

General Conditions of Sale, valid from 03/2003

§ 1 General - Scope

- (1) Our Conditions of Sale will apply exclusively; conditions of the Customer which conflict with or deviate from our Conditions of Sale will only be admitted by us if we expressly agree to their validity in writing. Our Conditions of Sale will also apply if we effect delivery to the Customer without reservation in the knowledge of conditions of the Customer which conflict with or deviate from our Conditions of Sale.
- (2) All agreements reached between us and the Customer in respect of fulfillment of this contract is stipulated in writing in this contract.
- (3) Our Conditions of Sale will apply only in respect of companies within the meaning of § 310 paragraph 1 of the German Civil Code.

§ 2 Offer – Offer documentation

- (1) If an order is to be deemed an offer in accordance with § 145 of the German Civil Code, we may accept it within 2 weeks.
- (2) We will retain the rights of ownership and copyrights in respect of reproductions, drawings, calculations and other documentation. This will also apply to any written documentation described as "confidential". The Customer will require our express written permission before passing any documentation on to third parties.
- (3) Our offers, particularly those in brochures, advertisements and the like, are also subject to confirmation and without obligation in terms of the price quotations contained therein. We will remain bound to a especially drawn-up offer for a period of 30 calendar days.
- (4) Employees of BEHNCKE will not be authorized to make any oral collateral agreements or provide any oral undertakings which go beyond the contents of this written contract.

§ 3 Prices – Conditions of payment

- (1) Unless specified otherwise in the order confirmation, our prices will apply "ex works" exclusive of packaging; the latter will be invoiced separately.
- (2) The prices quoted in the respectively valid price list or order confirmation will be authoritative, to which will be added the respective statutory rate of Value Added Tax. Additional deliveries and performances will be invoiced separately.
- (3) Deduction of a discount will only be permitted following a specific written agreement.
- (4) Bills of exchange will not be accepted as a means of payment by BEHNCKE, unless this is expressly agreed in writing between the parties to the contract.
- (5) Unless specified otherwise in the order confirmation, the purchase price will be payable net (without deduction) within 30 days of the date of invoice. The statutory regulations will apply in respect of the consequences of failing to pay by the due date.
- (6) The Customer will only be entitled to rights of set-off if his counterclaims have been recognized by declaratory judgment, are uncontested or have been admitted by us. The Customer will also be authorized to exercise a right of retention if his counterclaim is based on the same contractual relationship.
- (7) Unless otherwise agreed, invoices will be payable with 14 days of the date of invoice with a 2% discount or after 30 days net.
- (8) Invoices for repair and assembly work or similar performances will be payable 8 days after the date of invoice without deduction.
- (9) Even if specified otherwise in the terms of the Customer, BEHNCKE will be entitled to credit payments against longer-standing debts of the latter in the first instance. BEHNCKE will inform the Customer of the type of set-off used. If costs and interest charges have already been incurred, BEHNCKE will be entitled to credit the payment first against the costs, then against the interest charges, and finally against the primary obligation.

- (10) A payment will only be deemed to have been made once BEHNCKE has the respective sum at its disposal. In the case of checks, the payment will only be deemed to have been made when the check has been cashed.

§ 4 Delivery period and time of performance

- (1) Delivery dates or deadlines which may be agreed with or without binding force must be made in writing.
- (2) The start of the delivery period specified by us will be subject to all technical issues having been clarified. The agreed delivery period will not commence prior to the production in full of all documentation to be made available by the Customer. Subsequent modifications or additions by the Customer will have the effect of extending the delivery period by a commensurate period of time.
- (3) Compliance with our duty to deliver will additionally be dependent upon the Customer having discharged his obligation properly and in good time. The right to plead that the contract has not been fulfilled will be reserved.
- (4) Should the Customer be in default of acceptance, or should he be culpable of infringing other obligations to cooperate, we will be entitled to demand that the damage thereby caused to us, including any additional expenditure incurred, be made good. The right to make further claims will be reserved.
- (5) Should the conditions described in paragraph (4) exist, the risk of accidental destruction or deterioration of the object of sale will pass to the Customer as of the time when the default of acceptance or debtor's delay occurred.
- (6) We will accept liability in accordance with the statutory regulations if the underlying sales contract is a transaction for delivery by a fixed date within the meaning of § 286 paragraph 2 section 4 of the German Civil Code or of § 376 of the German Commercial Code. We will also accept liability in accordance with the statutory regulations if, as a result of a delay in delivery for which we are responsible, the Customer is entitled to assert that his interest in the further fulfillment of the contract has been discontinued.
- (7) We will also accept liability in accordance with the statutory regulations if the delay in delivery is based on any willful or grossly negligent breach of contract for which we are responsible; any fault of our representatives or subcontractors must be attributed to us. Unless the delay in delivery is based upon a willful breach of contract for which we are responsible, our liability for damages will be limited to the foreseeable damage which may typically occur.
- (8) We will also accept liability in accordance with the statutory regulations if the delay in delivery for which we are responsible is based on the culpable infringement of an important contractual obligation; in this case, however, liability for damages will be limited to the foreseeable damage which may typically occur.
- (9) For the rest, we will accept liability in the case of delay in delivery for every full week of the delay within the limits of a lump-sum compensation for delayed performance amounting to 3% of the delivery value, but not exceeding a maximum of 5-8% of the delivery value in total.
- (10) Further statutory claims and rights of the Customer will remain reserved.
- (11) BEHNCKE will be entitled to provide part-deliveries and partial performances at any time.

