the Material.
- D. Parties wish to record their understanding and set out the terms and conditions under which Fera is willing to supply and Recipient is willing to receive the Material and Process the Material, Replicates and/or Derivatives.

Scope of Agreement

This Agreement applies to the use, handling, sale, distribution and any disposition of the Material, Replicates, and Derivatives.

GENERAL TERMS

1. DEFINITION AND INTERPRETATION

The definitions and rules of interpretation contained in Schedule One (Definitions and Interpretation) shall apply to this Agreement.

2. ORDER PROCESS

- 2.1. Recipient may at any time request Fera to transfer Materials to the Recipient by completing the Order Form which, when fully executed, will become incorporated into and subject to the terms of this Agreement.
- 2.2. Fera shall have no obligation to deliver the Materials unless ordered in accordance with this Agreement.
- 2.3. Recipient acknowledges and agrees that:
 - 2.3.1. its relationship with Fera is not exclusive; and
 - 2.3.2. Notwithstanding any other provisions contained within this Agreement, Fera is not obliged to accept any single Order for the transfer of Materials.

3. THE MATERIAL

- 3.1. Fera agrees to provide the Materials to the Recipient in accordance with the Agreement.
- 3.2. Fera undertakes to the Recipient that it shall use its reasonable endeavours to provide the Material in accordance with good scientific practice and within the time period agreed between the Parties and at all times exercising reasonable skill and care.
- 3.3. Nothing in the Agreement implies that Fera will provide the Materials for the Recipient exclusively.
- 3.4. No Order for the supply of Materials is binding on Fera unless and until it has been accepted by Fera in writing.
- 3.5. Time shall not be of the essence in relation to the provision of the Materials by Fera to the Recipient.

4. RECIPIENT RIGHTS, QUALIFICATIONS AND RESPONSIBILITY

4.1. Recipient makes the following representations:

- (a) that it shall not sell, lend, distribute, or otherwise transfer the Material, Replicates and/or Derivatives to any third party without the express prior written consent of Fera and under an agreement which in all material respects incorporates the terms of this Agreement. Where any transfer is for the purposes of Legitimate Exchange consent will not be unreasonably withheld.
- (b) that it shall not use the Material, Replicates and/or Derivatives for any illegal, immoral or unethical purposes, and shall procure the necessary approvals and licenses required by, and comply with, all applicable Laws and regulatory bodies in any Processing activities; and
- (c) that it will not conduct research in humans without the advance written consent of all applicable regulatory authorities and strictly in compliance with all applicable Laws.

4.2. Recipient warrants that:

- (a) it is a sophisticated institution with the knowledge, experience and expertise required to Process the Material, Replicates and/or Derivatives and that it is capable of assessing (and has conducted or will conduct an assessment in respect of) the risk(s) arising from Processing the Material, Replicates and/or Derivatives;
- (b) it acknowledges that Material or Replicates designated 'Class II' constitute known pathogens and that other Material not so designated, or Derivatives, may be pathogenic under certain conditions;
- (c) the Material, Replicates and/or Derivatives may be hazardous and will take appropriate precautions and obtain such Information as it requires in order to Process them in accordance with this Agreement;
- (d) all Information provided to Fera in connection with this Agreement is, to the best of its knowledge and understanding, true, accurate and complete;
- (e) access to the Material, Replicates and/or Derivatives will be restricted to those of its Representatives who are suitably qualified and experienced to Process them, and that Recipient shall use appropriate premises and equipment taking into account the nature of the Processing activities;
- (f) it shall exercise the utmost care, taking into account the unique characteristics of the Material, to maintain and use the Material, Replicates, and/or Derivatives with appropriate precautions to minimise the risk of harm to persons and property and to safeguard them from theft or misuse;
- (g) it shall make reasonable enquiries and inform Fera in writing of any applicable foreign Law or regulatory requirement(s) applicable to the import of the Material to Recipient's territory and any territory through which the Material shall transit on its way to Recipient's territory;
- (h) it shall provide Fera with such assistance and Information as requested in order for Fera to comply with export controls and obtain export licence(s) applying to the transfer of Material to Recipient; and shall comply in all material respects with the terms of such export controls or export licence(s) notified to Recipient by Fera (or the issuing authority) in writing; and
- (i) it shall comply with all export controls, re-export controls, import controls and other applicable Laws and regulatory requirements (including the requirement to obtain licences, permits or authorisations) applying to transfer of the Material, Replicates and/or Deliverables (including Information derived therefrom) to other countries and/or citizens of other countries;

4.3. Recipient grants the warranties contained in this clause 4.2 in respect of itself and its Representatives; and shall procure that its Representatives abide by the restrictions contained herein.

