

# Terms & conditions



Effective June 13, 2014

The following Terms and Conditions Agreement ("Agreement") constitutes a binding contract between you ("Doctor") and ClearCorrect, LLC, a company with its principal place of business at 21 Cypress Blvd., Suite 1010, Round Rock, TX 78665 ("ClearCorrect"). By submitting a case to ClearCorrect, Doctor agrees to be bound by and accepts these terms and conditions. Doctor and ClearCorrect may each be referred to herein as a "Party" or collectively as the "Parties".

## 1. Product description

ClearCorrect manufactures clear plastic devices ("aligners") customized to fit patients' teeth. When both arches are being treated, a pair of aligners (one for each arch) is referred to as a "step" (or "set"). In single-arch treatment, one aligner constitutes a step by itself. Steps are manufactured and delivered over time in groups, referred to as "phases".

There are three types of aligners. "Starter aligners" are designed to apply gentle pressure to the teeth to gradually introduce the patient to treatment. "Treatment aligners" are designed to apply pressure to specific teeth to induce movement. "Retentive aligners" (also known as "retainers") are designed to maintain the existing position of teeth.

## 2. Case submission and payment

A sequence of treatment with aligners (a "case") can be prescribed either via the website located at <https://dr.clearcorrect.com> ("ClearComm") or by submitting a printed case submission form to ClearCorrect. Payment is due at the time of submission. By submitting a case or requesting any other service, Doctor authorizes ClearCorrect to charge the associated lab fee to the payment method on file, after factoring in any applicable discounts or credits.

## 3. Treatment options

At the beginning of all active treatment cases, ClearCorrect generates a representation of the treatment goal (a "treatment setup"). This includes 3D models representing the estimated position of the teeth throughout treatment, as well as the projected duration of the case, the position of engagers, and the amount of recommended IPR. Once a treatment setup has been approved, cases cannot be upgraded or downgraded to another treatment option.

ClearCorrect offers the following active treatment options:

- **Limited 6** (\$495) Includes a treatment setup, a set of starter aligners, up to 6 steps of treatment aligners, and a final set of retainers.
- **Limited 12** (\$795) Includes a treatment setup, a set of starter aligners, up to 12 steps of treatment aligners, up to 2 replacement aligners, and a final set of retainers.
- **Unlimited** (\$1195) Includes a treatment setup, a set of starter aligners, as many treatment aligners as necessary, up to 1 replacement for each treatment aligner received, and a final set of retainers.

Doctor can request a case evaluation and/or treatment setup without committing to a full course of treatment:

- **Case evaluation** (free) Includes a case type recommendation, based on photos and Doctor's description.
- **Treatment setup** (\$125) Includes a 3D representation of the treatment goal.

After purchasing a standalone treatment setup, Doctor is under no obligation to start a case. If Doctor chooses to start an active treatment case for the same patient within 90 days of requesting a standalone treatment setup, \$50 will be credited towards the lab fee for the new case.

Retainers are included with most cases, but they are also available for individual purchase:

- **Retainer** (\$50 per arch) Includes 1 retentive aligner.

Replacement aligners are included with some cases, but are also available for individual purchase:

- **Replacement aligner** (\$50 per arch) Includes 1 duplicate of an existing aligner.

Pricing is subject to change.

## 4. Open and closed cases

Aligners can only be made for a case that is active ("open"). Cases are inactivated ("closed") either when Doctor requests a final retainer, or 90 days after the patient is projected to finish wearing the final step (based on the ship date of the final phase and the wear schedule for the case), whichever comes first. A case will also be closed if required records or payments are not received within 90 days of a case submission, revision, or retainer request. Any unused steps are forfeited when a case is closed. No credit or refund will be provided for unused steps.

