



ALIGN AEROSPACE LLC

TERMS AND CONDITIONS OF SALE AND SERVICE

1. **ACCEPTANCE.** Buyer's Agreement/Purchase Order is accepted subject to the following terms and conditions and no others, unless the same have been consented to in writing by the Seller. The placing of orders by Buyer shall be conclusive evidence of the Buyer's approval of and consent to the terms and conditions contained herein.
2. **PRICES AND PRICE REVISION.** Proposals are quoted in \$US dollars. Seller may revise its quoted unit prices, in the event of supplier price increases or other circumstances beyond the reasonable control of Seller, including Buyer's orders varying +/- 25% from Buyer's forecast. If Buyer's usage requires alternate sources, gap buys, or expedite and premium transport fees to meet Buyer's demand, all such additional costs and fees shall be paid by Buyer. Seller shall use its best efforts to mitigate the impact of such price revisions upon Buyer, and will provide notice of Seller's intent to revise prices. Buyer's orders shall be a minimum \$50.00 per discrete line item and \$100.00 per order.
3. **PAYMENT.** Payment terms are net thirty (30) days from date of invoice, subject to approval of Buyer's credit.
4. **DELIVERY.** Terms are FOB Seller's dock (ExWorks). Title and risk of loss shall pass to Buyer at Seller's dock.
5. **EXPORT.** Buyer shall comply with the export control laws and regulations of the United States and other governments. Any governmental refusal to grant or cancel any export or re-export license, manufacturing license or technical assistance agreement shall be considered a Force Majeure.
7. **RESCHEDULES.** Orders are subject to cancellation/reschedule fees contingent on the completion percentage of the order.
8. **WARRANTY.**

Seller warrants that articles delivered hereunder conform to final specifications, drawings, and other description agreed in writing, and are free from defects in materials and workmanship. These warranties shall run to the Buyer, its successors, assigns and customers.

These warranties shall expire twelve (12) months after delivery of the article to the Buyer; or such longer period offered in the manufacturers' warranties.

These warranties shall not apply if the articles or any parts thereof have been subjected to; any maintenance, overhaul, installation, storage, operation, use, handling or environment which is improper or not in accordance with Seller's instructions; any alteration, modification, or repair by anyone other than Seller or its authorized representative; or any accident, misuse, neglect, or negligence after delivery by Seller. Warranties shall not apply for defect or non-conformities attributable to any part not supplied by or approved by the Seller.
9. **DISCLAIMER OF WARRANTY.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND SELLER DISCLAIMS AND BUYER WAIVES, ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW (STATUTORY OR OTHERWISE) AND WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE.
10. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, INCLUDING ANY DAMAGES OCCASIONED BY SELLER'S NEGLIGENCE. IN ADDITION, SELLER'S LIABILITY ON ANY CLAIMS FOR DAMAGES OR CHARGES ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS AND/OR SERVICES GIVING RISE TO THE CLAIM. Any action for breach of this Agreement, indemnity or any covenant or warranty must be commenced within one (1) year after the cause of action occurs.
11. **ACCEPTANCE/RETURNS.** Goods are deemed accepted within 30 days of delivery. Returns shall only be made upon Seller's issuance of a Return Material Authorization (RMA).
12. **FORCE MAJEURE.** Seller shall not be liable for any failure to perform its obligations under the contract resulting directly or indirectly from, or contributed to by, acts of God, acts of Buyer, civil or military authority, fires, strikes or other labor disputed, accidents, floods, war, terrorism, riot, inability to secure material or transportation facilities, acts or omissions of carriers, or any other circumstances beyond Seller's reasonable control.
13. **TERMINATION FOR CONVENIENCE:** Either Party may terminate upon sixty (60) days written notice to the other.

