

Terms and Conditions of Business

1. Definitions

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions ("Conditions").

Contract: the Customer's Order and NewGene's acceptance of it on the terms [overleaf] [stated in the document to which these terms and conditions are attached]

Customer: the person, firm, public body or company named in the Order who purchases the Testing Services from NewGene.

NewGene: NewGene Limited (Company No. 06735445) whose registered office is at Bioscience Centre, International Centre for Life, Times Square, Newcastle upon Tyne, Tyne and Wear NE1 4EP.

Order: an order for the Testing Services placed by the Customer [as set out overleaf] [or to which these terms and conditions are attached].

Patient: the person from whom the Sample is taken.

Price: the total price payable by the Customer to NewGene under the Contract for the Testing Services as stated in the Order.

Report: the report produced by NewGene and issued to the Customer following completion of the Testing Services detailing the results of such Testing Services.

Sample: the sample provided to NewGene for the purposes of carrying out the Testing Services.

Testing Services: the genetic tests to be conducted under the Contract by NewGene as described in the Order.

VAT: value added tax chargeable under English law for the time being and any similar additional tax (where applicable).

2. Applications of Conditions

2.1 These Conditions shall: (a) apply to and be incorporated into the Contract; and (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Order, or any other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's completion of an Order, constitutes an offer by the Customer to purchase the Testing Services specified in it on these Conditions and a warranty by the Customer that it has obtained the necessary consent from the Patient to enable the Testing Services to be carried out. No offer placed by the Customer shall be accepted by NewGene other than: (a) by a written acknowledgement issued and executed by NewGene; or (b) by taking payment for the Testing Services; or (c) (if earlier) by NewGene starting to provide the Testing Services, when a contract for the supply and purchase of the Testing Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.

2.3 Quotations are given by NewGene on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that NewGene has not previously withdrawn it.

3. NewGene's Obligations

3.1 NewGene will carry out the Testing Services and provide the Customer with the Report.

3.2 NewGene shall use all reasonable endeavours to conduct the Testing Services and to provide the Customer with the Report in accordance, in all material respects, with the test description set out in the Order.

3.3 Whilst NewGene shall use all reasonable endeavours in conducting the Testing Services and preparing the Report, the Customer acknowledges that any particular test cannot be treated as free of error in every case and NewGene makes no warranty as to the complete accuracy or completeness of the Report.

3.4 NewGene shall use reasonable endeavours to provide the Report by the expected test result date set out in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Testing Services and production of the Report. NewGene will not be liable for any loss of profits or other consequential loss caused by delay in providing the Report, or failure to provide the Report, as a result of any cause whatever.

4. Customer's Obligations

4.1 In order for NewGene to carry out its obligations, the Customer must:

(a) co-operate with NewGene in all matters relating to the Testing Services; (b) provide NewGene with a Sample which meets the Sample specification notified by NewGene to carry out the Testing Services; (c) package, store, label, transport and deliver the Sample in the conditions and manner specified by NewGene; (d) inform NewGene immediately if the Sample has any risk of causing any injury or infection to NewGene's employees or subcontractors; (e) provide to NewGene, on demand, any information that may be necessary to carry out the Test Services or to ensure the safety of any of NewGene's employees or its subcontractors; (f) if required, provide NewGene with evidence that the Patient has provided the appropriate consent to the Customer entering into a contract with NewGene to carry out the Testing Services and provide evidence that the Patient consents to the use of the Sample to carry out the Testing Services and the storage and destruction of it as required; (g) inform NewGene immediately if the Customer is made aware that the consent as required by clauses 5(1)(f) has been withdrawn by the Customer or the Patient.

4.2 If NewGene's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees or the Patient, NewGene shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

4.3 The Customer shall be liable to pay to NewGene, on demand, all reasonable costs, charges or losses sustained or incurred by NewGene (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract and including any claim arising from the failure of the Customer to establish informed consent of the Patient, subject to NewGene confirming such costs, charges and losses to the Customer in writing.

5. Pricing and Payment

5.1 In consideration of the provision of the Testing Services by NewGene, the Customer shall pay the charges as set out in the Order.

