

Standard Terms of Business

We are LDPATH Limited, (Company number: 11081427) whose registered office at 115c Milton Road, Cambridge, United Kingdom, CB4 1XE ("LDPATH").

These Terms of Business ("**Terms**") together with any documents referred to in these Terms set out the terms and conditions upon which LDPATH supplies services. By requesting any of LDPATH's services, the Client agrees to be bound by these Terms.

LDPATH will not be under any obligation to provide Cellular Pathology Services if the Specimen, Request Form or any other information required are not supplied in accordance with the Acceptance Criteria or these Terms (all capitalised words are defined in the Terms below).

After collection, LDPATH will transport the Specimen and Request Form in accordance with these Terms. Clause 12 of these Terms applies to any transportation services provided by LDPATH before the Agreement comes into force.

1. DEFINITIONS AND INTERPRETATION

1.1 For the purpose of these Terms, the following terms shall have the following meaning:

- "**Acceptance Criteria**" means the requirements for transport and acceptance of Specimens as published on the LDPATH Website.
- "**Agreement**" means the contract between LDPATH and the Client for the supply of the Services comprising these Terms and any documents referred to in them. The Agreement only comes into force on acceptance of the Request Form by LDPATH in accordance with clause 2.1.
- "**Cellular Pathology Services**" means the performance of all aspects of histopathological and cytopathological services for patients and users of the Client. Such services may include frozen sections, special staining, digital imaging and photography, transcription, reporting services and cytology and are set out in more details on the LDPATH Website.
- "**Client**" means the company, hospital, NHS Trust, organisation, body or representative thereof or any other person who makes a request to LDPATH for provision of the Services.
- "**Client Personal Data**" means personal data relating to the Client's patients and users which the Client supplies to LDPATH in order for LDPATH to provide the Services.
- "**Data Protection Laws**" means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679).
- "**HCPC**" means Health Professions Council.
- "**LDPATH Application**" means LDPATH's bespoke histopathology reporting platform. Available on secure.ldpath.com.
- "**LDPATH Website**" means LDPATH's website at www.ldpath.com.
- "**Request Form**" means a request form to be completed by the Client and submitted to LDPATH. A template Request Form is available from the LDPATH Website.
- "**Report**" means the diagnostic report following review by a histopathologist if applicable to the requested Services.
- "**Services**" means all the work and services (including Cellular Pathology Services) to be carried out following receipt of a Request Form and any additional services that LDPATH agrees to perform for the Client pursuant to the Agreement. Further details of the services provided by LDPATH are set out on the LDPATH Website.
- "**Services Level Agreement**" means a separate Services Level Agreement which has been entered into by LDPATH and the Client.
- "**Specimen**" means a specimen (including wet tissue, paraffin blocks, aspirates and prepared slides) provided by the Client to LDPATH for investigation.
- "**Working Day**" means any day (excluding Saturdays, Sundays and public holidays) where commercial banks in London are open for normal banking business.

2. APPLICATION OF THESE TERMS

2.1 If the Client wishes LDPATH to provide Services, it must initially contact LDPATH by telephone or email to inform LDPATH of the request. The Client must then complete a paper Request Form, prepare the Specimen and complete the label details for the Specimen ready for collection by (or on behalf of) LDPATH. Contacting LDPATH to inform LDPATH of the request constitutes an offer by the Client to purchase Services in accordance with these Terms. A Request Form shall only be deemed to be accepted on the earlier of LDPATH having (1) issued a written acknowledgment of the Request Form or (2) collected the Specimen and Request Form from the Client and created a case on the LDPATH Application, at which point and on which date the Agreement shall come into existence.

2.2 The Client and LDPATH acknowledge that, at the point LDPATH collects the Specimen and Request Form, no contract will have been formed and LDPATH will not be under any obligation to provide the Cellular Pathology Services if the Specimen, Request Form or any other information required are not supplied in accordance with the Acceptance Criteria or these Terms. Notwithstanding this, after collection, LDPATH shall be responsible for transporting the Specimen and Request Form in accordance with these Terms.

2.3 Subject to clause 2.4, these Terms apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 If the Client has entered into a Services Level Agreement with LDPATH, the terms of that Services Level Agreement will take precedence over these Terms to the extent that there is any conflict.

3. QUALITY OF SERVICES TO BE PROVIDED

3.1 Following acceptance of a Request Form, LDPATH will supply the Services to the Client in accordance with the description of such Services (as set out on the LDPATH Website) in all material respects.

3.2 Subject to clause 3.7, LDPATH warrants to the Client that it holds valid CQC registration for the provision of the Services covered by this Agreement.

3.3 LDPATH shall provide the Services to the Client with reasonable skill and care in accordance with its ISO9001 certified quality management system, in a manner consistent with generally accepted professional standards in the medical and healthcare professions and in accordance with all applicable law and any relevant regulations.

3.4 Subject to clause 3.7, LDPATH shall at all times ensure that it, and all external suppliers engaged by it, hold the necessary registrations and accreditations and are compliant with the appropriate legislation required to be able to provide the Services. LDPATH ensures that its partner laboratories maintain their ISO15189 accreditation and comply with these standards themselves.