4.4. Subject to the Terms and Conditions of this Agreement and any statutory, regulatory or other restrictions imposed by Law or any third party interest, Recipient may use the Material, Replicates, or Derivatives in any lawful manner for scientific research purposes only.

4.5. Recipient shall provide Fera with such assistance as required for Fera to comply with export and shipping requirements from Fera's designated facility. Recipient shall be responsible for completing any import documentation and procedures necessary to ensure receipt of the Material.

4.6. With respect to transfers of Material, Replicates, or Derivatives to destinations outside the United Kingdom,

- a) Recipient assumes all risk and responsibility in connection with complying with applicable foreign Law and regulations concerning the import, handling, transportation, storage, use, and misuse or other wrongdoing with respect to Material, Replicates or Derivatives and
 - b) Recipient has advised Fera when placing its request for culture(s) of any foreign legal or regulatory requirements pertaining to the requested shipment to be implemented within the United Kingdom in connection with such shipment.
- 4.7. Recipient acknowledges that certain Contributors of Material to Fera, may request and Fera shall agree to, notification of the identity of transferees of Materials hereunder. Recipient acknowledges that nothing prohibits Fera from identifying Recipient as a transferee of Materials hereunder.

5. INTELLECTUAL PROPERTY AND EXPLOITATION

- 5.1. Nothing in this Agreement grants Recipient any rights under any patents, propriety, intellectual property, or other rights with respect to the Material, Replicates or Derivatives.
- 5.2. The Agreement grants the Recipient the non-exclusive, revocable, non-assignable right to use the Material, Replicates or Derivatives for scientific research purposes only. Use for commercial purposes is specifically excluded without prior consent from Defra.
- 5.3. Recipient agrees to acknowledge NCPPB and Fera and any Contributor indicated by Fera 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 Fera Marks without the prior written consent of Fera.
- 5.4. Indemnification of Fera and Contributor. Recipient shall indemnify, to the extent permitted by Law, Fera and Contributor against any Claims made against Fera by third parties that sale or use of the Material, Replicates, or Derivatives by Recipient and/or production of Replicates or Derivatives by Recipient infringes any patent or other proprietary rights of such third parties or of Contributor and against any Claims or liabilities arising as a result of breach of this Agreement, including, without limitation, any Claims relating to, the receipt, handling, storage, transfer, disposal, use and any misuse or other wrongdoing with respect to Material, the Replicates, Derivatives, transferred hereunder.
- 5.5. Convention on Biological Diversity. NCPPB seeks to conform with the spirit of the Convention on Biological Diversity (“**CBD**”). Nothing in this Agreement shall be construed as changing the rights and obligations of Parties under the CBD. The Agreement fully complies with Article 15 of the CBD, which recognises the sovereign rights of States over their natural resources. The CBD requires users of genetic resources to share benefits accruing from their use with the country of origin. In the case of subsequent exploitation, suitable and adequate sharing of income must be negotiated with the country concerned.

6. LIMITED WARRANTY OF MATERIAL

- 6.1. Fera hereby represents and warrants that the Material shall be viable upon shipment from Fera, and for a period, from Fera's shipment, of thirty (30) days (the "**Warranty Period**").
- 6.2. The sole remedy for breach of this warranty is one (1) replacement by Fera of the Material free of charge if Recipient reports the lack of viability upon receipt or within the applicable Warranty Period. Any expiration date specified on the Material shipment documentation states the expected remaining useful life, but does not constitute a warranty.
- 6.3. Disclaimer of warranties.
 - a) Except as expressly provided in this Agreement, there are no representations or warranties by Fera or its Contributors with respect to the items, express or implied, including without limitation, any implied warranty of authenticity, typicality, title, safety, merchantability, or fitness for a particular purpose. Neither Fera nor its Contributors 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.
 - b) Fera 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. Fera makes no warranties of any kind, express or implied, with respect to the technical assistance or Information provided. It is the Recipient's responsibility to assess the technical assistance and Information in consideration of the use, selection, application or suitability of the items.

7. LIMITATION OF LIABILITIES AND REMEDIES

- 7.1. Recipient recognises the potential hazard of utilising the Material and Replicates, the experimental nature of the Material and Replicates, and understands that the taking of appropriate precautions to minimise any health risk becomes fully Recipient's responsibility upon receipt of the Material. Neither Fera nor any Contributor is liable for any damages or injuries resulting from receipt and/or improper, inappropriate, negligent or other wrongful handling

or use of the Material, Replicates, or Derivatives, except as expressly provided in this Agreement or any certificate of analysis provided herewith, and/or from any misidentification, misrepresentation, lack of title, safety, purity, typicality, or viability of the items. Neither Fera nor Contributor will be liable to Recipient or Recipient's institution or any of its employees, Representatives, or agents for any Loss, Claim or demand made by Recipient or Recipient's institution or such persons made against Recipient or 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 Fera.

