

Brian Hyde Ltd, terms and conditions of sale of products.

1. Brian Hyde Ltd

1.1 We are a company registered in England and Wales under number 549267. We sell hand tools, power tool accessories, plumbing, drainage and related equipment to customers located in the United Kingdom and overseas. We run our business from our offices in England.

1.2 These are the terms and conditions upon which we do business. Please read them carefully – in certain places they restrict your legal rights – and please contact us if you want to clarify or discuss any of these terms and conditions.

1.3 We may revise or update these terms and conditions at any time without notice. The current version of these terms and conditions can be found on our web site at www.brianhyde.co.uk.

2. Dealings between you and us

2.1 These are the terms and conditions (as revised or updated from time to time in accordance with clause 1.3) upon which we are willing to sell our products to you and they will apply to all dealings between you and us to the exclusion of all other terms and conditions (including any terms and conditions which you may purport to apply under any purchase order, confirmation of order or similar document).

2.2 These terms and conditions apply to the sale of all our products.

2.3 No variation to these terms and conditions will be binding unless one of our directors writes to you confirming the variation.

3. Quotations

All quotations and offers we make to you about the sale of our products are subject to these terms and conditions.

4. Orders and acceptance

4.1 To place an order you need to provide us with at least the description and number of products you wish to order, preferably using our product order codes.

4.2 Some of our products are pre-packed in master cartons, which means they can only be ordered in certain multiples, for example multiples of ten. You can obtain the current list of these multiples upon request. If you place an order for any of these products that is not in line with the multiple for the product then we may increase your order to the next multiple and charge you for the additional products. By way of example, if you order seventeen of a type of product that can only be ordered in multiples of ten then we may increase your order to twenty and charge you for twenty.

4.3 We accept an order you place with us at the time we send you written confirmation that we accept your order or, if earlier, at the time we dispatch the ordered products to you. It is at the moment we accept your order that a contract of sale is made between you and us for the sale by us to you of the products specified in your order ("contract of sale"). Each contract of sale is subject to these terms and conditions to the exclusion of all other terms and conditions (including any terms and conditions which you may purport to apply under any purchase order, confirmation of order or similar document).

4.4 You may cancel or modify an order at any time before we accept it. Unless agreed otherwise in writing by one of our directors, you may not cancel or modify an order that we have accepted.

4.5 If we accept a "call-off" order from you – i.e. an order that allows you to request the supply of the products you have ordered over a period of time – then one of the conditions of our acceptance is that you must request the supply of all the products you have ordered within a year of the date you place the "call-off" order. If you have not requested the supply of all the products you have ordered within the year then we may supply you with and charge you for the outstanding products.

5. Price

5.1 The price for each of the standard products you order will be our current list price for the product at the date we dispatch the product to you less any discount (if any) confirmed to you in writing from time to time by one of our directors. You can obtain a copy of our current list price upon request. The price for each product you order will be the current price agreed between you and one of our directors for the product.

5.2 The prices for products set out in clause 5.1 will apply irrespective of any prices that you may include on any order. If any order you place includes prices that differ from the prices set out in clause 5.1 then we will try and notify you of your error prior to dispatch.

5.3 Our prices are exclusive of value added tax and, except as set out in clause 10, do not include the cost of delivery. Where applicable, delivery charges and value added tax will be added to the price of the products you order at the current rate at the date we dispatch the products to you.

5.4 Details of any discount, branded product/bespoke product pricing or other non-standard pricing structure that we agree with you from time to time shall be treated by you as information of a confidential nature. You must keep this information confidential and not disclose it to any third party. You may disclose this information to your employees who need to know it for the purposes of carrying out their employment duties provided that you tell them that the information is confidential and must not be disclosed by them to any third party or used by them for any purpose other than carrying out their employment duties. You will be responsible for ensuring that your employees use this information in accordance with the terms of this clause.

6. Information about our products

6.1 All samples, drawings, descriptive matter, specifications and advertising we issue and any descriptions or illustrations contained in our catalogue or on our web site are issued or published for the sole purpose of giving you a general idea of our products. Although we make every effort to ensure that information about our products is correct, sometimes it may be incomplete, out of date or inaccurate. In particular, some details, such as colour and dimensions, may not be a true representation and subject to change without notice.

