

**MONUMENT TOOLS LIMITED TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS AND PROVISION OF SERVICES TO BUSINESS CUSTOMERS (other than sales made via the Monument Tools website).**

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**1 Introduction**

1.1 We are Monument Tools Limited, a company registered in England and Wales under number 281817. We manufacture and sell plumbing, drainage and related equipment and provide related services 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.monument-tools.com](http://www.monument-tools.com).

**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 and supply services 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 We manufacture and sell three types of products: our standard, branded products set out in our catalogue ("standard products"); products listed in our catalogue but with your, rather than our, branding ("branded products"); and other products made to your specification ("bespoke products"). These terms and conditions apply to the manufacture and sale of all three types of 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 and the provision of services are subject to these terms and conditions.

**4 Orders and acceptance**

4.1 To place an order for the purchase of products 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 To place an order for the purchase of services you need to provide us with at least the description of the services you require.

4.3 For our wholesale customers only, 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. If you are a wholesale customer then you can obtain the current list of these multiples upon request. If you are a wholesale customer and 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.

4.4 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 or commence the provision of the services (as applicable). 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 and the provision of the services 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).

4.5 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.

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4.6 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 branded product and bespoke 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 The price payable by you for the repair services set out in a contract of sale will be the price as notified to you by us following completion of the repair services calculated according to our standard hourly repair services rate from time to time plus the cost of any replacement parts. Details of our current standard hourly rate and replacement part costs are available on request. The price payable by you for other services you order will be the price as set out in our acknowledgement of order form that we send to you in respect of the contract of sale.

5.4 Our prices are exclusive of value added tax and, except as set out in clause 11, do not include the cost of collection and delivery. Where applicable, collection/delivery charges and value added tax will be added to the price of the products and services you order at the current rate at the date we invoice you.

5.5 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 **Tooling**

We may have to create or purchase additional tooling to enable us to supply you with branded products or bespoke products. We will own any additional tooling, but we may charge you, on a one-off basis, for the cost we incur in creating or purchasing the additional tooling.

## 7 **Branded products**

7.1 You permit us to use your trade marks, logos and get up for the purpose of manufacturing and supplying you with branded products.

7.2 You shall indemnify us against all costs, damages, losses and expenses we incur in connection with any claim brought against us relating, either directly or indirectly, to: our use of your trade marks, logos and get up for the purpose of manufacturing and selling to you branded products; and/or the application of your trade marks, logos and get up on the branded products or their packaging.

## 8 **Bespoke products**

8.1 You may supply us with materials, such as design drawings, product information and technical specifications, and trade marks, designs, logos and get up (“materials”) in connection with our design and manufacture of bespoke products. You permit us to use the materials for the purpose of designing, manufacturing and selling to you bespoke products.

8.2 Please note that we manufacture bespoke products to your specification, which means it is your obligation to ensure that the bespoke products are fit for use and resale and do not infringe the rights of any third party.

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8.3 You shall indemnify us against all costs, damages, losses and expenses we incur in connection with any claim brought against us relating, either directly or indirectly, to:

8.3.1 our use of the materials for the purpose of designing, manufacturing and selling to you bespoke products;

8.3.2 our design, manufacture and supply of bespoke products; and/or

8.3.3 your resale of bespoke products,

to the extent that they are not incurred by us as a result of our breach of these terms and conditions.

## 9 **Services**

9.1 In respect of each contract of sale, we will provide to you the services set out in that contract of sale. We aim to provide the services in accordance with any dates or timetable set out in the contract of sale; but we cannot, and do not, guarantee to provide the services in accordance with any dates or timetable. We accept no liability for any loss or damage you may suffer as a result of our failure to provide the services in accordance with any dates or timetable.

9.2 If you order our repair services then you may either deliver the damaged product(s) to us at your own cost or request that we collect the damaged product(s) from you. If we agree to collect the damaged products from you, we aim to collect the product(s) within 14 days of receipt of your request. The cost of collecting the product(s) from you will be added to the price of the repair services.

9.3 Damaged products that we are able to repair can, at your option and cost, either be sent to an address specified by you or collected from our offices.

## 10 **Information about our products and services**

10.1 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 and services. Although we make every effort to ensure that information about our products and services 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.

10.2 If you wish to rely on a particular piece of information about our products or services 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 or services 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 or services, any sample or the suitability of our products or services for a particular purpose.

10.3 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.