- 7.2. Neither Party shall be liable to the other Party for any consequential, indirect or special Loss however arising in connection with this Agreement.
- 7.3. Subject to clause 7.4
- (a) the maximum aggregate liability of Fera (and its Group) to Recipient under or in connection with this Agreement, whether arising under contract or by way of indemnity, negligence (including negligent breach of contract) or other legal theory shall not exceed the lesser of the fee paid or payable to Fera for the Material for which the liability arises; or five thousand pounds (or local currency equivalent).
- 7.4. Nothing in this Agreement shall exclude or limit the liability of either Party for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any matter for which it would be illegal to exclude or limit liability.

8. SHIPPING, DELIVERY AND PACKAGING

- 8.1. Fera will process, package and ship the Material ordered by Recipient in accordance with applicable Laws and regulations to the address as stated by Recipient. After receipt of the payment or confirmation of the Order Recipient is responsible for ensuring that all permits required for the shipment of the Material are obtained.
- 8.2. Fera will package the Material for shipping in accordance with IATA international safety regulations. Packaging supplied by Fera, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of expected duration. If special processing or packaging is necessary, a special processing fee will be charged. If the Material is lost or damaged during shipment, Fera will replace such Material, including storage media, at no additional charge, provided that Recipient has reported thawed, damaged or lost shipments immediately to the applicable airline or freight forwarder and notified Fera promptly upon discovery thereof.
- 8.3. Delivery of the Materials shall be at the time and date and in the manner specified by Fera or as otherwise agreed with the Recipient.
- 8.4. Time of delivery shall not be of the essence. Stated delivery times are an estimate only and, subject to the other provisions of the Agreement, Fera will not be liable for any Loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Material nor will any delay entitle the Recipient to terminate or rescind the Agreement.
- 8.5. If the Recipient; refuses or fails to take delivery of the Material within the Recipient's normal working hours on the date of delivery, or if Fera is unable to deliver the Material on time because the Recipient has not provided appropriate instructions, documents, licences or authorisations, Fera may store the Material and the Recipient shall in addition to the price payable pay all related costs and expenses (including without limitation, the costs for storage and insurance) and additional delivery costs incurred by Fera and if the Recipient fails to take delivery of or to collect the Material (as appropriate) after fourteen (14) days following the date of delivery, Fera may rescind the Agreement and sell the Material to a third party if possible or recover damages.
- 8.6. Fera shall use its reasonable endeavours to comply with the reasonable requests made by the Recipient to postpone delivery of the Material but shall be under no obligation to do so.
- 8.7. If Material are delivered in instalments, each delivery shall constitute a separate Agreement. Any failure by Fera to deliver or any Claim by the Recipient in respect of any one or more of the instalments in accordance with this Agreement shall not entitle the Recipient to treat the Agreement as a whole as repudiated.
- 8.8. Fera reserves the right to change the batch of the Material at any time and Material may be delivered which originate from one or more different batches.
- 8.9. Fera reserves the right, at its sole option, to cancel or withhold the delivery of any Material, (whether in whole or in part):
- (a) until receipt of satisfactory credit reference in respect of any Recipient; and/or
 - (b) where the supply of such Material would exceed any credit limit which Fera may, in its absolute discretion, have granted to the Recipient; or
 - (c) the Recipient is in breach of any of the terms of the Agreement.

- 8.10. Due to the nature of the Material to be supplied, the Recipient shall be responsible for ensuring the Material are kept in adequate storage conditions once delivered in accordance with this clause, including but not limited to protecting the Material against the effects of humidity and temperature.

9. RISK

Unless stated otherwise, risk in the Material shall pass to the Recipient (the Recipient is then responsible for all Loss or deterioration of the Material or for any damage occurring) upon delivery in accordance with clause 8 (Shipping, Delivery and Packaging).

10. DEFECTS APPARENT ON INSPECTION

- 10.1. The Recipient shall only be entitled to Claim in relation to defects in the Material as supplied which are apparent on visual inspection if the Recipient inspects the Material and a written complaint specifying the defect is made to Fera within seven (7) days of delivery, and Fera is given an opportunity to inspect the Material and investigate any complaint before any use of or alteration to or interference with the Material.
- 10.2. If a complaint is not made to Fera in accordance with this clause 10, the Material shall be deemed to be in all respects in accordance with the Agreement (subject only to clause 11) and the Recipient shall be bound to pay the Price for such Material.

