

ITERO ELEMENT INTRAORAL SLEEVES REPLENISHMENT CONTRACT

TERMS AND CONDITIONS

This Agreement is entered into between the Customer and Invisalign Australia Pty Ltd ACN 098 357 736 with its registered office at Level 6, 154 Pacific Highway, St Leonards, NSW 2096 ("Align").

1. DESCRIPTION OF THE PROGRAM TERMS

- 1.1. This sleeves replenishment plan is applicable only to registered 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 will provide the Customer with the amount of sleeves for the relevant iTero Scanner (the "Sleeves") based on the plan selected by the Customer above (the "Chosen Plan").
- 1.3. The Customer will receive quarterly deliveries of the amount of boxes pursuant to the Chosen Plan. Should the Customer want to change their Chosen Plan to another plan, the Customer will notify Align in writing of the requested change in the Chosen Plan at least 30 days before such change will come in effect via email: iTeroAPAC@aligntech.com.
- 1.4. The Customer will pay quarterly payments to Align according to the Chosen Plan. Align will issue the Customer an invoice based on the Chosen Plan and the Customer will pay such an invoice no later than 30 days from date of invoice. Invoice will be inclusive of all discounts. Align will have the right to terminate or suspend the Chosen Plan upon written notice to Customer in the event that Customer fails to make such payments or if required by law, without derogating from any other rights of Align.
- 1.5. All shipments are CIP (Incoterms 2010) unless otherwise agreed by the Customer and Align in writing, 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). Align and its affiliates (as the case may be) will endeavor to deliver accepted orders promptly; it is understood, however, that project delivery dates represent best current estimates only and Align will have no liability for failure to perform within such dates. In the event of any damage in supply of the Sleeves, such damage must be reported by Customer within 24 hours of receipt. Align will inform the Customer of an approximate delivery date.
- 1.6. Customer has the responsibility to adhere to all laws, regulations and reporting obligations. Customer acknowledges its responsibility for reporting the dollar value of any discounts or price reductions in any costs claimed or charges made to Medicare and any other federal, state or local programs providing reimbursement to Customer in Australia and as otherwise required under local laws, regulations or industry codes.
- 1.7. Sleeves are non-transferrable, non-reusable and are intended to be used with qualifying iTero Scanner units only. Sleeves will be used only in accordance with the written instructions provided with the Sleeves.
- 1.8. The Customer agrees that Align may request feedback or additional information from the Customer regarding the Sleeves or the Chosen Plan. The Customer hereby grants to Align and its affiliates (as the case may be) a non-exclusive, irrevocable, worldwide, fully-paid up license to use the feedback or additional information for the purposes of complying with applicable laws and regulations, research, education and development, data analytics, management, improvement and provision of Align and Align affiliate products and services.

2. TERM, TERMINATION

- 2.1. **Term.** This Agreement will commence on the date this Agreement is signed by the Customer, and the Chosen Plan period will commence on the delivery date of the first box shipped and will remain in effect, except as otherwise specified herein, for 12 months ("Plan Period"). The Chosen Plan will automatically renew for subsequent 12-month periods, after the initial Plan Period unless Align or the Customer provide written notice in accordance with section 2.2 below.
- 2.2. **Termination.** This Agreement will may be terminated upon thirty (30) days prior written notice by either party. The Customer will provide the notice to Align via email address iTeroAPAC@aligntech.com. Upon termination Align will cease shipments of the Sleeves to the Customer. For the avoidance of doubt, those Sleeves that have already been shipped as of the date of the notice will not be cancelled. In addition, Align may, in its sole discretion, by providing written notice to the Customer, terminate this Agreement, or any part hereof: (i) immediately, if the Customer fails to pay any monies due under this Agreement or any other agreement with Align or any of its affiliates, (ii) immediately, upon Align becoming aware of any misuse of Align proprietary information, as solely determined by Align, acting reasonably; (iii) immediately, if the Customer is deregistered as a dentist or orthodontist practitioner by the Dental Board of Australia, the Australian Health Practitioner Regulation Agency or any other relevant government agency or statutory body; or (iv) if the Customer commits a material breach of this Agreement that is not cured within 30 days of written notice from Align.

