

# Schwing Bioset, Inc.

## General Terms and Conditions

### Parts and Service Work

#### Schwing Bioset, Inc. Parts and Service Terms and Conditions

**1. Acceptance and Prices.** These terms and conditions are an integral part of Schwing Bioset, Inc ("Schwing Bioset")'s firm offer and form the basis of any agreement resulting from Schwing Bioset's proposal. The proposal is subject to acceptance within thirty days from its date, and the prices are subject to change without notice prior to acceptance by the party to whom this offer is made, or its authorized agent ("Buyer"). Following acceptance without addition of any other terms and conditions of sale or any other modification by Buyer, the prices stated are firm provided that notification of release for immediate production and shipment is received at Schwing Bioset's factory not later than five months from Schwing Bioset's submittals. If through no fault of Schwing Bioset, the order is not released for manufacture within 5 months from Schwing Bioset's submittals, Schwing Bioset reserves the right to increase the price of the order. Any delay in shipment caused by Buyer's actions will subject prices to increase equal to the percentage increase in list prices during that period of delay. In no event will prices be decreased.

Acceptance will have occurred if Buyer: signs Schwing Bioset's proposal; issues written order pursuant to submission of proposal; or permits or accepts performance; or other commercially reasonable manner. If Buyer's order is an acceptance of Schwing Bioset's proposal, Schwing Bioset's return of such order with these terms and conditions attached serves as an acknowledgement and confirmation of receipt of order. If order is expressly conditioned upon Schwing Bioset's acceptance or assent to terms other than those expressed herein, return of order by Schwing Bioset with these terms and conditions attached serves as notice of objection to such terms and a counter-offer to provide equipment in accordance with scope and terms of the original proposal. If Buyer does not reject or object within ten days, counter-offer will be deemed accepted. If Buyer permits or accepts performance, such terms will be deemed accepted. In order for Schwing Bioset's acknowledgement of order to be valid it must be made at the corporate level.

**2. Performance.** Schwing Bioset shall be obligated to furnish only the goods described in Schwing Bioset's proposal, and submittal data (if such data is issued in connection with this order), and Schwing Bioset may rely on the acceptance of proposal and submittal data as acceptance of the suitability of the equipment for the particular project. Schwing Bioset's duty to perform under any order and the price thereof is dependent upon Schwing Bioset's corporate approval of the order and Schwing Bioset shall not be responsible for delays in contract formation caused by inclusion of new or different terms by Buyer, or delays in credit approval due to delayed or incomplete credit information by Buyer. Schwing Bioset's duty to perform is contingent upon the non-occurrence of an Event of Force Majeure. If the order is not approved at the corporate level, Schwing Bioset may elect to delay performance or to renegotiate with Buyer. If Schwing Bioset and Buyer are unable to agree on revised prices or terms, the order may be canceled without any liability. If Schwing Bioset shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Schwing Bioset's election (i) remain in effect but Schwing Bioset's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days' notice to Buyer, in which event Buyer shall pay Schwing Bioset for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Schwing Bioset. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid); and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Schwing Bioset; and the requirements of the United States Government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the Government. SBI shall not be liable for or subject to Prevailing Wage Ordinances.

**3. Taxes.** No taxes are included in this quote/order. The amount of any applicable present or future state/local sales/use tax or other government charge upon the production, sale, shipment, and/or use of the goods covered by this quotation shall be paid directly to the taxing authorities by purchaser, and paid tax receipts will be furnished to Schwing Bioset upon request, unless purchaser provides us with an exemption certificate acceptable to the taxing authorities.

**4. Warranty and Liability.** Schwing Bioset warrants its new parts and service work against defects in material and workmanship under normal use and service, and which shall not have been subject to misuse, negligence, or accident, for a period of one (1) year that shall commence upon startup or ninety (90) days from delivery, whichever occurs first. Schwing Bioset will replace or repair free of charge, F.O.B. SBI factory, such part or parts thereof as in its sole judgment shall be deemed defective. This warranty on parts does not include labor. Due to the specialized nature of Schwing Bioset material handling equipment, Schwing Bioset field service technicians shall not be restricted in adjusting or repairing Schwing Bioset furnished equipment, regardless of collective bargaining agreements entered into by other parties. This warranty shall not apply to any equipment manufactured by us which shall have been loaded or operated beyond its rated capacity as specified by Schwing Bioset. Damage resulting from improper installations or alterations outside our plant will be considered as misuse and not as a defect. Certain parts of the equipment provided by Schwing Bioset such as the pumping cylinders, valves, pumping rams, screw flights, sliding frame components, trough liners for screws etc. that are in contact with material, are subject to normal wear. This normal wear is not covered under this warranty. Schwing Bioset shall not be liable for consequential damages or injuries of any kind, or for expenses, losses, or delays incidental to any failure. Schwing Bioset reserves the right to make changes and improvements in its product without incurring any obligation to install any such changes or improvements in its products previously manufactured. All warranty is void if equipment is not serviced by a Schwing Bioset certified technician and if replacement parts utilized are anything other than Schwing Bioset supplied and authorized parts, from delivery through termination of warranty period. In the event of a defect or issue with Schwing Bioset supplied equipment, buyer shall notify Schwing Bioset in writing of said defect and offer Schwing Bioset reasonable opportunity to cure. This warranty is in lieu of any other warranty expressed or implied or any other obligation or liability on the part of Schwing Bioset, and no other person is authorized to make any representations or warranties beyond those herein expressed. Without limiting the generalities of the foregoing, **THERE IS NO IMPLIED WARRANTY OF MARKETABILITY AND NO IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

