

General terms and conditions for the shipment of soil samples

of the Fraunhofer Gesellschaft zur Foerderung der angewandten Forschung e.V. [Fraunhofer Gesellschaft for the Advancement of Applied Research e.V. (registered association)], Hansastrasse 27c, 80686 Munich [Germany] for performances provided by its Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME) [Fraunhofer Institute for Molecular Biology and Applied Ecology], Schmallingenberg [Germany].

1. Subject matter

- 1.1 Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME) permits interested companies or institutions the use of soil samples for research purposes. The samples are taken from reference soils ("Refesols") that were defined as a result of the UBA [*Umweltbundesamt*; German Federal Environmental Agency] research project "*Information concerning the characterisation of reference soils - specification and description of the behaviour of pollutants in reference soils*". Details concerning the available soil samples can be found on the website www.refesol.de. The offer is not directed at consumers.
- 1.2 Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME) is a legally dependent institution belonging to the Fraunhofer Gesellschaft zur Foerderung der angewandten Forschung e.V., Hansastrasse 27 c, 80686 Munich. Hence, all rights and obligations of the customers originating under these general terms and conditions exist vis-à-vis the Fraunhofer Gesellschaft zur Foerderung der angewandten Forschung e.V. (hereinafter referred to as: "Fraunhofer Gesellschaft").
- 1.3 The contact address for all correspondence regarding all issues relating to the order of Refesol soil samples is

**Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME),
Auf dem Aberg 1, 57392 Schmallingenberg-Grafschaft, Germany;
Telephone: +49 (0)2972/302-310; E-Mail: karlheinz.weinfurtner@ime.fraunhofer.de**

- 1.4 For contracts regarding the permission to use soil samples, the following provisions shall apply. Divergent, contradictory or supplementary standard conditions on the part of the customer shall not become a part of the contract unless Fraunhofer Gesellschaft expressly agrees that they shall apply.

2. Order; offer

- 2.1 Orders shall be placed by telephone or by submitting by fax or by mail the completed order form found on the website www.refesol.de. The order shall be sent to:

**Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME),
Auf dem Aberg 1, 57392 Schmallingenberg-Grafschaft; Fax: +49 (0)2972/302-319;
Telephone: +49 (0)2972/302-310.**

- 2.2 The description of the reference soil samples that for example can be found on the website www.refesol.de does not constitute an offer for the sale of soil samples in the legal sense. Only the order of the customer shall constitute an offer to purchase soil samples

within the meaning of Section 145 German Civil Code [BGB, *Buergerliches Gesetzbuch*]. An agreement concerning the delivery of the soil samples shall effectively be entered into when Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME) dispatches the ordered soil samples to the customer or expressly accepts the customer's order in writing or in text format.

3. Delivery

- 3.1 Provided that the customer does not pick up the goods in person, the goods shall be delivered to the delivery address specified by the customer, unless something else has been agreed.
- 3.2 Specifications concerning delivery dates shall be non-binding unless in exceptional situations the delivery date is confirmed in a binding manner.
- 3.3 Should the ordered soil samples not be available, there shall be no obligation to deliver. In this case, the customer shall be informed without delay. Payments already received shall be returned.
- 3.4 The customer shall bear the costs of delivery.

4. Prices

- 4.1 All prices are governed by the "Information on ordering reference soils" on the website www.refesol.de, or can be enquired by calling Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME) at **+49 (0)2972 / 302-310**.
- 4.2 The prices are stated net of statutory value added tax and costs of delivery.

5. Due date; payment

- 5.1 Provided that no special dates for payment were agreed, payments shall be due in accordance with the due date specified in the invoice. If no due date is specified in the invoice, payments shall be due upon receipt of the invoice. Payments shall be rendered without any deductions to the account of Fraunhofer Gesellschaft stated in the invoice, and specifying the invoice number.
- 5.2 Setting off against claims on the part of Fraunhofer Gesellschaft shall only be permissible if the counterclaim is undisputed or has been legally established.
- 5.3 The customer may exercise a right of retention only if his counterclaim is based on the same contractual relationship.

6. Warranty; complaint

- 6.1 The warranty period for deliveries of goods shall be 12 months as of receipt of the goods. This shall not apply to defects that are fraudulently concealed.
- 6.2 Immediately upon delivery, the customer shall inspect the product and report any patent defect immediately. The warranty shall cover patent defects only if the customer reports the defects within a period of 10 days as of taking delivery. This shall not apply to defects that were fraudulently concealed.

Defects shall be reported to
Fraunhofer-Institut fuer Molekularbiologie und Angewandte Oekologie (IME),

**Auf dem Aberg 1, 57392 Schmallenberg-Grafschaft, Germany;
Fax: +49 (0)2972 / 302-319; Telephone: +49 (0)2972 / 302-310.**

6.3 Damages in transit shall be reported to the transport company immediately.

7. Damages

7.1 In the case of slight negligence, Fraunhofer Gesellschaft shall be liable only if it is in breach of material contractual duties (cardinal obligations) in the amount of the direct average damage that is predictable in view of the type of goods provided and typical of this contract as well as regarding damages that arise from injury to life, body or health. Apart from that, the pre-contractual, contractual and non-contractual liability of Fraunhofer Gesellschaft shall be limited to cases of intent and gross negligence; the limitation of liability shall also apply in the case of fault on the part of a vicarious agent. The limitation of liability shall not apply to the liability pursuant to the German Product Liability Act [*Produkthaftungsgesetz*].

7.2 The time limit after which claims to damages on the part of the customer due to defects of the delivered goods become time-barred shall amount to 12 months. This shall not apply to defects that were fraudulently concealed.

8. Retention of title

8.1 Ownership of the delivered good shall pass to the customer only upon payment of the entire purchase price.

8.2 If the customer maintains a constant business relation with Fraunhofer Gesellschaft, the requirement for payment of the entire purchase price shall be replaced by a requirement to settle all due claims of Fraunhofer Gesellschaft arising from this business relation.

9. Place of performance; passage of risk

9.1 The place of performance for Fraunhofer Gesellschaft shall be Schmallenberg-Grafschaft, the place of business of Fraunhofer Institut fuer Molekularbiologie und angewandte Oekologie (IME). Munich shall be the place of performance for payments by customers.

9.2 Should on the customer's request the goods be sent to a location other than the place of performance, the passage of risk to the customer shall be considered to occur at the moment of handing over the good to the transport company.

10. Final provisions

10.1 Ancillary agreements, changes and amendments require the written form.

10.2 If the customer is a merchant [*Kaufmann* under German law], Munich shall be the legal venue for all disputes arising from or in the context of contracts between Fraunhofer Gesellschaft and the customer.

10.3 Only German law shall apply to contracts between Fraunhofer Gesellschaft and the customer; the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

10.4 Should individual provisions of these general terms and conditions be invalid or become invalid due to circumstances that occur at a later time, the effectiveness of the other general terms and conditions shall remain unaffected.