6.2 If you wish to rely on a particular piece of information about our products then you should let us know in writing. If we are happy for you to rely on a particular piece of information about our products then one of our directors will confirm this to you in writing; otherwise you cannot make a claim against us or cancel an order based on information given to you about our products, any sample or the suitability of our products for a particular purpose.

6.3 All our products are either finished products or spares intended for incorporation within our finished products. None of our products are intended

for incorporation within other products.

7. Collection and delivery

7.1 If you order standard products and the products are in stock then we aim to dispatch the products to you or make them available for collection within two working days of the day we receive your order. Please note that the day we receive your order may not be the same day you place the order, for example if you place the order on a Saturday, Sunday or English bank holiday.

7.2 If the standard products you order are not in stock or you order special products then we will dispatch the products to you once they are in stock.

7.3 We recognise that you may suggest collection/delivery dates in your orders for products. We will try to meet your suggested collection/delivery dates; but we cannot, and do not, guarantee to make products available for collection or to deliver products by any particular date. We accept no liability for any loss or damage you may suffer as a result of our failure to make products available for collection or to deliver products on or by a particular date.

7.4 If you notify us that you want to collect ordered products from our offices then we will let you know when the products are ready for collection and you must collect the products within seven days. If you fail to collect the products within seven days then we may charge you and you will be liable to pay us for all costs we incur in continuing to keep the products.

7.5 If you notify us that you want us to deliver ordered products to an address in England, Scotland, Wales or Northern Ireland then we will deliver products to the delivery address you specify. Unless you state otherwise on your order, we will arrange delivery using our standard delivery service, which usually delivers products within three working days of dispatch. We will not charge you for standard delivery of products with a total net value (i.e. including any discounts, but excluding delivery charges and value added tax) of more than £100 or such other figure as we may determine at our absolute discretion from time to time. We will charge you for standard delivery of smaller orders or non-standard delivery (for example next-day delivery) at cost.

7.6 If you notify us that you want the ordered products to be delivered to an address outside England, Scotland, Wales or Northern Ireland then we will contact you prior to dispatch to agree the responsibilities of you and us in relation to such delivery. We will charge you for such deliveries at cost.

7.7 You must make all arrangements necessary to take delivery of products when we deliver them to you, including providing labour and suitable unloading equipment for the unloading of delivered products. If you do not accept delivery of products or we are unable to deliver or are delayed in delivering products because of your actions or omissions then we may charge you and you will be liable to pay us for all costs we incur as a result.

7.8 If you are an existing customer and you do not notify us whether you want to collect ordered products or have them delivered then we may make them available for collection or deliver them to your usual delivery address (as applicable) based upon our previous dealings with you. Otherwise we will contact you to confirm your requirements.

7.9 We may supply products either all on one date or by separate batches on different dates from time to time. Either you or us can, by notice, cancel an order if we are unable to supply the products within a reasonable time, and if this happens, neither party can make any claim against the other. If an order is cancelled and some of the ordered products have been supplied then the cancellation will only apply to the products that have not been supplied (which in this context does not include products that have been dispatched or are in transit at the time of cancellation).

8. Risk in the products

8.1 If you are collecting ordered products from our offices then risk of loss of or damage to the products passes to you on collection.

8.2 If we are delivering ordered products to an address in England, Scotland, Wales or Northern Ireland then risk of loss of or damage to the products passes to you on delivery.

8.3 If ordered products are to be delivered to an address outside England, Scotland, Wales or Northern Ireland then risk of loss of or damage to the products passes to you as agreed between you and us.

9. Title to the products

9.1 We own all products that you order from us until we receive from you in cleared funds all monies due to us in relation to the products, at which time title to the products passes from us to you.

9.2 You must clearly identify products that you have ordered from us but not paid for in full ("unpaid products") as belonging to us and keep them safe, secure, comprehensively insured against loss and damage and separate from other property.

9.3 You may sell unpaid products in the ordinary course of your business on the understanding that the proceeds of sale belong to us.

