

**B&L STANDARD TERMS AND CONDITIONS OF SALE**

1. **GENERAL.** 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). Buyer irrevocably agrees that all actions, suits or proceedings between the parties hereto with respect to this contract shall be litigated in the state or federal courts located in New York. The final, entire agreement pertaining to the sale to Buyer of the Goods described herein by Bausch & Lomb Surgical, Inc. ("Seller") is set forth on the face and reverse sides hereof; any prior understandings, agreements and representations, oral or written, shall be deemed superseded and merged in this contract. Agents and salesmen of Seller have no authority to make any representations not included herein. Seller hereby rejects any different or additional terms proposed by Buyer or included in Buyer's purchase order or other document, none of which shall be effective unless embodied in a writing signed by an authorized employee of Seller. Buyer acknowledges and agrees that the Goods described herein are sold to Buyer for Buyer's sole use, and that Buyer shall not resell, consign or otherwise transfer title to or possession of such Goods without Seller's prior express written consent.
2. **PRICE.** The Goods and other items or services covered by this contract shall be sold and invoiced at Seller's prices and charges in effect at the time of each shipment of Goods under this contract. Seller reserves the right to change without notice the published list prices referenced on the face of this contract. Such prices do not include sales, excise, use or other taxes (other than taxes based on income) now in effect or hereafter levied by reason of this transaction. Buyer shall pay all such taxes.
3. **PAYMENT TERMS.** A. Payment terms are net 30 days from date of invoice. Seller reserves the right to require alternative payment terms, including, without limitation, Sight Draft, Letter of Credit or Payment in Advance. If shipments are delayed by Buyer, payment shall be made based on the contract price and percent of completion. Buyer shall be liable for the price of all products substantially conforming to the contract, notwithstanding that Buyer may not have accepted, or may have revoked acceptance of same.  
B. If payment is not received by the due date, a service charge will be added at the rate of 1½% per month (18% per year) or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof.  
C. Remittances will be received by a bank simply as clearing agency. The receiving bank has no authority to determine whether or not the amount remitted constitutes payment in full. Remittances marked to indicate payment in full will be deposited by the bank notwithstanding such markings and such deposit shall not indicate Seller's acceptance of the remittance as payment in full unless the remittance actually constitutes payment of all sums owed.
4. **CREDIT.** Seller may, at any time and in its sole discretion, limit or cancel the credit of Buyer as to time and amount, and as a consequence, may demand payment in cash before delivery of any unfilled portion of this contract, and may demand assurance of Buyer's due performance. Upon making such demand, Seller may suspend production, shipment and/or deliveries. If, within the period stated in such demand, but in no event longer than 30 days, Buyer fails to agree and comply with such different terms of payment, and/or fails to give adequate assurance of due performance, Seller may (1) by notice to Buyer, treat such failure or refusal as a repudiation by Buyer of the portion of the contract not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable or, (2) make shipments under reservation of a security interest and demand payment against tender of documents of title. If Seller retains a collection agency and/or attorney to collect overdue amounts, all collection costs, including attorney's fees, shall be payable by Buyer. Buyer hereby represents to Seller that Buyer is now solvent and agrees that each acceptance of delivery of the Goods sold hereunder shall constitute reaffirmation of this representation at such time.
5. **SEVERAL SHIPMENTS.** Seller 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 Buyer of its obligation to accept delivery of remaining installments. Any delivery not in dispute shall be paid for on the due date, as provided in this contract, without offset, defense or counterclaim and regardless of controversies relating to other delivery or undelivered products.
6. **CONSIGNED GOODS.** Buyer acknowledges that certain Goods provided by Seller may be supplied on a consignment basis. In the event any Goods are designated on the face of this form as consigned Goods, then Buyer agrees to execute all documents provided by Seller necessary to effectuate the consignor-consignee relationship and, in addition to any terms and conditions of consignment, specifically agrees that Seller shall retain title to all consigned Goods until such time as Buyer sells such goods to its customers, at which time title shall pass directly from Seller to the respective customers. Buyer shall keep a current and accurate inventory and record of all consigned goods and shall permit Seller or Seller's representative to inspect said records and said Goods at any reasonable time upon demand.
7. **ACCEPTANCE.** Buyer or Buyer's agent may inspect the Goods at the place of manufacture. Buyer shall accept any tender of the Goods by Seller which substantially conform to the description of the Goods set forth herein. Buyer shall be deemed to have accepted any product and Buyer's right to cancel, reject or claim any damages for breach of warranty or breach of Seller's obligation under this contract shall cease, unless Buyer gives Seller notice in writing of Seller'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 invoice date. In the case of non-conforming goods, Buyer shall immediately notify Seller whether or not Buyer will continue to accept similarly non-conforming Goods and acceptance of any non-conforming Goods shall constitute a waiver by Buyer of specification requirements for said Goods. In any event, when the product shall have been altered from its original state, Buyer shall be deemed to have accepted the product. Buyer's acceptance of Goods tendered under this contract shall be final and irrevocable.