**5. Indemnity.** Schwing Bioset agrees to indemnify and hold Buyer harmless from the amount of any final judgment entered against Buyer for injury or death to any person (including employees of Buyer and Schwing Bioset) or damage to tangible property of Buyer and based solely upon: (a) Schwing Bioset's defective manufacture of equipment sold to Buyer; (b) Schwing Bioset's violation of any applicable laws, rules or regulations in connection with the manufacture of said equipment, or (c) Schwing Bioset's gross negligence or intentional misconduct. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

**6. Insurance.** Schwing Bioset agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Buyer, provide a Certificate of Insurance evidencing this coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

In the event Schwing Bioset agrees to name Buyer or others as an additional insured, Schwing Bioset will do so but only under its primary Commercial General Liability policies to the extent of the indemnity obligation assumed herein. In no event does Schwing Bioset waive its right of subrogation.

**7. Liability Disclaimer. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IN NO EVENT SHALL SCHWING BIOSET BE LIABLE FOR ANY SPECIAL, INCIDENTAL, LIQUIDATED, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES.** This exclusion applies regardless of whether such damages are sought based on breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory. Should Schwing Bioset nevertheless be found liable for any damages they shall be limited to the purchase price of the equipment under the order. **SCHWING BIOSET DISCLAIMS ANY LIABILITY FOR DAMAGES OF ANY KIND (WHETHER DIRECT OR INDIRECT) ARISING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH,**

**8. Patent Indemnity.** The Schwing Bioset shall protect and indemnify the Buyer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the articles or material delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Schwing Bioset shall promptly be notified and given full opportunity to negotiate a settlement. Schwing Bioset does not warrant against infringement by reason of Buyer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation Buyer agrees to reasonably cooperate with Schwing Bioset. In connection with any proceeding under the provisions of this Article all parties concerned shall be entitled to be represented by counsel at their own expense. Any and all Intellectual Property created by SBI before, during or after the sale of goods and/or services to the Customer shall remain the sole property of Schwing Bioset, Inc.

**9. Shipment Dates.** Shipment dates are estimates only. No valid contract may be made to ship within or at a specified time unless in writing, signed by an authorized signatory of Schwing Bioset. Shipments shall be f.o.b. factory or warehouse at named shipping point with title and risk of loss passing to Buyer upon delivery to the carrier unless quoted otherwise and stated as such in our formal written offer. Schwing Bioset shall not be liable for damages of any kind including Liquidated, Consequential, and/or Incidental.

**10. Cancellation.** If, following acceptance of proposal by Buyer, all or any portion of the resulting order is canceled by Buyer without default on the part of Schwing Bioset or without Schwing Bioset's written consent, Buyer shall be liable to Schwing Bioset for cancellation charges including but not limited to Schwing Bioset's incurred costs and such profit as would have been realized by Schwing Bioset from the transaction had the agreement not been breached by Buyer.

**11. Payment.** Payment terms are N30. Schwing Bioset reserves the right to invoice for and receive payment under N30 terms for services and goods supplied separately in stages and as invoiced with progress billings to be submitted each week as work is completed. Payment of progress billings shall not be held contingent upon completion of all services/parts orders made on a single purchase order. Schwing Bioset reserves the right to add to any account outstanding for more than 30 days a service charge the lesser of 1-1/2% of the principal amount due at the end of each month, or the maximum allowable legal interest rate. Buyer shall be liable to Schwing Bioset for all collection expenses, including reasonable attorney's fees and court costs, incurred by Schwing Bioset in attempting to collect any amounts due from Buyer. If requested, Schwing Bioset will provide appropriate lien waivers upon receipt of payment. Schwing Bioset reserves the right to suspend or terminate performance in the event of Buyer's non-payment.

**12. Returns.** Products may be returned only with permission of Schwing Bioset and shall be subject to a 25% restocking fee. All returned goods must have an SBI issued RGA number. Credit will not be issued without a properly issued RGA prior to return of goods.

**13. Applicable Law.** Any agreement resulting from Schwing Bioset's proposal will be governed and construed according to Minnesota law.

**14. U.S. Government Work. This provision applies only to indirect sales by Schwing Bioset to the US Government.** If the Work is in connection with a U.S. Government contract, Buyer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Schwing Bioset will have no obligations to Buyer unless and until Buyer provides Schwing Bioset with a true, correct and complete executed copy of the prime contract. Upon request, Buyer will provide copies to Schwing Bioset of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Buyer's ownership, eligibility or performance of the prime contract. Buyer will obtain written authorization and approval from Schwing Bioset prior to providing any government official any information about Schwing Bioset's performance of the work that is the subject of this offer or agreement, other than this written offer or agreement.