9.4 We may, by notice, cancel your right to sell unpaid products if you fail to pay us on time for any order. If:

9.5.1 insolvency or winding-up proceedings are instituted by or against you; a receiver, liquidator or administrator is appointed for you; a substantial part of your assets is the object of attachment, sequestration or other type of comparable proceeding; you are unable or admit in writing your inability to pay your debts as they fall due; or you take or suffer any similar action in any country in which you are resident; or

9.5.2 You make an arrangement or composition with your creditors; you commit an act of bankruptcy; a receiving order is made against you; or you take or suffer any similar action in any country in which you are resident, then your right to sell unpaid products will automatically end and we may refuse to supply you with any further products.

9.6 If your right to sell unpaid products is cancelled or ends then you must promptly:

9.6.1 make an insurance claim for all unpaid products that are lost or damaged and pay to us the proceeds of the insurance claim;

9.6.2 hand over to us the proceeds of sale of all unpaid products which you have sold; and

9.6.3 hand over to us those unpaid products that are not lost or sold and you agree that we may enter your premises or any other premises to which you have a right to enter to recover such products.

10. Warranty

10.1 We warrant to you that each of the products we supply to you is of satisfactory quality.

10.2 We also warrant that each of the products we supply to you is free from defects in materials and workmanship at the date you collect or we dispatch the product (as applicable).

10.3 The warranties and conditions set out in these terms and conditions are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying any of the products that you order from us and which might but for this clause

13.3 be implied or incorporated into any dealings between you and us or any contract of sale by statute, common law or otherwise, all of which are excluded to the extent permitted by law.

11. Conformity of products

11.1 We recommend you check that the products we sell to you conform to your order as soon as possible after the date you collect the products from us or we deliver them to you (as applicable).

11.2 If you do not receive all of the products or you find that any of the products do not conform to these terms and conditions then you must notify us of this fact in writing within 7 days of the date we invoice you for the products. If we do not receive notification from you within this period then you will be deemed to have accepted that: you have received the right quantity of products; the products are free from damage; and the products conform to these terms and conditions.

11.3 If you notify us that you have not received all of the products for which you have been invoiced then you must promptly provide us with reasonable evidence supporting your claim. If we accept your claim then we will by way of full and final settlement of all our obligations and liabilities to you in relation to the claim either: refund any monies you have paid to us for the unreceived products; or dispatch to you the unreceived products.

11.4 If you notify us that any of the products you receive were damaged whilst they were at our risk or do not conform to these terms and conditions then you must promptly return the products to us and provide us with reasonable evidence supporting your claim. If we accept your claim then we will by way of full and final settlement of all our obligations and liabilities to you in relation to the claim either: refund any monies you have paid to us for the damaged/non-conforming products; repair the damaged/non-conforming products; or replace them with products that conform with these terms and conditions.

12. Payment

12.1 We will invoice you for the products you order on or around the date the products are ready for collection or we dispatch the products to you (as applicable). If we dispatch products in batches on different dates then we will only invoice you for the products we dispatch.

12.2 You are responsible for paying any duty, value added tax and/or other sales taxes and/or any customs, import or export duties and/or any other miscellaneous charges that may be incurred on any products you purchase from us. We will charge you and you must reimburse us for any duty, value added tax and/or other sales taxes and/or any customs, import or export duties we are liable to pay on any products we sell to you.

12.3 You must pay the total amount we invoice you in a month so that we receive in cleared funds a sum equal to the total amount by the end of the following month. You must pay the total even if you dispute its amount on the understanding that if it is resolved that the total is too great we will rectify our mistake by promptly making an appropriate payment to you.

12.4 All payments you make must be in pounds sterling unless our invoice states otherwise.

12.5 You must make all payments due to us without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.

12.6 If you fail to pay us on time we may, amongst other things,:

12.6.1 charge you interest on the outstanding amount at the rate of 4% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made in full;

12.6.2 refuse to supply you with any further products until payment is made in full;

12.6.3 disallow any discount that applies to any part of the outstanding payment;

12.6.4 cancel or reduce your credit limit; and/or

12.6.5 deduct from any monies we owe you any monies you owe us.

13. Credit limit

13.1 When we first start trading with you we will set up a trading account for you with a credit limit, which we may increase or decrease from time to time.