11. DEFECTS NOT APPARENT ON INSPECTION

- 11.1. The Recipient shall only be entitled to Claim in respect of defects in the Material supplied which are not apparent on visual inspection at the time of delivery if:
- (a) a written complaint is sent to Fera as soon as reasonably practicable after the defect is discovered and subsequently no use is made of the Material or alteration or interference made to or with the Material before Fera is given the opportunity to inspect the Material in accordance with clause 11.4 below; and
 - (b) the complaint is sent within 30 (thirty) days of the date of delivery of the Material.
- 11.2. The Recipient shall not be entitled to Claim in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse, nor in respect of any Material to which alterations have been made without Fera's consent.
- 11.3. Fera shall not be liable for (and the Recipient shall indemnify and keep indemnified Fera against) any and all Claims whatsoever arising from Loss or damage suffered by reason of use of the Material after the Recipient becomes aware of any defect or after circumstances have occurred which should reasonably have indicated to the Recipient the existence of a defect.
- 11.4. Fera may within fifteen (15) days of receiving a written complaint in accordance with clauses 10.1 or 11.1 (or twenty-eight (28) days where the Material are situated outside the United Kingdom) inspect the Material and the Recipient if so required by Fera shall take all reasonable steps necessary to enable it to do so (including delivery of such Material to Fera at Fera's request at the Recipient's cost). For the avoidance of doubt, no Material should be returned to Fera without Fera's prior consent.

12. DEFECTS

- 12.1. If the Material delivered under this Agreement is found by Fera to be defective Fera will, following delivery (at Fera's request) of such defective Material to Fera by the Recipient, at its sole option, either:
- (a) supply satisfactory substitute Material free of cost and within a reasonable time; or
 - (b) repay the Price of the Material in respect of which the complaint has been made.

13. SPECIFICATIONS

- 13.1. The Recipient shall indemnify and keep indemnified Fera from and against any and all actions, Claims, costs, liabilities and proceedings which arise due to the manufacture of the Material by Fera being in accordance with specifications provided by the Recipient if such specifications are inaccurate or contain defects or if they infringe or are alleged to infringe any patent, copyright, design right, registered design or any other third party intellectual property rights.
- 13.2. Fera does not guarantee suitability of materials or design of Material made especially to the Recipient's requirements even if the purpose for which the Material are acquired is known to Fera.
- 13.3. All Material must be used strictly in accordance with the instructions, recommendations and specifications (if any) of Fera.
- 13.4. Fera accepts no liability for any Losses arising due to:

- (a) any use of the Material which is not in accordance with any such instructions referred to in clause 13.3 above; or
 - (b) any use of the Material for a purpose which has not been specified by Fera.
- 13.5. Without prejudice to the generality of the foregoing, all recommendations and advice given by or on behalf of Fera as to the methods of storage or use of the Material and the suitability of using such Material in manufacturing processes or in conjunction with any other materials are given without liability on the part of Fera.

14. PRICE AND PAYMENT

- 14.1. Except as expressly agreed by Fera in writing, payments under this Agreement shall be made in British pounds sterling. Bank charges or levies incurred by Fera arising from receipt of payments from overseas shall be payable by Recipient on an indemnity basis in addition to the Price.
- 14.2. Except where Fera agrees to receive payment by credit card (or other like method), invoices will be submitted by Fera on completion of delivery of the Material. Payment of each invoice will be due no later than thirty (30) days from the date of invoice. Payment will be deemed to have been made only when cleared and good value funds appear in Fera's nominated bank account.
- 14.3. Tax.
- (a) Prices payable in connection with this Agreement are expressed exclusive of VAT which shall be charged to Recipient at the prevailing rate and Recipient agrees to pay such VAT in addition to the Price.
 - (b) In respect of any deduction or withholding required by Law, Recipient shall pay to Fera such additional sums as required such that Fera receives a net amount in its bank account equal to the Price (after deducting therefrom all withholdings or similar taxes). The Parties shall use their commercially reasonable efforts to minimise such withholding or similar tax obligation. In the event there is no applicable double taxation agreement, or if an applicable double taxation agreement only serves to reduce such withholding or similar tax, then Recipient shall pay such withholding or similar tax to the appropriate government authority.
- 14.4. If the payment of any sum due in accordance with this Agreement is subject to a dispute, then:
- (a) the Parties will resolve such dispute in accordance with clause 20 (Dispute Resolution);
 - (b) Recipient shall pay the undisputed amount(s) of such sum(s) in accordance with this clause 14 (Price and Payment);
 - (c) Recipient shall provide to Fera its reason(s) for disputing the payment of such sum(s) together with supporting Information as reasonably requested by Fera without undue delay, and in any event at least five (5) Working Days prior to the due date for payment; and
 - (d) Fera shall be entitled to withhold the delivery of further Materials until the dispute is resolved.
- 14.5. Payment of any sum by Recipient shall be deemed as acceptance of the Materials to which such payment(s) apply.
- 14.6. Without prejudice to Fera's other rights and remedies under this Agreement, any undisputed sums outstanding for payment after the due date shall bear compounded interest at the rate of five hundred (500) basis points over the prevailing base rate of the Bank of England, calculated from the original due date for payment until the date that such sum(s) are received in full by Fera. The Parties agree that such interest is a 'substantial remedy' for the purposes of section 9 of the Late Payment of Commercial Debts (Interest) Act 1998.
- 14.7. Time shall be of the essence in relation to payments by Recipient to Fera under this Agreement.