3. OWNERSHIP AND RIGHT TO USE

Align will 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"). The Customer will only use the Sleeves and Align Intellectual Property for the use with the relevant iTero Scanner. In addition, the Customer agrees not to (nor allow any third party to) make copies, reverse engineer, disassemble, or decompile the Sleeves.

4. WARRANTY

TO THE EXTENT PERMITTED BY LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING THE CUSTOMER'S RIGHTS (IF ANY) UNDER THE AUSTRALIAN CONSUMER LAW, THE SCANNERS ARE WARRANTED FOR A PERIOD OF 12 MONTHS (I) AGAINST DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL USE; AND (II) TO OPERATE IN ACCORDANCE WITH ITS SPECIFICATIONS AND IN ACCORDANCE WITH THE APPLICABLE LIMITED WARRANTY SET OUT BELOW ("WARRANTY"). THE WARRANTY IS GIVEN BY ALIGN OF SUITE 2.02/6-8 HERBERT STREET ST LEONARDS, NSW 2065, AUSTRALIA, WHICH CAN ALSO BE CONTACTED VIA TELEPHONE ON 0208 920 1011 AND EMAIL AT ITEROCSAPAC@ALIGNTECH.COM. CLAIMS UNDER THE WARRANTY MUST BE SENT TO SUCH POSTAL OR EMAIL ADDRESSES. THE WARRANTY IS EFFECTIVE FROM THE DATE OF DELIVERY OF THE SLEEVES TO THE CUSTOMER ("WARRANTY EFFECTIVE DATE"). THE WARRANTY FOR THE SLEEVES TO BE WARRANTED, EXTENDS ONLY TO THE ORIGINAL CUSTOMER, AND MAY NOT BE TRANSFERRED TO THIRD PARTIES BY OPERATION OF LAW OR OTHERWISE. NO EMPLOYEE, AGENT, DEALER, RESELLER, OR OTHER PERSON IS AUTHORISED TO MODIFY, VARY, OR EXTEND THE WARRANTY OR TO ASSUME FOR ALIGN ANY OTHER LIABILITY IN CONNECTION WITH ITS SLEEVES. ALIGN ALSO DOES NOT WARRANT ANY REPRESENTATIONS MADE BY ANY THIRD PARTY. OUR GOODS COME WITH GUARANTEES THAT CANNOT BE EXCLUDED UNDER THE AUSTRALIAN CONSUMER LAW: (I) YOU ARE ALSO ENTITLED TO CHOOSE A REFUND OR REPLACEMENT FOR MAJOR FAILURES WITH THE SLEEVES. (II) IF A FAILURE WITH THE SLEEVES DOES NOT AMOUNT TO A MAJOR FAILURE, YOU ARE ENTITLED TO HAVE THE FAILURE RECTIFIED IN A REASONABLE AMOUNT OF TIME. IF THIS IS NOT DONE YOU ARE ENTITLED TO A REFUND FOR THE SLEEVES. (III) YOU ARE ALSO ENTITLED TO BE COMPENSATED FOR ANY OTHER REASONABLY FORESEEABLE LOSS OR DAMAGE FROM A FAILURE IN THE GOODS.

5. LIABILITY

TO THE EXTENT PERMITTED BY LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING CUSTOMER'S RIGHTS (IF ANY) UNDER THE AUSTRALIAN CONSUMER LAW, NONE OF ALIGN NOR ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, OR AGENTS (COLLECTIVELY, **ALIGN PARTIES**) WILL BE LIABLE FOR NON-PERFORMANCE OR DELAY IN PERFORMANCE OF ANY OBLIGATION TO THE EXTENT CAUSED BY EVENTS OR CIRCUMSTANCES BEYOND SUCH ALIGN PARTY'S REASONABLE CONTROL. FOR DELAYS RESULTING FROM SUCH CAUSES, PERFORMANCE WILL BE CORRESPONDINGLY EXTENDED. ANY ACTION AGAINST ALIGN ARISING FROM OR RELATING TO THE SLEEVES MUST BE BROUGHT WITHIN 6 YEARS AFTER THE CAUSE OF ACTION ARISES.

