



## ALIGN TERMS AND CONDITIONS OF PURCHASE

This agreement contains the Align Technology, Inc. ("Align") Terms and Conditions of Purchase (the "Agreement") and sets forth the terms of purchase between the parties. Additional terms may be set forth in the Align Purchase Order ("P.O.") which may be accepted in writing or by specific performance (including but not limited to shipment of product, provision of services, acceptance of a purchase order, etc.). The terms set forth on an Align P.O. will prevail over any conflicting terms in this Agreement. This Agreement will prevail over any quote, order, invoice or other communication. If a formal written agreement beyond these terms and conditions (such as a Supply Agreement) is entered into between the parties, then such agreement will prevail.

**1. PRICE.** Seller's acceptance of an Align P.O. constitutes a warranty that the prices charged for the goods and/or services ordered will not exceed the prices referenced on the P.O. Align will only pay for quantities ordered and/or services rendered pursuant to the terms of the P.O. and will not have any liability for over-shipments.

**2. PACKAGING AND DELIVERY.** Seller will package all goods in an economical manner: (a) in accordance with good commercial practices, (b) acceptable to common carriers for shipment (c) in accordance with governing regulations, and (d) adequate to ensure safe arrival of the goods at the named destination. Each shipment must include a packing list referencing Align's P.O. number, Align's part number (if applicable), quantity, and description of goods. The exterior packaging must include a label with Align's P.O. number, Align's part number, Align's revision number and lot number (if applicable), and quantity in each box. The order is due at Align's designated facility on the Request Date which is listed on the applicable P.O. Align may issue changes, including but not limited to, a change to the Request Date, a change to the method or location for shipment without any liability to Align, provided such change is communicated in writing to Seller prior to shipment.

**3. DELIVERY AND RISK OF LOSS.** It is understood that TIME IS OF THE ESSENCE for the P.O. since the goods and/or services are required for products and/or services necessary to satisfy Align's expanding market. The goods ordered hereunder will be delivered via the carrier approved by Align, utilizing the account number approved by Align, FOB Align's designated facility or other destination approved by Align, freight collect. The title passes to Align at Align's designated facility or other approved Align destination, the packing slips and/or bill of lading must reference Align's Purchase Order Number, Item Number and list the name of the carrier and tracking number.

**4. INSPECTION AND ACCEPTANCE.** All goods and/or services are subject to inspection and acceptance at Align's designated facility within a reasonable time after delivery of goods or completion of services. In the event any goods and/or services are defective (in material, workmanship, design, construction, or manufacture), has claims alleging infringement, does not meet the specifications or applicable warranties, and/or is not in conformity with the requirements of the P.O., Align may, at its option: (i) reject the goods and/or services, and Seller must promptly replace or rework the rejected goods and/or services at Seller's expense, (ii) require Seller to promptly correct the defective, infringing or nonconforming goods and/or services by repair, rework or replacement at no cost to Align, (iii) return the defective, infringing or nonconforming goods to Seller at Seller's expense and recover from Seller the order price thereof, or (iv) correct the defective, infringing or nonconforming goods and/or services itself and charge Seller with the cost of such correction. If under (i) or (ii) above Seller, after being requested by Align, fails to promptly replace or correct any defective or infringing goods and/or services, then Align may at its sole discretion (i) replace or correct the goods and/or services and charge to Seller the cost occasioned thereby, (ii) immediately cancel the P.O. without liability to Align, or (iii) adjust the P.O. to indicate a reduction in price for the defective, infringing or nonconforming goods and/or services.

**5. WARRANTY.** Seller warrants that all goods and/or services delivered (i) will be free from defects in workmanship, design, construction, material and manufacture (whether latent or patent), (ii) will comply with the requirements of the P.O. and this Agreement (iii) will comply with specifications provided or agreed by Align, and (iv) will be free from any liability, including but not limited to, a royalty, mechanics' lien or other encumbrance. Seller warrants that the goods and/or services provided under the P.O. and this Agreement will be delivered in a professional and workmanlike manner and will comply with all applicable federal, state and local laws. Seller agrees to pass through warranties of any subcomponent supplier's product included in the goods delivered to Align. All warranties run to the benefit of Align and its customers.

**6. TERMINATION.** The parties agree that this Agreement and the P.O. may be terminated as follows:

- **Termination Prior to Shipment.** Align reserves the right to cancel the P.O., in whole or in part, and without liability at any time prior to delivery of the goods and/or services ordered.
- **Termination By Align.** Additionally, Align may terminate the P.O. in whole or part, after shipment of the goods and/or delivery of the services by providing written notice to Seller.
- **Termination for Default.** If termination is for Seller's default, Align may procure at its sole discretion, goods and/or services substantially similar to those ordered and Seller will be liable to Align for any reasonable excess costs for the replacement goods and/or services.
- **Procedures Upon Termination.** Upon termination, Seller will, upon Align's direction and at the times specified by Align, stop work under the terminated portion of the P.O., place no further orders for materials or services under the terminated portion of the P.O., settle

(with Align's prior approval) any third party claims relating to the goods and/or services (including payment owed to third party sub-contractors), safeguard property related to the goods and/or services, transfer title and make delivery to Align of all deliverables and/or work in process relating to the goods and/or services under the terminated portion of the P.O., deliver materials acquired for performance of the P.O., and preserve records documentation, and other materials relating to the goods and/or services. Seller shall at all times proceed with any portion of P.O. that has not been terminated.

