



## DENTIST CUSTOMER AGREEMENT

This Customer Agreement ("Agreement") is made as of the date set forth when signing or sending the prescription form, or a substitute thereof, by and between ArkLign Laboratories ("Company") and the customer ("Customer"). The Company and the Customer do hereby agree as follows:

1. **Payment Terms.** Full payment, as set forth on the Company's current price sheet for all products, work, services or shipments requested by the Customer pursuant to each order placed by the Customer shall be due no later than the 25th day of the month in which the statement is prepared, regardless of when actually received by Customer. Any remaining, unpaid balances existing past the Due Date shall be considered past due.

1.1. **Past Due Amounts.** On any past due balances, Customer agrees to pay a late monthly charge equal to one and one-half percent (1.5%) of any such balance with a minimum of fifteen dollars (\$15.00). This late charge will accrue on a pro-rata basis during each 30 day period starting on the Due Date and continuing until the unpaid past due balance is paid in full. Unless elected otherwise by the Company, any promotional discounts will be void if the invoice total is not paid when due, and any and all future shipments to the Customer shall be on a C.O.D. basis only, as to the entire outstanding balance, until the Customer's entire outstanding balance and any late charges are paid in full.

1.2. **Payment Processing.** Any payments made by the Customer while a past due balance exists shall be applied first to late charges and second to past due balances before being applied to current balances, unless elected otherwise by the Company. A minimum of twenty-five dollars (\$25.00) will be charged for returned checks.

1.3. **Total Late Charge Limit.** The late charges applicable to any past due balance are expressly limited so that in no event whatsoever shall the amount of any late charge exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances whatsoever, a late charge hereunder shall accrue such that it transcends the limit of permissible charges prescribed by law which a court of competent jurisdiction may deem applicable thereto, then the late charge shall be reduced to the limit of such permissible charges, and if from any circumstances the Company shall ever receive a payment amount which might be otherwise deemed to be interest in excess of such limits, the same shall be applied to the reduction of the unpaid principal balance due by the Customer and not to the payment of interest. This provision shall control every other provision of all agreements between the Customer and the Company.

2. **Delivery Terms and Conditions.** The Company shall use its best reasonable commercial efforts to prepare all products, work, services or shipments requested by the Customer in a timely fashion. However, the Company cannot and does not represent or warrant that such products, work, services or shipments will be delivered by any particular date, unless otherwise agreed by the Company. The Customer may not claim any offset or reduction in price for products, work, services or shipments for any alleged late delivery, discrepancies, shortages, claims, or incorrect shipments unless agreed to by the Company.

3. **Method of Shipment.** The Company shall, unless specified otherwise in writing by Customer, determine the method of shipping or transport of its products, work, services or shipments. Customer shall be responsible for all shipping and transport costs, including, but not limited to, the payment and maintenance of any shipping or transport insurance. Customer shall bear all risk of loss or damage during shipping or transport.

4. **Customer Orders.** All Customer orders or requests for products, work, services or shipments requested by the Customer shall be made in writing pursuant to the forms made available by the Company for such purposes. The Company reserves the right to disregard any other orders or requests. The Customer shall supply the Company in writing with all specifications and information reasonably required by the Company to produce and prepare any prosthesis or other items requested by the Customer. While the Customer reserves the right to request, from time to time, further specifications or information from the Customer on each order, it expressly disclaims any duty to do so and may rely entirely upon the original specifications and information provided by the Customer without any duty of investigation or further inquiry. The Customer shall be solely responsible for the accuracy of any such specifications or information. Further, upon receipt, the Customer shall be responsible to inspect the products, work, services, or shipments requested by Customer, including, without limitation, all prosthesis for proper application, fit, alignment and ultimate use.

5. **Errors, Omissions or Mistakes.** Any and all discrepancies, shortages, claimed product deficiencies, or incorrect shipments ("Claimed Errors") must be reported immediately to the Company by the Customer, and in no event later than fifteen (15) calendar days from the date of delivery. Such a report shall be made in writing and delivered to Company, provided, however, that Customer may notify Company verbally, by telephone, by email or otherwise of Claimed Errors, so long as it also contemporaneously prepares and delivers to Company a written record of Claimed Errors, upon which such verbal notification shall be deemed effective as of the date made. Unless notification of Claimed Errors is made and delivered as set forth above, Customer shall be deemed to have inspected and accepted all products, work, services, or shipments of or by Company. The Company shall reasonably cure any discrepancies, shortages, claimed product deficiencies, or incorrect shipments for which it may be responsible only if notified as set forth above. Upon Customer's proper notification to Company, discrepancies, shortages, claimed product deficiencies, or incorrect shipments shall be handled as follows:

