

# iTero Element Sleeves Replenishment Terms and Conditions

**Effective:** February 1st, 2021

These iTero Element Sleeves Replenishment Terms and Conditions (the "Terms") are the terms that govern the sleeve replenishment plan, as offered to you by Align Technology Inc or anyone acting on Align's behalf ("Align") and are subject to change from time to time at Align's discretion. By accepting the Plan, as defined below, you agree to these Terms.

## 1. DESCRIPTION OF THE PROGRAM TERMS

- 1.1. This sleeves replenishment plan (the "Plan") is applicable only to dental practitioners who own iTero Element intraoral scanners ("iTero Scanner") as solely determined by Align.
- 1.2. During the Plan Period, as defined below, Align shall provide the Customer with the amount of sleeves for the iTero Scanner (the "Sleeves") based on the Plan selected by the Customer (the "Chosen Plan"). The Chosen Plan may be either a Fixed Plan or Automatic Plan, as offered to you by Align.
- 1.3. In the event that Customer chooses a Fixed Plan, the Customer shall receive quarterly deliveries of the amount of boxes pursuant to the Chosen Plan. Should Customer want to change their Chosen Plan to another Plan, Customer shall notify Align in writing of the requested change in the Chosen Plan, at least 30 days before such change shall come in effect, via email: [orders@aligntech.com](mailto:orders@aligntech.com).
- 1.4. In the event that the Customer chooses the Automatic Plan, Align shall review Customer's history of scans usage and provide the Customer with quarterly deliveries of Sleeves. The Sleeves shall be packed and shipped in boxes of 25 Sleeves per box. Each order of Sleeves shall be of a minimum of 4 boxes. In the event that the Customer is aware of an expected change in requirements, i.e. increase or decrease of quantity needed, the Customer shall inform Align in writing to the email address: [orders@aligntech.com](mailto:orders@aligntech.com), at least 30 days prior to the required change. Align shall not be held accountable and/or liable in any way, for any shortage or overstock of Sleeves.
- 1.5. Customer shall pay quarterly payments to Align according to the Chosen Plan. Align shall issue the Customer an invoice based on the Chosen Plan and the Customer shall pay such an invoice no later than 30 days from date of invoice. Invoice shall be inclusive of all discounts. Align shall have the right to terminate or suspend the Plan upon written notice to Customer in the event that Customer fails to make such payments, without derogating from any other rights of Align.
- 1.6. If payments are made via credit card, Customer hereby authorizes Align to automatically charge the credit card provided by Customer to Align in the payment process schedule and any and all amounts due by Customer to Align hereunder. By accepting these Terms, Customer hereby represents and warrants that Customer is legally authorized to enter into this recurring credit card agreement with Align.
- 1.7. All shipments are CIP (Incoterms 2010), provided, however, that title to the Sleeves will pass upon shipment to the first carrier of instance (subject to Align's rights as an unpaid creditor). In the event of any damage in supply of the Sleeves, such damage must be reported by Customer within 24 hours of receipt. Align shall inform the Customer of an approximate delivery date. Align shall bare no responsibility or liability in the event of any change of delivery date.
- 1.8. Customer has the responsibility to adhere to all laws, regulations and reporting obligations, including, if applicable, reporting the discount under the Chosen Plan to any federal or state healthcare program that may provide reimbursement.
- 1.9. Sleeves are non-transferrable, non-reusable and are intended to be used with qualifying iTero Scanner units only. Sleeves shall be used only in accordance with the written instructions provided with the Sleeves.
- 1.10. Customer agrees that Align may request feedback or additional information from Customer regarding the Sleeves or the Plan, which feedback or additional information shall belong solely to Align to be used at Align's sole discretion for its business purposes, and Customer hereby grants and transfers to Align all rights, title, and interest, including intellectual property rights, relating thereto.

## 2. TERM, TERMINATION

**2.1 Term.** These Terms shall commence on the date of approval by Customer, and the Plan period shall commence on the delivery date of the first box shipped and shall remain in effect, unless Align or Customer provide written notice in accordance with section 2.2 below ("Plan Period"). Charges will be billed automatically to the Customer's credit card in accordance with the Chosen Plan.

**2.2 Termination.** These Terms may be terminated upon thirty (30) days prior written notice by either party. Customer shall provide the notice to Align via email

[orders@aligntech.com](mailto:orders@aligntech.com). Upon termination Align will cease shipments of the Sleeves to the Customer, provided, that those Sleeves that have already been shipped as of the date of the notice shall not be cancelled.

## 3. OWNERSHIP AND RIGHT TO USE

3.1 Align shall retain and own all rights, title, interest in any patents, trademarks and any other intellectual property rights in and to the Sleeves ("Align Intellectual Property"). Customer agrees that Align will solely own all rights to any feedback or improvements communicated by Customer to be used by Align at its sole discretion for its business purposes. Customer shall only use the Sleeves and Align Intellectual Property for the use with the iTero Scanner. In addition, Customer agrees not to (nor allow any third party to) make copies, reverse engineer, disassemble, or decompile the Sleeves.

## 4. INDEMNIFICATION

Customer agrees to indemnify, defend and hold harmless Align against, and shall reimburse Align for, any and all claims, expenses, liabilities, or damages, including interest, penalties and reasonable attorneys' fees and expenses which arise from, or are attributable to Customer's breach of these Terms or allegations of negligence by Customer or its employees, contractors or agents resulting in: (i) injury to any person, (ii) personal property damage, or (iii) resulting from illegal or improper use of the Sleeves.

## 5. WARRANTY

THE SLEEVES PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND TO THE EXTENT PERMITTED BY LAW, ALIGN MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SLEEVES OR OTHER INFORMATION PROVIDED BY ALIGN OR THE USE OR OPERATION THEREOF, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND SUITABILITY FOR A PARTICULAR PURPOSE.

## 6. LIABILITY

TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, ALIGN SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOSSES INCURRED BY CUSTOMER ARISING FROM OR RELATING TO THESE TERMS OR THE SLEEVES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS OR STRICT LIABILITY OR ANY OTHER FORM OF ACTION, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE. EXCEPT FOR FRAUD OR WILLFUL MISCONDUCT BY ALIGN, ALIGN'S LIABILITY IN CONNECTION WITH THESE TERMS SHALL NOT EXCEED THE ACTUAL FEES PAID BY CUSTOMER DURING THE LAST QUARTER OF THE PLAN PERIOD.

## 7. MISCELLANEOUS

- 7.1. Customer shall not assign or transfer this Agreement to any third party. No covenant or condition of these Terms can be waived except by prior written consent of the other party. Neither party shall be deemed to be in breach of these Terms for any failure or delay in performance caused by reasons beyond its reasonable control (other than payment obligations). Rights and obligations under these Terms, which by their nature should survive will remain in effect after termination or expiration hereof, including Section 1.8, Ownership and Right to Use, Confidentiality, Indemnification, Liability and Miscellaneous. The validity, interpretation, enforceability and performance of these Terms shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of law principles thereof. The appropriate courts of New York, USA shall have exclusive jurisdiction over disputes resulting from or in connection with these Terms. These Terms set forth the entire agreement and understanding between the parties and supersedes all prior or contemporaneous terms relating to the subject matter hereof. These Terms can only be modified by a subsequent written agreement executed by each party. Notices shall be delivered in writing to the addresses first set forth above and in the case of Align, to its legal counsel, and shall be deemed received, if delivered by hand delivery, upon delivery; if by facsimile or email, within one business day of transmission, and in the case of facsimile, with proof of transmission.