## 5. Revisions

Doctor may request a revision to any open case via ClearComm. There is no fee for requesting a revision, but Doctor is responsible for the cost of shipping materials to ClearCorrect. Any aligners that ship before a revision request is processed will be counted against the number of steps allowed for the case. To avoid wasting steps, Doctor should reschedule shipments as needed to stay in sync with the patient's wear schedule, and notify ClearCorrect as soon as a revision is anticipated.

If a case revision extends the length of a case beyond the number of steps included with the case, Doctor must purchase additional phases as needed for \$240 each, with each phase containing up to 4 steps.

## 6. Case extensions

Doctor may request a "case extension" for any closed case. At ClearCorrect's discretion, the case may be re-opened for additional treatment. Treatment during the case extension will be charged at the rate of \$240 per phase, with each phase containing up to 4 steps. No credit will be applied for steps that were forfeited when the case was closed. A retainer is not included with a case extension. A case extension will close immediately after the final scheduled aligner ships. No credit or refund will be offered if a case extension is canceled before all steps are delivered.

## 7. Restrictions

- If a retainer is requested after a case has been closed, it will be charged at the standard rate of \$50 per arch.
- ClearCorrect will not provide more than one free replacement for any given aligner.
- Doctor agrees to request no more aligners than necessary to achieve the approved treatment goal.
- ClearCorrect reserves the right to reject case revisions if the patient or Doctor has failed to comply with product instructions or the treatment goal has changed.
- ClearCorrect reserves the right to cancel treatment without refund if Doctor is suspected of abusing these policies.
- ClearCorrect reserves the right to close any case five years after submission, regardless of any other policies in effect.

## 8. Volume discounts

Doctor can qualify to receive discounted lab fees based on the number of Unlimited cases Doctor submits in a given quarter. In any given quarter:

- The first 10 Unlimited cases will be charged at the standard price of \$1195.
- For the 11th Unlimited case, the lab fee will be waived.
- The 12th–25th Unlimited cases will be priced at \$1095.
- The 26th–35th Unlimited cases will be priced at \$995.
- The 36th Unlimited case and all subsequent Unlimited cases will be priced at \$895 until the end of the quarter.

The discount program resets at the beginning of each quarter. Cases must be originally submitted as Unlimited in order to count towards discounts or qualify for discounted lab fees. At ClearCorrect's discretion, select practices and groups may make special arrangements to qualify for volume discounts based on aggregated submissions.

## 9. Cancellation and refunds

If Doctor cancels a case before approving a treatment setup, ClearCorrect will credit or refund the lab fee paid for that case, minus a \$250 cancellation fee. If Doctor cancels a case after approving a treatment setup, ClearCorrect will not credit or refund any of the lab fee paid for that case.

ClearCorrect will credit or refund the lab fee paid for a standalone retainer or replacement aligner only if Doctor cancels the order before ClearCorrect receives all necessary records.

## 10. Records

All submissions and requests must be accurate and complete. In addition to any required patient, provider, and treatment information, the following records must be provided in a timely manner:

For a standalone retainer:

- PVS impressions (or intraoral scans) of requested arches

For a case evaluation:

- Photos from multiple angles (full face, smiling, profile, upper & lower occlusal, left & right lateral, front)

For a treatment setup or active treatment:

- PVS impressions of both arches with a bite registration (or articulated intraoral scans)
- Photos from multiple angles (full face, smiling, profile, upper & lower occlusal, left & right lateral, front)
- X-rays (optional)

Records submitted to ClearCorrect become the property of ClearCorrect and will not be returned to Doctor. Doctor shall obtain patient's informed consent for Doctor to provide such patient's medical records to ClearCorrect as necessary for Doctor's treatment of the patient. ClearCorrect is not responsible for verifying the quality or accuracy of submitted dental impressions or other records.

## 11. Shipment and delivery

Starter aligners will ship as soon as possible after all required records and payments are received.

After a treatment setup is approved, phases of treatment aligners will be scheduled to ship according to the wear schedule unless payment is due or otherwise requested by Doctor. ClearCorrect shall not be liable for any damages, losses or expenses incurred by Doctor if ClearCorrect fails to meet targeted delivery dates.