§ 5 Shipment, passing of risks – Packaging costs

- (1) Unless specified otherwise in the order confirmation, delivery will be agreed "ex works".
- (2) Transport packaging and all other types of packaging under the conditions of the packaging directive will not be taken back, with the exception of pallets. The Customer will be obliged to dispose of the packaging material at his own expense.

- (3) Should the Customer so require, we will have the delivery covered by transport insurance; the Customer will bear the costs incurred for this measure. Deliveries will be made carriage forward.
- (4) Delivered objects must be accepted by the Customer without prejudice to his warranty rights, even if such objects show minor defects.

§ 6 Liability for defects

- (1) Any warranty claims of the Customer are dependent on him having duly satisfied his statutory obligations to inspect for and give notice of defects in accordance with § 377 of the German Commercial Code.
- (2) Should there be a defect in the object of sale, the Customer, after first notifying us in writing of the defect in question, will be entitled either to subsequent fulfillment in the form of a remedy of defects, after receiving written permission and authorization from us, or to delivery of a new object which is free from defects, at his own option. In the case of a remedy of defects, we will be obliged to bear all the expenses incurred for this purpose, and in particular transport, freight, labor and material costs, unless these are increased owing to the fact that the object of sale has been transported to a location other than the place of fulfillment.
- (3) Should subsequent fulfillment fail, the Customer will be entitled to demand either withdrawal from the contract or a reduction of the purchase price, at his own option.
- (4) We will accept liability in accordance with the statutory regulations if the Customer asserts any claims for damages which are based on intent or gross negligence, including any intent or gross negligence on the part of our representatives or subcontractors. Insofar as we are not accused of any willful breach of contract, liability for defects will be limited to the foreseeable damage which may typically occur.
- (5) We will accept liability in accordance with the statutory regulations if we are culpable of infringing an important contractual obligation; in this case, however, liability for damages will be limited to the foreseeable damage which may typically occur.
- (6) Insofar as the Customer is entitled to claim reparation of the damage instead of substitute performance, our liability, also within the scope of paragraph will be limited to the foreseeable damage which may typically occur.
- (7) Liability resulting from culpable injury to life, body or health will remain unaffected; this will also apply to mandatory liability under the German Product Liability Act.
- (8) Unless otherwise stipulated above, liability will be excluded.
- (9) The limitation period for warranty claims will be 12 months, calculated as of the date of the passing of risks.
- (10) The limitation period for recourse in respect of delivery under § 478, 479 of the German Civil Code will remain unaffected; this period will be set at five years, calculated as of delivery of the defective object.
- (11) Should the assembly, operating and maintenance instructions of BEHNCKE be disregarded, modifications made to the products, parts replaced or consumables which fail to comply with the original specifications used, or should assembly or operating errors occur, all liability for defects will be deemed inapplicable, as these are not cases of product defects. This will also apply correspondingly to unprofessional swimming pool water treatment. Liability for defects will also be deemed inapplicable in cases of transgression above or below the following critical values: no. 1.4301 (V2A) max. sterilization concentration 1.0 mg/l, chloride concentration up to 150 mg/l, pH value 7.0 to 7.6, for stainless steel materials no. 1.4571 (V4A). Sterilization concentration: max. 1.3 mg/l, chloride concentration up to 500 mg/l, pH value 6.8 to 7.8. The same will apply correspondingly to parts subject to wear and tear.

§ 7 Total liability

- (1) Liability for damages which exceeds the provisions of § 6 will be excluded – irrespective of the legal nature of the claim asserted. This will apply in particular to claims for damages resulting from indebtedness at the conclusion of the contract, due to other forms of neglect of duty or due to claims in tort for reparation of material damages in accordance with § 823 of the German Civil Code.
- (2) Insofar as liability for damages vis-à-vis our company is excluded or limited, the same will apply in respect of the personal liability for damages of our employees, staff, associates, representatives and subcontractors.