15. COMPLIANCE WITH LAW

- 15.1. General.
- (a) Each Party in performing its obligations under this Agreement will comply with applicable Laws and neither Party shall expect or demand that the other Party performs any act or omission that would (in that Party's reasonable opinion) cause it to infringe any Law.
 - (b) Each Party shall remain primarily responsible for the compliance by its Representatives and subcontractors with applicable Laws.
- 15.2. Modern Slavery. Notwithstanding the generality of clause 15.1(a), each Party shall perform its obligations under this Agreement in compliance with (and shall ensure that its Representatives and sub-contractors comply with) the Modern Slavery Act 2015.
- 15.3. Bribery and corruption.
- (a) Each Party warrants to the other that it shall not, and that its Representatives shall not, induce, do or agree to do any other act, failure to act or thing in connection with this Agreement that contravenes any Law relating to anti-bribery and corruption or anti-money laundering, including: (i) the Ethical Legislation; and (ii) in the case of a Public Official, any Law applicable to the Public Official in their capacity as such.

- (b) Each Party shall maintain policies applicable to its Representatives that are designed to prevent them from contravening the Ethical Legislation, including the maintenance of a gifts and hospitality policy requiring such persons to not accept, agree, authorise, give, offer, promise, request or undertake any Inducement (or to agree to do any of the same).
- (c) Each Party agrees to notify the other as soon as reasonably practicable upon becoming aware of any extortive solicitation, demand or other request for anything of value, by or on behalf of any person relating to this Agreement or its subject matter.

15.4. Data Protection.

- (a) Each Party will comply with the requirements of the DPL in performance of this Agreement.
- (b) In the event of a requirement for Fera to process the personal data of Recipient or Recipient's Representatives in performance of its obligations under this Agreement, the Parties shall execute a variation to this Agreement incorporating the requirements of the DPL.

15.5. Each Party will notify the other in writing promptly upon discovering any actual, potential or suspected breach of this clause 15 (Compliance with Law).

16. **EXCUSABLE DELAY**

16.1. Neither Party shall be in breach of this Agreement or liable to the other for any delay, non-performance or Loss arising from a Force Majeure Event.

16.2. Where a Force Majeure Event occurs, the Party seeking to rely on that event to excuse its delay or non-performance shall:

- (a) promptly give written notice to the other Party of the details of any Force Majeure Event, including an estimate of its duration, the extent to which its delivery of this Agreement is likely to be affected and any mitigating action(s) being taken;
- (b) take reasonable steps to minimise the effects of the Force Majeure Event and resume full delivery of this Agreement as soon as reasonably possible;
- (c) facilitate efforts that the other Party makes to obtain alternative goods or services; and
- (d) use reasonable endeavours to continue to deliver or resume delivery of this Agreement for the duration of that Force Majeure Event.

16.3. Following cessation of the Force Majeure Event, the Party relying on the Force Majeure Event shall provide written notice to the other Party confirming the cessation of the Force Majeure Event; and resume performance of its obligations under this Agreement as soon as reasonably possible.

16.4. Fera will not be in breach of this Agreement, or liable for any Loss sustained or incurred by Recipient due to delay or non-performance of its obligations to the extent that such delay or non-performance was caused directly or indirectly by any act or omission of Recipient, its Representatives or sub-contractors.

17. **CANCELLATION AND TERMINATION**

17.1. The Recipient may cancel the Order within fourteen (14) days of placing the Order for the Materials provided that the Materials have not been used and are returned unopened and in a satisfactory condition within fourteen (14) days after receipt. Cancellations should be sent by email to ncppb@fera.co.uk

17.2. Materials shall be returned at the cost of the Recipient. Fera shall refund the Price of the Order and delivery charges where applicable within fourteen (14) days of receipt of the cancellation of the Order; or where the Materials have already been despatched within fourteen (14) days of receipt of the returned Materials.