5.1. **Customer Errors.** Errors, omissions or mistakes made by Customer may be corrected by the Company in its sole discretion, and, depending upon the nature of the case, at the expense of the Customer, provided, however, that the Company shall invoice the Customer only the cost of correcting the mistake of the Customer. If Customer reasonably believes there is a defect in Company's workmanship or the materials, Customer shall request a return authorization from Company which Company shall reasonably provide. The Company will not remake any prosthesis or otherwise remedy any claimed prosthesis defect unless and until proper return authorization has been requested and provided. Upon obtaining a return authorization, the Customer shall promptly return any prosthesis in question while also clearly and conspicuously identifying the same pursuant to the return authorization, or as otherwise directed by the Company. The Company shall, at its option, either remake or repair any prosthesis in question once returned to Company as set forth above. Credit to Customer of the original invoice amount will be issued if the prosthesis in question is returned by the Customer to Company as set forth above, no later than fifteen (15) calendar days from the date of delivery. Any credit balance on account expires six (6) months after the date of issuance.

5.2. **Remake Policy.** Remakes will be charged under the following circumstances: (a) Company inquired about the die, margin, impression or model. However, Customer approved and requested completion of the prosthesis; (b) Company requested a try-in, but Customer declined and approved and requested completion of the prosthesis; (c) case was cancelled after fabrication was initiated; (d) shade or prosthesis requested is different from original order; (e) original prosthesis not returned; (f) teeth are re-prepared; (g) original prosthesis fits the master model.

5.3. **Limited Warranty Coverage Inclusion.** Limited warranty coverage includes: (a) Thirty (30) day limited warranty: Orthodontic appliances, sports guards, night guards, click-on appliances; (b) three (3) year limited warranty: Porcelain-fused-to-metal restorations, all ceramic restorations, zirconia restorations, full cast restorations, composite restorations, cast partial dentures, non-metal partial dentures, and full dentures; (c) five (5) year limited warranty: Custom titanium abutments; (d) one (1) year limited warranty: Custom hybrid titanium/zirconia abutments, and custom full zirconia abutments.

5.4. **Limited Warranty Coverage Exclusion.** Limited warranty coverage excludes: (a) Cash refund for prosthesis; (b) cost incurred for removal or insertion; (c) incidental or consequential damages: including inconvenience, lost wages, chair time, or pain and suffering; (d) damages resulting from accident, negligence, abuse, failure of supportive tooth or tissue structure, improper adjustment, or improper dental hygiene; (e) any fixed prosthesis over five (5) units or any removable prosthesis that has not been appropriately fitted prior to process; (f) repairs, relines, diagnostic wax-up, temporaries, immediate dentures or partials, stayplates, flippers, veneers (once cemented or re-prepared), Click-On appliances, appliances partially or completely fabricated by another lab other than the Company.

6. **DISCLAIMER OF WARRANTIES.** THE COMPANY AND THE CUSTOMER ACKNOWLEDGE THAT THE COMPANY WILL PREPARE ANY REQUESTED PROSTHESIS OR OTHER DENTAL RESTORATION TO THE SPECIFICATIONS OF THE CUSTOMER AND THAT THE CUSTOMER IS SOLELY RESPONSIBLE FOR SUCH SPECIFICATIONS. THE COMPANY MAKES NO OTHER WARRANTIES AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED, EXCEPT FOR THAT LIMITED WARRANTY PROVIDED IN SECTION 5.2, 5.3 AND 5.4. ABOVE. THE CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT LICENSED TO PRACTICE DENTISTRY AND DOES NOT KNOW THE PARTICULAR CIRCUMSTANCES OR APPLICATIONS UNDER WHICH THE PROSTHESIS OR OTHER DENTAL RESTORATION ARE TO BE UTILIZED, AND, THEREFORE, THE COMPANY DOES NOT AND CANNOT WARRANT THAT THE PROSTHESIS ARE FIT FOR ANY PARTICULAR PURPOSE OR THAT THE SAME IS IN ANY WAY MERCHANTABILITY.

7. **LIMITS OF LIABILITY FOR USE OF PROSTHESIS.** THE CUSTOMER ACKNOWLEDGES THAT IN NO EVENT WILL THE COMPANY BE LIABLE TO ANY PARTY, INCLUDING, BUT NOT LIMITED TO PATIENTS OF THE CUSTOMER, FOR ANY DAMAGES RESULTING FROM ANY USE OF THE PROSTHESIS OR OTHER DENTAL RESTORATION, INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER CLAIMED BY THE CUSTOMER, ANY PATIENT OF THE CUSTOMER, OR ANY OTHER PARTY. IN ADDITION, THE CUSTOMER UNDERSTANDS THAT NEITHER THE CUSTOMER OR ANY OTHER PERSON WILL BE CONSIDERED A THIRD-PARTY BENEFICIARY TO THIS AGREEMENT AND THAT NO SUCH PERSON WILL BE ABLE TO ENFORCE AGAINST THE COMPANY ANY REPRESENTATIONS OR WARRANTIES, IF ANY, MADE HEREIN OR BY THE CUSTOMER TO SUCH PATIENT.