3.5 LDPATH shall be responsible for obtaining and maintaining in force throughout the duration of this Agreement all licences, consents and approvals of any governmental or quasi-governmental or regulatory authority as may be required in connection with the provision of the Services.

3.6 LDPATH will also, in respect of the provision of the Services, meet any specific requirements of the Client which have been agreed in writing between LDPATH and the Client.

3.7 Specialist tests may be required to support the Services. LDPATH may sub-contract any one or more tests to be performed to a suitably accredited laboratory. Laboratory analyses are forever advancing; in the event that the required test can only be obtained from a laboratory that does not have appropriate accreditation e.g. resides outside the UK, agreement will be sought from the Client in writing prior to requesting the test.

4. PROFESSIONAL STANDARDS

4.1 LDPATH laboratory staff will be registered with the HCPC or be suitably supervised.

4.2 LDPATH will take all reasonable steps to ensure that its consultant histopathologists shall be fully validated, appropriately registered with the General Medical Council, Royal College of Pathologists and any relevant professional bodies that may be required.

4.3 LDPATH will be responsible for the clinical governance monitoring of their consultants via ensuring maintenance of EQA and appraisals, and shall provide evidence of such clinical quality to the Client as may be reasonably requested by the same from time to time.

5. DELIVERY OF SERVICES

5.1 Provided that LDPATH has received and accepted a courier request (by telephone or by email in accordance with clause 2.1) LDPATH will arrange for the collection of each Specimen.

5.2 LDPATH shall use all reasonable endeavours to meet any service delivery times requested in a Request Form or otherwise agreed by LDPATH in writing, but any such delivery times shall be estimates only.

5.3 The Client acknowledges that, except as expressly outlined in this Agreement, LDPATH gives no warranties or representations to the Client (whether express or implied) in respect of the Services. In particular, whilst every effort is made to achieve any turnaround times quoted by LDPATH for the provision of Services, no warranty or guarantee is given that such turnaround times will be achieved in any particular instance.

5.4 LDPATH consultant pathologists may deem it necessary for some cases to be referred for additional tests such as special staining, immunohistochemistry or molecular diagnostics. In such circumstances overall turnaround time will extend beyond the standard turnaround time stated on the LDPATH Website. In these cases the initial report may be made available to the referring clinician clearly stating that further studies have been requested.

5.5 Unless agreed otherwise, LDPATH will make Reports available to the Client via secure log-in to the LDPATH Application. The Client is responsible for maintaining the confidentiality of any log-in details provided by LDPATH for the Client to access Reports.

5.6 LDPATH shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and LDPATH shall notify the Client in any such event.

6. CLIENT OBLIGATIONS

- 6.1 The Client is responsible for complying with all applicable law and any relevant regulations in respect of its use of the Request Forms and Reports.
- 6.2 The Client warrants that it has obtained all necessary permissions and consents from its patients and users in connection with its use, completion and submission to LDPATH of the Request Form and Specimen and to allow the lawful transfer of personal data to LDPATH for LDPATH to provide the Services.
- 6.3 The Client will ensure that all paper Request Forms and Specimens are ready for collection by LDPATH's courier from a single point (to be notified by the Client to LDPATH) at the agreed time for collection.
- 6.4 The Client will:
 - 6.4.1 ensure that all details it provides on the Request Form and with the Specimen (including all personal data provided by the Client relating to its patients or users) are complete and accurate;
 - 6.4.2 ensure that the Specimen and the Request Form meet the Acceptance Criteria;
 - 6.4.3 cooperate with LDPATH in all matters relating to the Services;
 - 6.4.4 ensure that the Specimen is suitable for LDPATH to perform the Services;
 - 6.4.5 provide reasonable assistance to LDPATH to help it comply with any specific requirements of the Client which have been agreed in writing between LDPATH and the Client in accordance with clause 3.5.
- 6.5 If LDPATH has to repeat any Services as a result of any failure by the Client to meet the terms of this clause, the Client will be responsible for the costs of any such repeated Services.

7. DATA PROTECTION

- 7.1 LDPATH and the Client in their respective performance of this Agreement will comply with the provisions of the Data Protection Laws and LDPATH's Client Data and Privacy Policy (a copy of which is available on the LDPATH Website).
- 7.2 The parties acknowledge that for the purposes of the Data Protection Laws, the Client is the data controller and LDPATH is the data processor (where "controller" and "processor" have the meanings as defined in the Data Protection Laws).
- 7.3 Without prejudice to the generality of clause 7.1, LDPATH shall, in relation to any Client Personal Data processed in connection with the performance by LDPATH of its obligations under the Agreement:
 - 7.3.1 process the Client Personal Data only on the written instructions of the Client unless LDPATH is required by applicable law to otherwise process that Client Personal Data;
 - 7.3.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data;
 - 7.3.3 ensure that all personnel who have access to and/or process Client Personal Data are obliged to keep the Client Personal Data confidential;
 - 7.3.4 not transfer any Client Personal Data outside of the European Economic Area unless (1) the country to which Client Personal Data is to be transferred has been deemed by the European Commission to provide an adequate level of protection for personal data; (2) the transfer uses a specific contract approved by the European Commission which gives personal data the same degree of protection that it has in Europe; or (3) the transfer is to an organisation in the US which is part of the Privacy Shield. If LDPATH considers there is a clinical need as part of the Services to transfer any Client Personal Data out of the European Economic Area otherwise than on one of the bases set out in this clause, it will inform the Client and will only make such transfer of the Client Personal Data with the express written consent of the data subject, the data subject having been informed of the proposed transfer and the risks due to the absence of appropriate safeguards;
 - 7.3.5 assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 7.3.6 notify the Client without undue delay on becoming aware of a Client Personal Data breach; and
 - 7.3.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- 7.4 After completion of the Services, LDPATH will continue to store any records or materials produced by LDPATH in connection with the Services (including Specimens and slides in physical and digital format) and Client Personal Data to the extent necessary to provide any follow-up services and to comply with its legal obligations.