17.3. Orders for Materials cannot be cancelled where the Materials were a special order to a Recipient's specification.

17.4. Either Party may terminate this Agreement on written notice to the other where:

- (a) the other Party commits a breach of the Agreement which (if capable of remedy) has not been remedied by the Party in default within thirty (30) days from delivery of written notice in respect of such breach;
- (b) the other Party commits a material breach of the Agreement; or
- (c) that Party suffers an Insolvency Event.

17.5. Fera may terminate this Agreement for its convenience on providing one (1) months' written notice to Recipient.

18. **EFFECT OF TERMINATION**

18.1. Termination or expiry of this Agreement shall not affect any obligation or liability of any Party which has accrued prior to date of termination.

18.2. On expiry or termination of this Agreement:

- (a) The license granted to Recipient under clause 5 (Intellectual Property/Exploitation) shall terminate; and
 - (b) Recipient shall immediately cease Processing and will (at Fera's election) either return or destroy (and certify the destruction of) any Material, Replicates and/or Derivatives in its possession or control.
- 18.3. Termination of this Agreement shall be without prejudice to the terms of clauses 1 (Definitions and Interpretation); 4 (Recipient Rights, Qualifications and Responsibility); 5 (Intellectual Property and Exploitation); 7 (Limitation of Liabilities and Remedies); 18 (Effects of Termination); 19 (General) and 21 (Governing Law and Jurisdiction); and Schedule One (Definitions and Interpretation).

19. GENERAL

- 19.1. Assignment and Sub-Contracting. Recipient shall not assign or sub-contract this Agreement or any part of it without the prior written consent of Fera. Any attempted or purported assignment in contravention of this clause 19.1 shall be void.
- 19.2. Waiver and variation
- (a) No amendment or variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised Representative of each Party.
 - (b) A waiver of any right or remedy under this Agreement or by operation of Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
 - (c) A failure or delay to exercise any right or remedy provided under this Agreement or by operation of Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
 - (d) No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.3. Legal Relationship
- (a) Nothing in the Agreement shall create a partnership or joint venture between the Parties or have the effect of making any Representative of Recipient an employee or servant of Fera or of making any Representative of Fera an employee or servant of Recipient.
 - (b) Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
 - (c) Where Recipient consists of more than one person, the obligations of those persons in respect of this Agreement shall be joint and several.
- 19.4. Severability. If a provision of this Agreement is found to be unenforceable by a court, that provision shall be deemed to be amended to the minimum extent necessary to make it enforceable. The unenforceability of a provision of this Agreement shall not affect its continuance in force or any of its other provisions.
- 19.5. Notices
- (a) Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed by letter). Notice shall be deemed to have been given two (2) Working Days after the day on which the letter was posted or sooner where the other Party acknowledges receipt.
 - (b) Either Party may change its address for service on written notification to the other Party.
- 19.6. Third Party Rights. A person who is not a party to the Agreement (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any of these conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
- 19.7. Entire Agreement.
- (a) This Agreement represents the entire understanding and constitute the whole agreement between the Parties in relation to its subject matter.
 - (b) The Parties agree that there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between them except as specifically set forth herein and neither Party has relied on any other Information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.
 - (c) Nothing in this clause 19.7 shall seek or purport to relieve either Party for liability in respect of fraud or fraudulent misrepresentation.
- 19.8. Publicity. Neither Party shall make any press announcement, or publicise this Agreement without the prior written consent of the other Party.
- 19.9. Counterparts. This Agreement may be executed in counterparts each of which when executed and delivered is an original, but such counterparts shall be deemed to constitute one and the same instrument. The Parties agree that

signatures exchanged by electronic means are effective for the purposes hereunder to the same extent as original signatures.

20. DISPUTE RESOLUTION

- 20.1. The Parties will in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.
- 20.2. In respect of any dispute arising out of or in connection with this Agreement, either Party may initiate this clause 20 (Dispute Resolution) by issuing a 'notice of dispute' to the other Party, setting out the dispute together with its suggested action(s) to resolve it.
- 20.3. Following receipt of a notice of dispute, the senior executives of each Party will negotiate in good faith to resolve the dispute. Where no resolution is possible within ten (10) Working Days, the Parties will refer the dispute to their respective managing director or equivalent. If the Parties' managing directors cannot resolve the dispute within a further ten (10) Working Days, the dispute may, by agreement between the Parties be referred to mediation in accordance with clause 20.4.
- 20.4. The procedure for any such mediation shall be as follows:
 - (a) A neutral person (the "Mediator") shall be chosen by agreement between the Parties, or (where the Parties cannot agree on the Mediator), either Party may within ten (10) Working Days from the notice of mediation, apply to the Centre for Dispute Resolution ("CEDR") to appoint a mediator (who shall then be the Mediator).
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him to agree a timetable for the exchange of Information and the procedure to be adopted for the mediation. Either Party may at any stage seek from CEDR guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations and proceedings in the mediation shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, that agreement shall be set out in writing and shall be binding upon them.
 - (e) Failing agreement, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a 'without prejudice' basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of both Parties.
- 20.5. For a period of sixty (60) calendar days from the date of the appointment of the Mediator (or such other period as the Parties agree) neither Party may commence proceedings in relation to the matters referred to the Mediator.
- 20.6. The existence of any dispute shall not entitle Recipient to suspend the payment of any undisputed charges.