13.2 You must keep within your credit limit at all times. If you exceed your credit limit, or if the value of an order would make you exceed it, then we will not supply you with any further products until you reduce the outstanding balance sufficiently.

14. Products bought for resale

14.1 If you resell standard products or branded products then you must:

14.1.1 resell the products in their original state;

14.1.2 not modify, delete or obscure any copyright, trade mark, patent or other proprietary notice which we have put on the products, the products packaging or the documentation that accompanies the products;

14.1.3 pass on to your customers all documentation, including instructions of use, that we supply to you with the products;

14.1.4 not incorporate the products within any other product; and

14.1.5 not make any representations, warranties, claims or guarantees to your customers about us or the products that are false or misleading or inconsistent with those contained in the documentation supplied by us with the products.

14.2 If you resell standard products then, in addition to complying with clause 14.1, you must:

14.2.1 resell the products in their original packaging; and

14.2.2 not use or apply on or in relation to the products (including as or part of any corporate, trade or business name) any other trade marks, logos or wordings.

14.3 You shall indemnify us against all costs, damages, losses and expenses we incur as a result of your failure to comply with your obligations under clauses 14.1 and/or 14.2.

15. Intellectual Property Rights

15.1 We own or are licensed to use all intellectual property rights subsisting in standard products and branded products and you must not infringe or direct anyone else to infringe such intellectual property rights.

15.2 If you decide to manufacture or supply or ask someone else to manufacture or supply any products that are the same as or similar to any of

our products then you must ensure that those products do not infringe our intellectual property rights and do not use any of our trade marks, logos or get up or any trade mark, logo or get up that so resembles any of our trade marks, logos or get up as to be likely to cause confusion.

15.3 You shall indemnify us against all costs, damages, losses and expenses we incur as a result of your failure to comply with your obligations under clauses 18.2 and/or 18.3.

16. Our liability to you

16.1 Nothing in these terms and conditions or any contract of sale shall exclude or limit our liability for: death or personal injury arising from our negligence; fraud or fraudulent misrepresentation; or any other liability that cannot be limited or excluded by law.

16.2 Subject to clause 19.1, we will not be liable to you under any statute or in contract, tort or otherwise for any:

16.2.1 Loss of profits, business revenue, business opportunity, contracts, goodwill and/or anticipated savings; and/or

16.2.2 Indirect or consequential loss or damage, which arises out of or in relation to these terms and conditions or any contract of sale.

16.3 Subject to clause 19.1, our total aggregate liability to you under or in connection with each contract of sale (whether such liability arises under any statute or in contract, tort or otherwise) shall be limited to the price payable by you for the products purchased by you under that contract of sale.

16.4 Subject to clause 19.1, our total aggregate liability to you under or in connection with these terms and conditions (whether such liability arises under any statute or in contract, tort or otherwise) shall be limited in each calendar year to £1,000.

17. Assignment

You must not assign or dispose of any of your rights or obligations under these terms and conditions or any contract of sale without our prior written consent.

18. General

18.1 We will not be liable to you for any breach of our obligations under these terms and conditions or any contract of sale to the extent that the breach is due to circumstances beyond our reasonable control, which shall include, without limitation, labour disputes, shortages of materials or labour and problems with our sub-contractors.

18.2 No third party shall have any rights under or in connection with these terms and conditions or any contract of sale by virtue of the Contracts (Rights of Third Parties) Act 1999.

18.3 If at any time any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of these terms and conditions, or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of these terms and conditions.

18.4 No delay or failure by us in exercising or enforcing any right or remedy under these terms and conditions or any contract of sale will be deemed to be a waiver of any such right or remedy, nor will that failure operate to bar the exercise or enforcement of such right or remedy at any future time.

18.5 These terms and conditions and each contract of sale are governed by and will be construed in accordance with English law and, except as set out in clause 21.6, you and us hereby submit to the exclusive jurisdiction of the English courts in respect of the same.

18.6 If you fail to pay us for any products on time or you infringe any of our intellectual property rights then you acknowledge and agree that we may bring a claim against you for non-payment or infringement of our rights (as applicable) in any jurisdiction in which you or your assets are located.