Title to products shipped under this Agreement and risk of loss or damage during shipment pass from ClearCorrect to Doctor upon delivery to the address specified by Doctor.

Lab fees include standard shipping costs for aligners and one set of records for a new case. Doctor is responsible for the costs of upgraded shipping and shipping any additional materials to ClearCorrect, including records required for case revisions.

## 12. Doctor representations

Doctor represents and warrants to ClearCorrect that:

- (i) Doctor is licensed to practice dentistry and/or orthodontics in the location where, and at all times during which, treatment is being provided;
- (ii) Doctor has the proper training, expertise and/or experience to perform procedures associated with and/or using ClearCorrect clear aligner products;
- (iii) Doctor's use of ClearCorrect products will be in accordance with all applicable medical and dental standards and used in compliance with ClearCorrect's product specifications;
- (iv) Doctor has properly represented the ClearCorrect system to patients using the Informed Consent and Agreement form provided by ClearCorrect;
- (v) Doctor has obtained an executed Informed Consent and Agreement from each patient Doctor treats using ClearCorrect clear aligner products; and
- (vi) Doctor agrees to provide a copy of the executed Informed Consent and Agreement form to ClearCorrect upon request.

## 13. Warranties and disclaimer

ClearCorrect is a dental laboratory and does not practice dentistry or give medical advice. Doctor is solely responsible for prescribing and administering orthodontic treatment. Clear aligner therapy is unpredictable. ClearCorrect does not guarantee a successful treatment outcome. Individual results will vary.

ClearCorrect warrants that its products:

- (i) shall conform to the specifications provided by Doctor at the time of submission and as contained in the treatment setup approved by the Doctor; and
- (ii) are free from defects in material and workmanship.

ClearCorrect shall not be liable for:

- (i) any defects that are caused by neglect, misuse, or mistreatment of its products by the doctor, patient, or any third party;
- (ii) any defects that are caused by failure to follow directions including (but not limited to) wearing aligners out of sequence or wearing aligners for less than 22 hours per day;
- (iii) any products being used in combination with other third party products; or
- (iv) any defects that result from Doctor's errors in submitted records or instructions for such products.

This limited warranty expires 90 days after shipment of the product. If any ClearCorrect product fails to conform to the warranty set forth above, ClearCorrect's sole liability, at its option, shall be to:

- (i) replace such product; or
- (ii) credit Doctor's account for such product.

Doctor must return such product to ClearCorrect in order to receive a replacement or credit for it. If ClearCorrect elects to replace such product, it shall have a reasonable time to provide replacements. Replaced products shall be warranted for a 90-day warranty period.

Except as set forth above, ClearCorrect hereby expressly disclaims any and all warranties, express or implied, including any warranty of merchantability, or fitness for any specific purpose.

## 14. Limitations of liability

In no event shall ClearCorrect be liable for any consequential, incidental, indirect, exemplary, punitive or special damages in connection with or arising out of this agreement or the use of the products provided hereunder, however caused, and under any theory of liability whether in negligence, breach of warranty, strict liability, contract, tort, indemnity or any other cause or theory whatsoever. Excluded damages include loss of profits, loss of use and costs of replacement or substitute products.

In no event shall ClearCorrect's aggregate monetary liability for damages of any kind arising out of or in connection with this agreement, or any use of any product provided hereunder, exceed the total amount paid to ClearCorrect by Doctor for the particular products sold under the agreement for which losses or damages are claimed. The existence of more than one claim against the particular products sold to Doctor under this agreement, or the existence of more than one agreement with the Doctor or the sales of additional products to the Doctor shall not enlarge or extend this limit.