21. GOVERNING LAW AND JURISDICTION

- 21.1. This Agreement shall be construed and enforced in accordance with and governed by the Laws of England. This Agreement and any dispute or Claim (including non-contractual disputes or Claims) arising out of or in connection to it shall be construed in accordance with the Law of England and Wales.
- 21.2. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England.
- 21.3. Each Party expressly waives any Claim that it may have on the grounds of inconvenient forum.

SCHEDULE ONE (DEFINITIONS AND INTERPRETATION)

1. DEFINITIONS

In this Agreement the following words shall have the following meanings:

“**Agreement**” means this agreement, including any schedules or annexes hereto;

“**Claim**” means any action, assertion of right, claim, demand or request;

“**Confidential Information**” means in respect of a Party: (a) all Information in respect of that Party's business including customer data, financial Information, trade secrets, the existence of and contents of this Agreement and other Information of commercial value; (b) all Information of any nature whatsoever which includes, Information which relates to the business, affairs, properties, assets, trading practices, goods/services, developments, Intellectual Property rights, know-how, personnel, customers and suppliers of that Party; and (c) any Information which has either been designated as confidential by that Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored);

“**Contributor**” means a person, organisation, company, body, or academic institution that has deposited material in the NCPPB.

“**Data Protection Legislation**” or “**DPL**” means the Data Protection Act 2018, the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable Laws relating to the processing of personal data;

“**Derivative**” means material created from the Material that is substantially modified to have new properties. Derivative includes, but is not limited to, recombinant DNA clones made using a vector purchased from Fera;

“**End-User**” means but is not limited to scientific or research organisations, universities or academic institutions, companies and their subsidiaries and/or their representatives, or individual scientists, who are working with the supplied Material but are not Parties to this Agreement;

“**Ethical Legislation**” means the Criminal Finances Act 2017, Bribery Act 2010, Companies Act 2006, Fraud Act 2006, Proceeds of Crime Act 2002 the Theft Act 1968; and the ‘*OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*’ and the commentaries issued thereto from time to time;

“**Fera Marks**” means the proprietary identifying marks of Fera including branding, logos, trademarks and service marks;

“**Force Majeure Event**” means an event which is beyond the reasonable control of a Party and which that Party could not anticipate and mitigate by contingency planning, insurance or other prudent business means, but excludes (a): industrial action affecting that Party only and not its industry generally; (b) failure of any subcontractor (save where that subcontractor itself is affected an event which is beyond its reasonable control and which it could not anticipate and mitigate by contingency planning, insurance or any other prudent business means); or (c) (in respect of Fera) the breakdown of machinery or delay in delivery by Fera's suppliers;

“**Group**” means in relation to a company, that company, any holding company or subsidiary from time to time of that company and any subsidiary from time to time of a holding company of that company (where “holding company” and “subsidiary” have the meanings given to them by section 1159 of the Companies Act 2006);

“**Inducement**” means: (a) any advantage, benefit, consideration, gift or payment of any kind, which is (or is agreed to be) or could act as an inducement or reward, for any form of improper conduct by any person in connection with their business, employment, official, public or business role, duties or functions; (b) anything that would amount to an offence of bribery or corruption under law; or (c) any facilitation payment;

“**Information**” means information recorded in any form;

“**Insolvency Event**” means a Party experiencing or suffering one or more of the following events: (a) that Party entering into liquidation or receivership; (b) that Party enters into compulsory or voluntary liquidation with or for the benefit of its creditors; (c) that Party (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency); (d) that Party has a receiver or manager appointed of the whole or substantially the whole of its undertakings; (e) if any distress or execution is threatened or levied upon any property of the that Party; (f) that Party undergoes a change of control (within the meaning of s. 1124 of the Corporation Tax Act 2010); (g) that Party is unable or is deemed unable to pay its debts as they fall due; and/or any substantially equivalent or analogous event to the foregoing that apply to that Party in its jurisdiction of incorporation or (in the case of a partnership) occurs to any individual partner;