5.2 NewGene reserves the right to increase the price of the Testing Services to reflect (a) any increase in the costs to NewGene which are out of the control of NewGene and which were not envisaged or foreseeable at the time that NewGene entered into the Contract with the Customer and (b) any additional cost caused by the Customer's act or omission.

5.3 The Customer shall pay each invoice submitted to it by NewGene, in full and in cleared funds, within 30 days of receipt, to a bank account nominated in writing by NewGene.

5.4 Time for payment shall be of the essence of the Contract.

5.5 All sums payable to NewGene under the Contract shall become due immediately on its termination, despite any other provision. This condition 5.5 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

5.6 NewGene may, without prejudice to any other rights it may have, set off any liability of the Customer to NewGene against any liability of NewGene to the Customer.

6. Use of Sample and Report

6.1 NewGene will only use the Sample for the purpose of carrying out the Testing Services and providing the Report. In the event that the Sample provided is inadequate (by either quality or quantity) for the purposes of carrying out the Testing Services, NewGene reserves the right to request further samples before providing the Report or to refuse to complete the Testing Services. NewGene will dispose of the Sample at the end of [six (6)] months from the date of the Report.

6.2 The Report is provided solely for the information of the Customer and the Patient and must not be disclosed to, or relied upon by, any other party without the consent in writing of NewGene.

7. Limitation of Liability – the Customer's attention is particularly drawn to this condition.

7.1 This condition 7 sets out the entire financial liability of NewGene (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of: (a) any breach of the Contract; (b) any use made by the Customer of the Testing Services and Report and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.3 Nothing in these Conditions limits or excludes the liability of NewGene for: (a) death or personal injury resulting from negligence; or (b) any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by NewGene; or

7.4 NewGene will not be liable for loss or damage of any kind whatever, whether direct or consequential arising directly or indirectly from (a) failure to submit a Sample in accordance with NewGene's instructions or (b) incorrect or incomplete information being submitted with a Sample.

7.5 Subject to condition 7.2 and condition 7.3 (a) NewGene shall not be liable for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses and (b) NewGene's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the Price paid for the Testing Services.

8. Data Protection

8.1 The Customer acknowledges and agrees that NewGene will collect, store and process the personal and sensitive personal data of the Patient in order to carry out the Services required and to provide a Report to the Customer. All test results, invoices and other confidential information issued by NewGene in connection with the delivery of the Services will only be disclosed to its professional staff and healthcare professionals associated with local patient pathways.

8.2 NewGene will only use the personal data of the Patient for the purposes of carrying out the Services and will not use the personal data for any marketing purposes. Patient identifiable information will not be released to third parties with the exception of the sharing of data with the National Cancer Registration and Analysis Service (NCRAS).

8.3 NewGene routinely submits identifiable data to NCRAS, as do other organisations involved in the clinical care of NHS cancer patients. The legal basis for this is enshrined in Section 251 of the NHS Act 2006: https://www.gmc-uk.org/guidance/ethical_guidance/30639.asp Patients can choose to opt out from the cancer registry, for more information please visit their website <https://www.ndrs.nhs.uk/>

8.4 In order to make a Subject Access Request for personal data held by NewGene please contact info@newgene.org.uk

9. Termination

9.1 Without prejudice to any other rights or remedies which the parties may have, NewGene may terminate the Contract without liability to the Customer immediately on giving notice to the other if the Customer: (a) fails to pay any amount due under the Contract on the due date for payment and remains in default for seven days after being notified in writing to make such payment; or (b) commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or (c) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (d) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party.

9.2 On termination of the Contract for any reason in respect of Testing Services supplied but for which no invoice has been submitted, NewGene may submit an invoice, which shall be payable immediately on receipt;

10. Force Majeure

NewGene shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of NewGene or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11. Variation

11.1 NewGene may, from time to time and without notice, change the Testing Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Testing Services. If NewGene requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

11.2 Subject to condition 11.1, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

12. Waiver

12.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

13. Severance

13.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14. Entire Agreement

14.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

14.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

14.3 Nothing in this condition shall limit or exclude any liability for fraud.

15. No Partnership or Agency

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16. Rights of Third Parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

17. Notices

17.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party.

17.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

17.3 A notice required to be given under the Contract shall not be validly served if sent by e-mail.

18. Governing Law and Jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.