8. **DELIVERY.** Delivery of the Goods shall be made F.O.B. shipping point unless otherwise indicated on the face of this contract. Seller will use every reasonable effort to effect shipment on or before the date indicated. Seller shall not be liable, directly or indirectly, for any delay or failure in performance or delivery or inability to perform or deliver where such delay, failure or inability arises or results from any cause beyond Seller's control or beyond the control of Seller's suppliers or contractors including, but not limited to, strike, boycott or other labor disputes, embargo, governmental regulation, inability or delay in obtaining materials. **IN NO EVENT SHALL SELLER, IN THE EVENT OF DELAYS, NONPERFORMANCE, OR OTHERWISE, BE LIABLE TO BUYER OR ANY THIRD PARTIES FOR ANY CONSEQUENTIAL, SPECIAL, OR CONTINGENT DAMAGES.** In the event of any such delay or failure in performance, Seller shall have such additional time within which to perform its obligations hereunder as may reasonably be necessary under the circumstances, and Seller shall also have the right, to the extent necessary in Seller's reasonable judgment, to apportion fairly among its various customers in such manner as Seller may consider equitable, the goods then available for delivery. If, as a result of any such contingency, Seller is unable to perform this contract in whole or in part, then to the extent that it is unable to perform, the contract shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion of the contract, if any.
9. **SELLER'S LIABILITY.** If Buyer timely notifies Seller in writing under the terms hereof of a claimed defect Buyer shall concurrently offer Seller opportunity to investigate the claim and to inspect allegedly defective Goods. If Seller determines that Buyer's claim is valid, Seller may repair the defective Goods or replace the defective Goods with conforming Goods at the F.O.B. point specified in this contract. Failure to offer Seller such opportunity shall constitute acceptance by Buyer and waiver of all claims for defects. **SELLER'S LIABILITY FOR DAMAGES ON ACCOUNT OF A CLAIMED DEFECT IN ANY PRODUCT DELIVERED BY SELLER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCT ON WHICH THE CLAIM IS BASED.** Replacement of defective Goods or repayment of the purchase price for any such product will be made only upon return of the defective product. Specifically and without limiting the generality of the foregoing. **SELLER SHALL NOT BE RESPONSIBLE OR LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, OR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR CONTINGENT DAMAGES FOR ANY BREACH OF WARRANTY OR OTHER BREACH OF SELLER'S OBLIGATIONS UNDER THIS CONTRACT. SELLER SHALL NOT BE LIABLE FOR DAMAGES RELATING TO ANY INSTRUMENT, EQUIPMENT, OR APPARATUS WITH WHICH THE PRODUCT SOLD UNDER THIS CONTRACT IS USED.**
10. **SELLER'S REMEDIES.** If Buyer fails, with or without cause, to furnish Seller with specifications and/or instructions for, or refuses to accept deliveries of any products sold under this contract, or is otherwise in default under or repudiates this contract or any other contract with Seller or fails to pay when due any invoice under this contract, then in addition to any and all remedies allowed by law, Seller without notice (1) may bill and declare due and payable all undelivered products under this or any other contract between Seller and Buyer and/or (2) may defer shipment under this or any other contract between Buyer and Seller 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 (Buyer remaining liable for damages).
11. **WARRANTY. SELLER SPECIFICALLY EXCLUDES ALL EXPRESS WARRANTIES AND MAKES NO IMPLIED WARRANTY THAT THE GOODS SOLD UNDER THIS AGREEMENT ARE MERCHANTABILITY OR ARE FIT FOR ANY PARTICULAR PURPOSE,** except such warranties expressly identified as warranties as are set forth in Seller's operating manual, catalog or written guarantee covering such product. If Buyer furnishes specifications to Seller, Buyer agrees to hold Seller harmless against any claim that arises out of compliance with the specifications. Any description of the Goods contained in this contract is for the sole purpose of identifying them, and any such description is not part of the basis of the bargain, and does not constitute a warranty that the goods shall conform to that description. Any sample or model used in connection with this contract is for illustrative purposes only, is not part of the basis of the bargain, and is not to be construed as a warranty that the goods will conform to the sample or model. No affirmation of fact or promise made by Seller, whether or not in this contract, shall constitute a warranty that the goods will conform to the affirmation or promise.
12. **ASSIGNMENT.** This contract and Buyer's rights hereunder may not be assigned by Buyer except with the prior written approval of Seller.