## 15. Indemnification

Doctor agrees to indemnify, defend and hold harmless ClearCorrect and/or its officers, agents, employees, contractors, successors and assigns from and against any and all liability, obligations, losses, claims, actions, damages, penalties, fines, demands or suits and all related costs, attorney's fees and expenses of any kind and nature whatsoever arising under any theory of legal liability (a "Claim") that may be asserted against ClearCorrect arising out of, or resulting from, or relating to:

- (i) this agreement or use of products sold under this agreement;
- (ii) any breach of or failure of Doctor to abide by any term of this agreement;
- (iii) any breach or alleged breach of any representations or warranties made by Doctor in this agreement or any incorrect information provided by Doctor or Doctor's patient to ClearCorrect; or
- (iv) ClearCorrect's providing of or failure to provide products to Doctor, unless the providing of or failure to provide such products was due to ClearCorrect's willful misconduct or gross negligence.

The obligation of the Doctor to defend ClearCorrect against any Claim is separate and distinct from the obligation of indemnity set forth in this Agreement. Doctor has the right and obligation to assume the defense of any Claim with counsel chosen by Doctor and reasonably acceptable to ClearCorrect provided that counsel to ClearCorrect may participate in the defense of the Claim with counsel for Doctor, at the expense of ClearCorrect. Doctor will not have the right to assume the defense of a Claim made against both ClearCorrect and Doctor if counsel for ClearCorrect advises in writing that a conflict in interest between ClearCorrect and Doctor would under applicable ethical principles preclude a single counsel or firm from defending both Parties.

## 16. Relationship of parties

The Parties intend by this Agreement that Doctor is and at all times shall be an independent contractor and not the agent or employee of ClearCorrect. Neither this Agreement nor any contract with ClearCorrect nor any course of dealing or practice shall be interpreted as creating, or shall be deemed to create, any employer-employee, principal-agent, partnership, joint venture or other relationship between Doctor and ClearCorrect.

## 17. Assignment

This Agreement shall not be assigned by either Party hereto without the prior written consent of the other Party.

## 18. Successor and assigns

This Agreement shall be binding upon and shall inure solely to the benefit of the Parties hereto and their respective successors and shall not be for the benefit of any other person, persons, or legal entities.

## 19. Entire agreement and amendment

This Agreement, the ClearCorrect Case Submission Form, and the Informed Consent & Agreement shall constitute and contain the entire agreement of the Parties and supersede any and all prior negotiations, correspondence, understandings and agreements between the Parties respecting the subject matter hereof. This Agreement can only be modified by an authorized representative of ClearCorrect.

## 20. Severability

If any provision of this Agreement is or shall be deemed a violation of any applicable law, rule or regulation, such legal invalidity shall not void this Agreement or affect the remaining terms and provision of this Agreement and this Agreement shall be construed and interpreted to comply with all laws, rules or regulations.

## 21. Force majeure

ClearCorrect cannot be in default or breach by reason of any failure of its performance under this Agreement if such failure results, whether directly or indirectly, from fire, explosion, strike, freight embargo, act of God, or of war, civil disturbance, act of any government, de jure or de facto, or any agency or official thereof, labor shortage, transportation contingencies, severe weather, default of manufacturer or supplier, quarantine or restriction, epidemic or catastrophe, lack of timely instructions or essential information from Doctor or any other third party, or other conditions beyond the control of ClearCorrect.

## 22. Notices

All notices, demands, requests, approvals and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been given or made as of the date delivered or mailed if delivered personally or mailed by certified mail (postage prepaid, return receipt requested), or on the date transmitted if transmitted by facsimile or electronic mail, to Doctor at the address provided by Doctor.

## 23. Waiver

The failure of either Party at any time or times to require performance of any provision hereof shall in no manner affect the right to enforce the same. No waiver by either Party of any condition, or of the breach of any term, provision, covenant or warranty contained in this Agreement, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, provision, covenant or warranty.

## 24. Governing law

This Agreement shall be construed and governed under and by the laws of the State of Texas. The parties agree that the exclusive venue for any legal action authorized hereunder shall be in Williamson County, Texas.