“**Intellectual Property Right**” or “**IPR**” means all intellectual and industrial property rights, including copyright, database rights, registered and unregistered design rights, know-how, models, patents, topography rights, registered and

unregistered trademarks, rights in confidential information and any rights in any discovery, invention or process, and applications for and rights to apply for each of these in any country;

“Intermediary” means a third-party entity that makes an Order on behalf of the End-User, and to which Fera addresses the Material but that will not engage in Utilization of the Material. These can be wholesalers, importers, or other type of intermediary agents, unrelated to the End-User;

“Law” means any law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directive applicable to the performance of this Agreement;

“Legitimate Exchange” means the transfer of the Material between scientists working in the same Laboratory, or between partners in different institutions collaborating on a defined joint project, for non-commercial purposes. This also includes the transfer of Material between public service culture collections and biological resource centers (BRCs) for deposit purposes. Legitimate exchange can only be conducted provided the further distribution is under MTA conditions equivalent and compatible with those in place at the supplying collection and under an agreement which in all material respects incorporates the terms of this Agreement;

“Loss” means any loss, cost, charge, damages or expense of any kind including interest, expenses fines, legal and other professional expenses and disbursements;

“Material” means the material listed in the Order Form or any portion thereof;

“Order” means an order issued in accordance with this Agreement;

“Order Form” means the NCPPB order form contained within this Agreement;

“Price” means the charges, taxes and disbursements specified by Fera in a quotation, Order or as stated in the Agreement;

“Public Official” means any person holding an administrative, judicial or legislative position of any kind, whether appointed or elected, including any person employed by or acting on behalf of a public agency, body or state-owned enterprise, a public international organisation (where ‘public international organisation’ has the meaning given to it by section 6 of the Bribery Act 2010) or a political organisation or party, or a candidate for any such office;

“Process” (and “Processing” shall be construed accordingly) means, in respect of Material, Replicates, and/or Derivatives, all phases of processing, including its transport, import, export, receipt, handling, storage, use, transfer, and disposal;

“Recipient” means the party to whom Fera sends the Material. This includes but is not limited to an Intermediary, scientific or research organisations, universities or academic institutions, companies and their subsidiaries. Where the Recipient consists of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several.

“Replicates” means any biological or chemical material that represents a substantially unmodified copy of all or part of the Material, including material produced by growth of cells or microorganisms or amplification of the Material;

“Representative” means, in respect of a Party, an agent, contractor, director, employee, officer, professional advisor, representative, servant or member of staff;

“Tax” includes any fee, charge, customs duty, excise duty, fine, penalty, levy, stamp duty, tariff, withholding tax or other like tax incurred as a result of providing the Material or Replicates under this Agreement;

“Terms and Conditions” means the terms and conditions contained within this Agreement;

“Technical Information” means and includes inventions, discoveries (and applications thereof), biological substances, organisms and materials (whether patentable or not), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form;

“Utilization” means to conduct research and development on the genetic and/or biochemical composition of the Material, including through the application of biotechnology; and

“VAT” means UK value added tax.

“Working Day” means any day other than Saturday, Sunday and bank holidays in England.

2. INTERPRETATION

- 2.1. References to clauses, schedules, annexes or appendices are to clauses, schedules, annexes or appendices of this Agreement. All schedules, annexes, and appendices shall form part of a single Agreement.
- 2.2. References to Recipient or Fera shall, where appropriate, be references to any lawful successor, assignee or transferee.
- 2.3. References to a person or third party shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency (whether or not having a separate legal personality).
- 2.4. Unless the context requires otherwise, references to the singular shall include references to the plural and *vice versa*.
- 2.5. References to ‘written notice’ shall mean a notice prepared and served in accordance with clause 18.5 (Notices).
- 2.6. The word ‘including’, ‘include’, or similar expression shall be construed as illustrative and interpreted as meaning ‘including without limitation’.
- 2.7. Headings in this Agreement are for ease of reference only and shall not affect the interpretation of any provision.
- 2.8. References to any Law shall be construed as references to all subordinate legislation made under that Law (where ‘subordinate legislation’ has the meaning given to it by section 21 of the Interpretation Act 1978) and to all such Laws as amended, consolidated, re-enacted or replaced, or as their application is modified by other Laws, whether before or after the date of this Agreement.

Please return your completed Order Form to the address below or scan the Order Form and email to the following:

NCPPB (04GA04) Fera Science Ltd.
York Biotech Campus
Sand Hutton
York
YO41 1LZ
Email: ncppb@fera.co.uk

Following receipt of this Order Form, the Order will be processed by NCPPB/Fera. Only NCPPB Order Forms will be accepted and Fera Terms and Conditions are the only terms and conditions under which Fera will supply Materials.

For Fera use only:

Order approved by	Name
	Position
	Signature
	Date