- Payment Upon Termination. Payment for completed goods and/or services delivered to and accepted by Align under this paragraph will be the P.O. price. Seller must promptly submit any outstanding invoices for goods and/or services. Align will not have any liability whatsoever as to any goods or services not invoiced within forty-five (45) days of the termination date.

**7. PAYMENT TERMS AND INVOICE.** Seller shall invoice Align no earlier than shipment of goods and/or delivery of the services. Payment terms shall be Net 45 days (unless otherwise agreed in writing as a condition of purchase) from Align's receipt of goods and/or completion of services and a correct invoice, if required. Seller's invoice(s) must include the Supplier Name, Address, Invoice Number, Invoice Date, Purchase Order Number, Quantity, Unit Price and Extended Price, Description/Item Number, Ship to address, and additional charges such as freight and handling and tax. Align's payment of an invoice will not constitute acceptance of goods and/or services. Invoices shall be subject to review for errors, shortages, defects, or other related failure of Seller to meet the requirements of a Purchase Order.

**8. WAIVER; REMEDIES.** The failure of Align to require performance of any provision under this Agreement or the P.O. will not affect in any way the full right to require such performance at any time thereafter. The remedies stated herein are in addition to all other remedies at law or in equity.

**9. INDEMNIFICATION.** Seller agrees to indemnify Align, its agents, customers, successors and assigns against any loss, damage, and liability (including costs and expenses) which arise from or are attributable to allegations of (i) infringement of any patent, copyright, trademark or other intellectual property ("Intellectual Property") arising from the goods and/or services provided, however, that Align must promptly notify Seller of the claim and allow Seller control over the defense and settlement of the claim with counsel reasonably satisfactory to Align. Align, at its own expense, may participate in the defense of any such claim with counsel of its own choice. Seller may not settle or compromise any claim in a manner that imposes any material restrictions or obligations on Align without Align's prior written consent.

**10. LIMITATION OF LIABILITY.** EXCEPT FOR PAYMENT FOR GOODS AND/OR SERVICES DELIVERED AND ACCEPTED BY ALIGN, IN NO EVENT WILL ALIGN'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE P.O. UNDER ANY THEORY OF LAW EXCEED THE SUM OF FEES PAID BY ALIGN DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THE EXISTENCE OF ONE OR MORE CLAIMS SHALL NOT EXPAND SUCH LIMIT. IN NO EVENT SHALL ALIGN HAVE ANY LIABILITY TO SELLER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSS OF DATA, LOSS OF USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY OR OTHERWISE) WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**11. CONFIDENTIAL INFORMATION.** "Confidential Information" means all tangible and intangible information disclosed by Align or otherwise made available or accessible whether intentionally or inadvertently regardless of the manner or medium of disclosure or access that is described as proprietary or confidential or considered as confidential or proprietary and shall include but is not limited to: this Agreement, the P.O., Intellectual Property, specifications, drawings, samples, ideas, concepts, prototypes, materials and equipment, capacities, inventions, manufacturing processes, pricing and financial information, business plans, marketing and development plans, and products. Align owns all deliverables, Intellectual Property, Confidential Information, work product and results developed or created by Seller under this Agreement or the P.O. whether such development occurs with or without contribution by Align.

**12. ASSIGNMENTS.** No right or obligation under this Agreement and/or the P.O. may be assigned by Seller without Align's prior written consent, and any attempted assignment without such consent will be null and void. Align may assign the P.O. at any time to any party which assumes Align's obligations hereunder.

**13. DELAYS.** Whenever any event delays or threatens to delay the timely performance of the P.O., Seller will immediately notify Align in writing furnishing all relevant details. Receipt by Align of such notice will not constitute a waiver of the Request Date or other due dates agreed by the parties.

**14. APPLICABLE LAW.** The validity, interpretation, enforceability, and performance of this Agreement and/or the P.O. shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules, as if it was entered into by California residents and, as if it was performed entirely within California. Venue for all disputes shall be in Santa Clara County, California. The parties specifically disclaim the applicability of the United Nations Convention on Contracts for the International Sale of Goods to this P.O.

**15. NOTICES.** Any notice or other communication to be provided hereunder must be evidenced by a delivery receipt and will be effective upon receipt.

**16. INSURANCE.** Seller must procure and maintain, at its sole expense, a policy or policies of insurance at levels sufficient to support its obligations under this Agreement and the P.O. and Seller shall promptly notify Align of any change, cancellation, or non-renewal of the insurance. Upon request by Align, Seller shall provide a Certificate of Insurance or other evidence satisfactory to Align.