8. **Indemnification.** To the fullest extent permitted by law, the Customer shall defend, indemnify and hold the Company and its principals, shareholders, directors, officers, employees, representatives, agents, successors and assigns, free and harmless from any and all claims, liabilities and damages, known and unknown, arising directly or indirectly from either the Company's performance pursuant to the Customer's orders or requests for products, work, services, or shipments, or otherwise by reason of the Customer's treatment of any patient or the actual application, fit, alignment or ultimate use of any prosthesis or other dental restorations prepared by Company hereunder, except as to claims arising from the Company's intentional misconduct or gross negligence. With the prior approval of the Customer, which approval shall not be unreasonably withheld, the Company and its principals, shareholders, directors, officers, employees, representatives, agents, successors and assigns may retain its/their own counsel to defend it/them in such action in which case the Customer shall pay for the reasonable fees, costs and expenses of such counsel, and all Court or Arbitration costs.

9. **Entire Agreement/Non-Waiver.** This Agreement shall be read in conjunction with the provisions set forth on the prescription form, or a substitution thereof, which provisions (including name, description of products, work, services, or shipments, etc.) shall be incorporated herein, and all of which shall constitute the entire agreement between the parties hereto pertaining to the subject matter contained herein and therein and shall supersede all prior, and contemporaneous agreements, representations and understandings of the parties. No waiver of any one of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

10. **Severable Provisions.** Should any provision or portion of this Agreement be held or otherwise become unenforceable or invalid for any reason, the remaining provisions and portions of this Agreement shall remain binding and unaffected by such unenforceability or invalidity.

11. **Binding Effect.** This Agreement shall be binding on, and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors and assigns. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies upon any person other than the parties to it and their respective successors and assigns, except as set forth herein, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third-persons to any party to this Agreement, except as set forth herein, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement, except as set forth herein.

12. **Binding Arbitration Terms.** To the fullest extent permitted by law, any and all disputes between Company and the Customer arising over the terms of this agreement, its enforcement, or relating in any manner whatsoever to, the Company's performance pursuant to the Customer's orders or requests for products, work, services, or shipments ("Claims"), including, without limitation, all disputes arising under or to enforce this Agreement, ("Arbitral Claims") shall be resolved by binding arbitration. The scope of Claims shall include, but are not limited to, contract disputes (express or implied), tort claims of all kinds, equitable claims, and any Claims based on any federal, state or local law, statute or regulation. The parties agree that the venue for any such Claim will be in Santa Clara County, California. In any arbitration proceeding commenced as hereinabove described, the successful or prevailing party or parties shall be entitled to recover as an element of their damages reasonable attorneys' fees and other costs incurred in that action or proceeding, including but not limited to filing fees, deposition expenses, and expert witness fees, in addition to any other relief to which said prevailing party or parties may be entitled.

12.1 **Arbitration Procedure.** Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all Claims. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither party shall initiate or prosecute any lawsuit or administrative action in any way related to any Claim. Notwithstanding the foregoing, and only to the extent allowed by law, either party may, at its option, seek injunctive relief pursuant to California Code of Civil Procedure section 1281.8. In any arbitration proceeding, the parties shall have the same rights provided in California Code of Civil Procedure section 1283.05. The decision of the arbitrator shall be in writing and shall include a statement of the essential conclusions and findings upon which the decision is based. The interpretation and enforcement of this agreement to arbitrate shall be governed by the California Arbitration Act.

12.2 **Arbitrator Selection and Authority.** All disputes involving Claims shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. The arbitrator shall have only such authority to award equitable relief, damages, costs and fees as a court would have for the particular claim(s) asserted. The fees of the arbitrator shall be paid equally by the parties. If the allocation of responsibility of the payment of the arbitrator's fees would render the obligation to arbitrate unenforceable, the parties authorize the arbitrator to modify the allocation as necessary to preserve enforceability. The arbitrator shall have exclusive authority to resolve all Claims, including, but not limited to whether a particular claim can be arbitrated and whether all or any part of this Agreement is void or unenforceable.

13. **Controlling Law.** This Agreement is deemed to have been entered into, and primary performance will be deemed to be in Santa Clara County, California. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

All warranty terms, conditions, and prices are subject to change without notice.