WITH RESPECT TO BODILY INJURY, EACH PARTY WILL BE RESPONSIBLE IN SUCH PROPORTION AS REFLECTS ITS RELATIVE FAULT FOR DAMAGES ARISING FROM OR RELATED TO THE USE OR OPERATION OF THE SLEEVES. PROVIDED THAT ALIGN WILL HAVE NO RESPONSIBILITY WHATSOEVER AND, UNLESS PROHIBITED BY APPLICABLE LAW, CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS ALIGN FROM AND AGAINST, ALL LOSSES, LIABILITIES, OR DAMAGES ARISING OUT OF IMPROPER USE, HANDLING, STORAGE, OR OPERATION, OF ANY OF THE SLEEVES.

IN NO EVENT WILL ANY ALIGN PARTY, INDIVIDUALLY OR COLLECTIVELY, BE LIABLE FOR ANY CONSEQUENTIAL OR INDIRECT LOSS OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS OR COST OF PROCUREMENT OF SUBSTITUTE SLEEVES.

TO THE EXTENT PERMITTED BY LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING CUSTOMER'S RIGHTS (IF ANY) UNDER THE AUSTRALIAN CONSUMER LAW, AND NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ALIGN'S OR ANY ALIGN PARTY'S MAXIMUM LIABILITY FOR DAMAGES ARISING FROM THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ARISING OUT OF OR RELATED TO THE SLEEVES WILL NOT EXCEED, IN THE AGGREGATE, NOT EXCEED THE ACTUAL FEES RECEIVED BY ALIGN DURING THE LAST QUARTER OF THE PLAN PERIOD. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

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THE CUSTOMER HAS ACCEPTED THE DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE SLEEVES AND UNDERSTANDS THAT THE PRICE OF THE SLEEVES WOULD BE HIGHER IF ALIGN WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.

TO THE EXTENT PERMITTED BY LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING CUSTOMER'S RIGHTS (IF ANY) UNDER THE AUSTRALIAN CONSUMER LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, WILLFUL MISCONDUCT, MIS-REPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE. SOME JURISDICTIONS DO NOT PERMIT THE LIMITATION OR EXCLUSION OF CERTAIN LIABILITIES SO THE ABOVE LIMITATIONS MAY NOT APPLY IN WHOLE OR IN PART IN SUCH JURISDICTION.

6. MISCELLANEOUS

Customer must not assign, novate or otherwise deal with all or any part of its rights and/or obligations under this Agreement without Align's prior written consent. Subject to Align providing Customer with such written notice as is reasonably practicable (as determined by Align) and to the extent permitted by law, Align may assign or novate any or all of its rights and obligations under this Agreement. Any assignment or novation takes effect at the expiration of the period of Align's notice; however this will not affect Customer's rights or obligations under this Agreement. Customer agrees that, in the event of any novation in accordance with this Section, Align is released from all obligations arising under this Agreement on and from the date the novation takes effect. Neither party will be deemed to be in breach of this Agreement for any failure or delay in performance caused by reasons beyond its

reasonable control (other than payment obligations). No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it. Rights and obligations under this Agreement, which by their nature should survive will remain in effect after termination or expiration hereof, including Section 1.8, Ownership and Right to Use, Warranty, Liability and Miscellaneous. The validity, interpretation, enforceability and performance of this Agreement will be governed by and construed in accordance with the laws of New South Wales. The venue for all disputes will be in New South Wales, Australia. If a court of competent jurisdiction finds that a provision of this Agreement is unenforceable, and the parties agree to modify the Agreement so as to best accomplish the original provision to the fullest extent allowed by law, the remainder of this Agreement will remain in full force and effect. Any waiver hereunder must be in writing, signed by the party against whom the waiver is sought to be enforced. The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by law. This Agreement sets forth the entire agreement and understanding between the parties and supersedes all prior or contemporaneous terms relating to the subject matter hereof. This Agreement can only be modified by a subsequent written agreement executed by each party. Notices will be delivered in writing to the addresses first set forth above and in the case of Align, to its legal counsel, and will be deemed received, if delivered by hand delivery, upon delivery; if by email, within one business day of transmission.