§ 8 Reservation of ownership

- (1) We will retain the title of the object of sale until all payments from the contract of delivery have been received. Should the Customer act in breach of the contract, especially as regards failing to pay by the due date, we will be entitled to take back the object of sale. The taking back of the object of sale by us will not constitute a withdrawal from the contract unless we have expressly declared in writing that this is the case. The attachment of the object of sale by us will always constitute a withdrawal from the contract. Once we have taken back the object of sale, we will be entitled to utilize it, with the proceeds from
- (2) utilization to be credited against the debts of the Customer – less reasonable realization costs.
- (3) The Customer will be obliged to handle the object of sale with care; in particular, he will be obliged to procure adequate reinstatement value insurance for the object of sale against loss or damage by fire, water and theft. Should any maintenance or surveying work be required, the Customer must perform such work in good time and at his own expense.
- (4) In the case of attachments or other interventions by third parties, the Customer must notify us without delay in writing, in order that we may take action in accordance with § 771 of the Code of Civil Procedure. Insofar as the third party involved is unable to reimburse us for the legal and out-of-court costs and expenses of an action brought in accordance with § 771 of the Code of Civil Procedure, the Customer will be deemed liable for the loss thereby incurred to us.
- (5) The Customer will be entitled to resell the object of sale in the ordinary course of business; he will, however, assign to us as of now all debts to the value of the final amount of the invoice (inclusive of Value Added Tax) of the sum due to us which may accrue to him from the resale vis-à-vis his buyers or third parties, irrespective of whether the object of sale has been resold without or following processing. The Customer will remain entitled to collect this debt even following assignment. This will not affect our authority to collect the debt ourselves. However, we will undertake not to collect the debt as long as the Customer meets his financial obligations from the revenues received and is not in default of payment and, in particular, as long as there has been neither an application to open bankruptcy, composition or insolvency proceedings, nor a suspension of payments. Should any of the latter cases apply, however, we may demand that the Customer discloses both the assigned debt and the parties liable in respect of it, provides all the particulars required for collection of the debt, hands out the corresponding documentation and notifies the parties liable (third parties) of the assignment.
- (6) Any processing or remodeling of the object of sale by the Customer will always be performed on our behalf. Should the object of sale be processed with other objects not owned by us, we will acquire co-ownership of the new object at a ratio of the value of the object of sale (final amount of the invoice, inclusive of Value Added Tax) to the other processed objects at the time of processing. For the rest, the same provisions will apply to the object created as a result of processing as to the object of sale delivered under reserve.

- (7) Should the object of sale be inseparably intermixed with other objects which do not belong to us, we will acquire co-ownership of the new object at a ratio of the value of the object of sale (final amount of the invoice, inclusive of Value Added Tax) to the other intermixed objects at the time of intermixture. If the intermixture results in the object of the Customer being regarded as the essential item, it will be deemed to be agreed that the Customer will transfer pro rata co-ownership to us. The Customer will hold in custody for us the resulting sole ownership or co-ownership.
- (8) The Customer will also assign to us, by way of securing our debts vis-à-vis him, such debts in respect of third parties which result from the conjunction of the object of sale with a plot of land.
- (9) Insofar as the marketable value of our securities exceeds the debts to be secured by more than 10 %, we will undertake to release securities to which we are entitled at the request of the Customer; we will be entitled to choose which of the securities we release.

§ 9 Design modifications

- (1) BEHNCKE will reserve the right to make design modifications at any time; however, the company will not be obliged to make such modifications to products which have already been delivered.

§ 10 Repair and maintenance work

- (1) The actual job and travel times, travel expenses and allowances incurred will be calculated, taking care to ensure commensurability, and replacement parts installed.
- (2) Cost estimates will only be binding if made in writing. Commitments will not relate to the size of the estimated costs.
- (3) Should repairs have to be performed, transport and return to the works will be effected at the expense and the risk of the Customer.
- (4) The Customer must give notice of defects arising following repair without delay.
- (5) Customer service call-outs and repair measures not caused by any fault on the part of BEHNCKE will be invoiced to the Customer.

§ 11 Legal venue – Place of fulfillment

- (1) Should the Customer be a businessman, our principal place of business will be the legal venue; we will, however, be entitled to bring an action against the Customer at the court of his domicile.
- (2) The law of the Federal Republic of Germany will apply; application of the UN Sales Convention will be excluded.
- (3) Unless specified otherwise in the order confirmation, our principal place of business will be the place of fulfillment.