14. **BUYER'S FORECAST/USAGE.** Buyer shall; a) purchase 100% of its first year's forecast, and provide an updated forecast for each succeeding year ninety (90) days prior to the anniversary date; and b) meet with Seller annually to review, i) deviations from forecast, and ii) its purchase commitment for the succeeding year. Failure of Buyer to complete either a) or b) may make Seller's price and delivery commitment invalid.
15. **SAFETY STOCK.** Where Buyer requires, Seller shall hold safety stock for the items and quantities identified by Buyer. Unless otherwise agreed, Seller shall hold an amount not less than 90 days usage plus a buffer based on factory lead-time, administrative and material handling, and transit time. In the event of partial or full termination, obsolescence of items, or expiration of this Agreement, Buyer shall purchase all remaining inventories, including parts on order(s) specific to this agreement not yet received by the Seller, at the contract prices identified herein.
16. **SLOW MOVING / INACTIVE INVENTORY.** The Parties shall review the inventory usage annually, to identify slow moving or inactive parts. Slow moving parts are those with actual usage less than or equal to eighty (80%) percent of Buyer's annual forecast. Inactive parts are those with no usage in a twelve (12) month period. Buyer shall purchase the inventory of all slow moving and inactive parts at the unit prices herein within sixty (60) days after the annual review.
17. **CONTRACT RENEWAL.** Upon reaching twelve months, or the longest contact part lead time prior to expiration date of the contract, the Parties shall start discussions related to the potential renewal of the contract. During this period, Align will advise Buyer of any parts that require replenishment orders to be placed and request Buyer approval to place such purchases. In the event the contract is not renewed, Buyer will be liable for 100% of the contract price for items purchased during this period.
18. **SEVERABILITY.** If any provision of this Agreement is held invalid or unenforceable, the remaining provisions will remain in full force and effect, and the invalid or unenforceable provision will be limited or eliminated to the minimum extent necessary.
19. **APPLICABLE LAW/DISPUTES –** Any Agreement/ Purchase Order This contract shall be governed by the laws of the state of New York. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association Manhattan, NY under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in a New York court having jurisdiction thereof.
20. **WAIVER.** Failure by Seller to assert all or any part of its rights upon any breach of a subsequent Agreement/Purchase Order shall not be deemed a waiver of such rights.
21. **ASSIGNMENT.** No assignment by Buyer of this Agreement shall be made without the express written approval of Seller.
22. **ENTIRE AGREEMENT/AMENDMENT.** This Agreement constitutes the entire, integrated agreement between the Parties related to the subject matter of this Agreement, and any and all discussions, understandings, agreements, representations, courses of dealings, customs, and usages of trade heretofore made or engaged in by the Parties with respect to the subject matter hereof are merged into this Agreement which alone fully and completely expresses the Parties' Agreement. No amendments, modifications, waivers, or termination of this Agreement can be made through the Parties' course of dealings and no such change can be made except in a single writing by the Parties hereto.
23. **ORDER OF PRECEDENCE.** Any inconsistencies between these terms and subsequent Agreements/Purchase Orders shall be resolved in accordance with the following descending order of precedence: (i) These Terms and Conditions of Sale and Service, (ii) other Agreement(s) and attachments thereof; (iii) Statement of Work; (iii) Face of the Purchase Order, release document, or schedule (including any electronic release) as applicable.
24. **INDEMNITY.** Seller will defend, indemnify and save Buyer harmless from and against any and all losses, costs, expenses (including without limitation reasonable attorney's fees), damages, and liabilities (collectively "Damages"), arising from or in connection with (i) Seller's violation of any laws, ordinances or regulations; (ii) any third party claim for personal injury (including death) and tangible property damage to the extent of Seller's gross negligence or willful misconduct; or (iii) any rightful claim of any third person by way of infringement of any United States patent or copyright by products which are of Seller's own manufacture, provided that Buyer promptly gives Seller written notice of any such suits, gives Seller or its designee full control over the defense and settlement, and provide Seller with all reasonable information and assistance (at Seller's cost) to handle the defense and settlement. Should any goods become, or in Seller's opinion, are likely to become, the subject of any claim for infringement of any U.S. patent or copyright, Seller, in its sole option may either procure the right for Buyer to continue using the good, modify the good to make it non-infringing, substitute an equivalent non-infringing good, or take back and refund the depreciated value of the infringing good. Seller's indemnification obligation does not apply if the alleged infringement results from Buyer's modification or enhancement of the Products or use of the Products in combination with other products not provided or approved by Seller. If Buyer furnishes specifications to Seller for use in the manufacture of the products, Buyer will indemnify and hold Seller harmless against any claim of intellectual property infringement or any other claim which arises out of compliance with the specifications. Seller's obligation to indemnify Buyer hereunder shall only apply if Buyer promptly notifies Seller of any claim or action.