BAUSCH & LOMB SURGICAL TERMS AND CONDITIONS OF SALE

1. **PAYMENT TERMS.** Payment terms are net 30 days from date of invoice. Customer shall be deemed to have accepted the accuracy of all invoices unless Customer notifies B+L, in writing, of any discrepancies on or before the due date. Customer agrees to pay any applicable federal, state and local taxes on the purchase of Products. Tax exempt accounts will not be charged taxes upon Customer's demonstration of its tax exempt status.

2. **ORDERS.** All Products must be purchased directly through B+L utilizing one of the 4 methods below unless otherwise agreed upon by the parties in writing:

   a. Customer Service 1-800-338-2020
   b. Web ordering: www.blsurgicalonline.com
   c. Fax orders: 1-800-362-7006
   d. EDI

3. **SEVERAL SHIPMENTS.** B+L may make delivery in installments and may render a separate invoice for each installment, which invoice shall be paid when due, without regard to subsequent deliveries. Each installment shall be deemed a separate sale. Delay in delivery of any installment shall not relieve Customer of its obligation to accept delivery of remaining installments. Any delivery not in dispute shall be paid for on or before the due date, as provided in this contract, without offset, defense or counterclaim and regardless of controversies relating to other delivery or undelivered products.

4. **DELIVERY.** Delivery of the Products shall be made F.O.B. Customer's destination specified on the purchase order provided, however, that Customer shall be responsible for all freight and shipping charges which shall be prepaid by B+L and added to Customer's invoice unless otherwise indicated on the face of this contract. B+L will use every reasonable effort to effect shipment on or before the date indicated. Normal delivery time is 5-7 days from acceptance of a purchase order by B+L, but B+L shall not be liable, directly or indirectly, for any delay of delivery. Any Products needed by Customer on an overnight basis will be shipped by overnight courier at Customer's additional expense prepaid and added to Customer's invoices.

5. **ACCEPTANCE.** Customer shall accept any tender of the Products by B+L which conform to the description of the Products set forth herein. Customer shall be deemed to have accepted any product and Customer's right to reject the order shall cease, unless Customer gives B+L notice in writing of B+L's breach: (a) in the case of defects discoverable through inspection, 14 days after arrival of the shipment; or (b) in the case of defects not discoverable through inspection, 30 days after arrival of the shipment. In any event, when the product shall have been altered from its original state, Customer shall be deemed to have accepted the product. Customer's acceptance of Products tendered under this contract shall be final and irrevocable.

6. **REJECTED PRODUCTS.** If Customer timely notifies B+L in writing under the terms hereof of a claimed defect and rejects Products as per Section 5 hereof, Customer shall concurrently offer B+L opportunity to investigate the claim and to inspect allegedly defective Products. If B+L determines that Customer's claim is valid, B+L may repair the defective Products or replace the defective Products with conforming Products at the F.O.B. point specified in this contract, or, at Customer's option, refund the purchase price for the Products. Failure to offer B+L such opportunity shall constitute acceptance by Customer. Replacement of defective Products or repayment of the purchase price for any such product will be made only upon return of the defective product consistent with B+L's then-current return policy.

7. **FORCE MAJEURE.** Neither party to this contract shall be responsible to the other party for nonperformance or delay in performance of any of the terms or conditions of this contract due to acts of God, acts of governments, wars, terrorism, riots, strikes, accidents in transportation, or other causes beyond the reasonable control of the parties. Notwithstanding the foregoing, such events do not excuse any obligations to make payments.

8. **WARRANTY.** Except for warranties expressly identified as warranties and set forth in B+L's operating manual, Directions or Instructions for Use or other labeling supplied with Products, **B+L SPECIFICALLY EXCLUDES ALL EXPRESS WARRANTIES AND MAKES NO IMPLIED WARRANTY THAT THE PRODUCTS SOLD UNDER THIS AGREEMENT ARE MERCHANTABLE OR ARE FIT FOR ANY PARTICULAR PURPOSE**. Any description of the Products contained in this contract, or any sample or model used in connection with this contract is for the sole purpose of identifying them, and any such description, sample or model is not part of the basis of the bargain, and does not constitute a warranty that the Products shall conform to that description.

9. **LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO FRAUD, WILLFUL MISCONDUCT, OR BREACH OF A CONFIDENTIALITY OBLIGATION UNDER THIS CONTRACT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTIES FOR ANY LOSS OF PROFITS, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR CONTINGENT DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