7.5 The Client consents to LDPath appointing third-party processors under the Agreement. LDPath confirms that it has entered into written agreements with any third-party processors which incorporate terms that are substantially similar to those set out in this clause 7. As between the Client and LDPath, LDPath will remain liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.

8. CONFIDENTIALITY

8.1 Each party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.

8.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this Agreement.

8.3 The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

8.4 This clause shall survive termination or expiry of the Agreement.

9. PRICING

9.1 LDPath will charge for the Services in accordance with its standard prices which are available from LDPath on request.

9.2 LDPath will exercise reasonable judgement when providing an estimate or indication of price before carrying out Services.

9.3 The Client shall recognise that in the healthcare industry coding and pricing of cellular pathology can be subject to a number of factors outside the control of LDPath. LDPath will endeavour wherever possible for the price of any new or additional service not within the scope of the Agreement to be mutually agreed in writing between LDPath and the Client.

9.4 LDPath reserves the right to increase its prices from time to time. The increased prices will be applicable to any Agreements entered into after the date of increase.

10. PAYMENT

10.1 Unless agreed otherwise, LDPath will invoice the Client for Services and may do so at any time after the completion of the Services.

10.2 The Client will pay each invoice submitted by LDPath within 30 days of the date of the invoice and in full and cleared funds to a bank account nominated in writing by LDPath. Time for payment shall be of the essence of the Agreement.

10.3 All amounts payable are exclusive of VAT which will be added to the invoice where appropriate and will be payable by the Client.

10.4 Interest may be charged on overdue accounts at the rate of two per cent (2%) above the base interest rate charged by Barclays Bank Plc if payment is not received within 14 days of a written reminder to the Client.

10.5 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. INSURANCE

LDPath shall maintain in force public liability, medical malpractice, products and employers' liability insurance providing cover of at least £5 million for any one claim.

12. LIABILITY

12.1 Nothing in this Agreement shall in any way exclude or limit a party's liability for death or personal injury caused by that party's negligence or for fraud or fraudulent misrepresentation.

12.2 Subject to clause 12.1:

12.2.1 LDPath will not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any (i) loss of profits, (ii) loss of business, (iii) loss of use or corruption of software or data, (iv) loss of or damage to goodwill or (v) any indirect or consequential loss arising under or in connection with this Agreement; and

12.2.2 LDPath's maximum aggregate liability to the Client, where not covered by respective insurance policies, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £10,000.

- 12.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 12.4 This clause 12 applies to any Services provided by LDPath before the Agreement comes into force (as referred to in clause 2.2) and shall survive termination or expiry of the Agreement.

13. TERMINATION

- 13.1 LDPath may terminate the Agreement with immediate effect by giving written notice to the Client if:
- 13.1.1 the Client fails to pay any overdue invoice within 30 days of receipt of a written reminder; or
- 13.1.2 the Client commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so.
- 13.2 On termination of the Agreement, the Client will immediately pay to LDPath all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, LDPath will submit an invoice, which will be payable by the Client immediately on receipt.
- 13.3 Termination or expiry of the Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

14. FORCE MAJEURE

LDPath will not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Services, if the delay or failure was due to any cause beyond the reasonable control of LDPath or any of its subcontractors (**Force Majeure Event**). Without prejudice to the generality of the foregoing, the following shall be regarded as Force Majeure Events:

- Act of God, explosion, flood, tempest, fire or accident;
- War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority import or export regulations or embargoes;
- Failure or delay by a subcontractor;
- Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of LDPath's staff, sub-contractors or other third parties);
- Difficulties in obtaining raw materials, labour, fuel, parts or machinery; and
- Power failure or breakdown in machinery.

15. SUBCONTRACTING AND ASSIGNMENT

Subject to it complying with the requirements of these Terms, LDPath may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties. In entering this Agreement, the Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of LDPath which is not set out in this Agreement.

17. WAIVER

A waiver of any right under this Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose.

19. THIRD PARTIES

A person who is not a party to this Agreement shall not have any rights to enforce its terms.

20. VARIATION

No variation of this Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by each of the parties.

21. GOVERNING LAW AND JURISDICTION

This Agreement, 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 agree to the exclusive jurisdiction of the courts of England and Wales.