10. **DEFAULT.** The occurrence of one or more of the following events shall constitute an Event of Default:

   a. If Customer shall fail to pay any amount under this contract or the agreement to which these terms and conditions are an exhibit or incorporated by reference;
   b. If Customer shall fail to duly perform, comply with or satisfy any other terms, conditions or obligations under this contract or the agreement to which these terms and conditions are an exhibit or incorporated by reference, and such failure continues for thirty (30) days after written notice thereof by B+L to Customer;
   c. If Customer becomes a "Debtor" in any proceeding under the federal bankruptcy law or any state insolvency law, or makes an assignment for the benefit of creditors or is adjudicated bankrupt or insolvent or admits in writing Customer's inability to pay its debts as they become due;
   d. For agreements to which these terms and conditions are an exhibit or incorporated by reference having a Quarterly Purchase Commitment or Quarterly Purchase Target, if Customer shall fail to satisfy the Quarterly Purchase Commitment or Quarterly Purchase Target in any full quarter of the Term; or
   e. For the rental, lease, or loan of equipment, the following:
      i. The equipment is not maintained and operated in the normal course as set forth in the operation manual or any written instructions of B+L;

ii. Maintenance or other services for the equipment are provided by persons other than B+L and its authorized service representatives;

iii. The equipment is used with spare or replacement part(s) or component(s) other than those purchased from or installed by B&L or its authorized service representatives;

iv. The equipment has been altered, neglected, abused, or misused; or

v. The equipment has been relocated, reinstalled or taken apart by any person other than B+L or its authorized service representative

vi. Title to the equipment is encumbered, transferred, or attempted to be encumbered transferred without the express written consent of B+L.

11. **B+L'S REMEDIES.** If Customer is in default under or repudiates this contract or any other contract with B+L or fails to pay when due any invoice under this contract, then in addition to any and all remedies allowed by law, B+L without notice (1) may bill and declare due and payable all undelivered products under this or any other contract between B+L and Customer and/or (2) may defer shipment under this or any other contract between Customer and B+L until such default, breach or repudiation is removed and/or (3) may cancel any undelivered portion of this and/or any other contract in whole or in part (Customer remaining liable for damages) and/or (4) may recover any amounts attributable to any physical damage or loss to any equipment subject to an Event of Default and/or (5) may terminate this contract or the agreement to which these terms and conditions are an exhibit or incorporated by reference and/or (6) may enter onto Customer's premises during normal business hours and repossess any or all of the equipment.

12. **CONFIDENTIALITY.** The terms, conditions and prices granted under this agreement shall be confidential and Customer shall not disclose any of such information to any third party except upon the prior written consent of B+L or as may be required by applicable law.

13. **ASSIGNMENT.** Neither party may assign this agreement without the prior written approval of the other party. Notwithstanding the foregoing, either party can assign to a wholly owned subsidiary entity or purchaser of all or substantially all of the assets to which this contract relates. The assigning party will give written notice to the other party within thirty (30) days of such assignment.

14. **REPORTING.** Customer acknowledges that this contract provides for discounts or price reductions which are allocated to the Products. Customer agrees that Customer is solely responsible for properly disclosing and appropriately allocating any discounts and price reductions in any claims filed or reports submitted under Medicare, Medicaid or any other federal, state or private healthcare program which provides for reimbursement to Customer for Products or services and to retain and make such information available as required by applicable law. B+L will notify Customer of any discount on any Products in a manner reasonably calculated to give Customer the ability to fulfill its additional obligation to report such discount to the U.S. Department of Health & Human Services or a state agency upon request.

15. **WAIVER.** No failure or delay at any time by B+L or Customer to exercise any right under this contract or any agreement to which it is an attachment, or to enforce any particular provision hereof or thereof, will be construed or operate as a waiver of its right to insist upon the strict performance of, or the enforcement of its rights with respect to such provision(s) or any other provision(s) hereof or thereof at any time.

16. **GOVERNING LAW/VENUE.** This contract is deemed made in the State of New York and shall be governed by, subject to, and construed in accordance with the Laws of the State of New York (without giving effect to its conflict of law rules). Customer irrevocably agrees that all actions, suits or proceedings between the parties hereto with respect to this contract shall be litigated in the State Courts of New York in Monroe County or the Federal Courts located in the Western District of New York.

17. **NO MODIFICATION.** If these terms and conditions are referred to, or appended to, any written agreement between B+L and Customer, the terms of such written agreement shall prevail in the event of any inconsistency. Agents and salesmen of B+L have no authority to make any representations not included herein. B+L hereby rejects any different or additional terms proposed by Customer or included in Customer's purchase order or other document, none of which shall be effective unless embodied in a writing signed by an authorized employee of B+L.

18. **NO RESALE.** Customer acknowledges and agrees that the Products described herein ("Products") are sold to Customer for Customer's sole use, and that Customer shall not resell, consign or otherwise transfer title to or possession of such Products without B+L's prior express written consent.

19. **SOFTWARE.** Subject to Customer's compliance with the terms and conditions contained herein, B+L hereby grants to Customer a non-exclusive right and permission to use the software (if any) included or associated with the Products (the "Software") solely in conjunction with normal and ordinary use of the Products as set forth in the B+L's operating manual or instructions. Customer acknowledges that the Software, its structure and organization constitute valuable trade secrets of B+L or its suppliers. Except as may be permitted by applicable law, Customer shall not otherwise use the Software and shall not reproduce, modify, translate, enhance, reverse engineer, decompile or disassemble, or create derivative works of the Software and will not otherwise attempt to reconstruct or discover the source code for the Software. Customer agrees to use the Software only with the Products purchased from B+L.