## 11 **Collection and delivery**

11.1 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.

11.2 If the standard products you order are not in stock or you order branded products or bespoke products then we will dispatch the products to you once they are in stock.

11.3 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.

11.4 If you notify us that you want to collect any products (including repaired 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.

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- 11.5 If you notify us that you want us to deliver any products (including repaired 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 ordered products with a total net value (i.e. including any discounts, but excluding delivery charges and value added tax) of more than £130 or such other figure as we may determine at our absolute discretion from time to time. We will charge you for delivery of repaired products, standard delivery of smaller orders or non-standard delivery (for example next-day delivery) at cost.
- 11.6 If you notify us that you want any products to be delivered to an address outside England, Scotland, Wales or Northern Ireland then we will contact you prior to dispatch to agree, using the then current version of Incoterms, the responsibilities of you and us in relation to such delivery. We will charge you for such deliveries at cost.
- 11.7 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.
- 11.8 If you are an existing customer and you do not notify us whether you want to collect 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.
- 11.9 We may supply products either all on one date or by separate batches on different dates from time to time. Either you or we 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 partly manufactured, dispatched or are in transit at the time of cancellation).
- 12 **Risk in the products**
- 12.1 If you are collecting products from our offices then risk of loss of or damage to the products passes to you on collection.
- 12.2 If we are delivering 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.
- 12.3 If 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.
- 12.4 You shall be responsible for financing the costs of collection, treatment, recovery and environmentally sound disposal of waste electrical and electronic equipment from users other than private households arising from any of the products that we sell to you; and accordingly Regulation 9(1) of the Waste Electrical and Electronic Equipment Regulations 2000 shall not apply to us in respect of any such waste. 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 this clause.
- 13 **Title to the products**
- 13.1 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.
- 13.2 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.
- 13.3 You may sell unpaid products in the ordinary course of your business on the understanding that the proceeds of sale belong to us.
- 13.4 We may, by notice, cancel your right to sell unpaid products if you fail to pay us on time for any order. If:

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- 13.4.1 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
- 13.4.2 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.
- 13.5 If your right to sell unpaid products is cancelled or ends then you must promptly:
- 13.5.1 make an insurance claim for all unpaid products that are lost or damaged and pay to us the proceeds of the insurance claim;
- 13.5.2 hand over to us the proceeds of sale of all unpaid products which you have sold; and
- 13.5.3 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.
- 14 **Warranty**
- 14.1 We warrant to you that each of the standard products and branded products we supply to you is of satisfactory quality.
- 14.2 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).
- 14.3 We warrant to you that we will provide the services with reasonable skill and care.
- 14.4 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 and services that you order from us and which might but for this clause 14.4 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.
- 15 **Acceptance of products**
- 15.1 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).
- 15.2 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.
- 15.3 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.
- 15.4 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.
- 16 **Payment**
- 16.1 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

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products in batches on different dates then we will only invoice you for the products we dispatch.

- 16.2 We will invoice you for the services we provide under a contract of sale on a monthly basis, or, where the services are to be provided for less than a month, once the services have been completed.
- 16.3 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 or services 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 or services we provide to you.
- 16.4 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.
- 16.5 All payments you make must be in pounds sterling unless our invoice states otherwise.
- 16.6 You must make all payments due to us without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 16.7 If you fail to pay us on time we may, amongst other things,:
- 16.7.1 charge you interest on the outstanding amount at the rate of 5% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made in full;
- 16.7.2 refuse to supply you with any further products or provide any further services until payment is made in full;
- 16.7.3 disallow any discount that applies to any part of the outstanding payment;
- 16.7.4 cancel or reduce your credit limit; and/or
- 16.7.5 deduct from any monies we owe you any monies you owe us.
- 17 **Credit limit**
- 17.1 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.
- 17.2 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 or services until you reduce the outstanding balance sufficiently.
- 18 **Products bought for resale**
- 18.1 If you resell standard products or branded products then you must:
- 18.1.1 resell the products in their original state;
- 18.1.2 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;
- 18.1.3 pass on to your customers all documentation, including instructions of use, that we supply to you with the products;
- 18.1.4 not incorporate the products within any other product; and
- 18.1.5 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.
- 18.2 If you resell standard products then, in addition to complying with clause 17.1, you must:
- 18.2.1 resell the products in their original packaging; and



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18.2.2 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

18.2.3 marks, logos or wordings.

18.3 We may supply you with toolbars, which you and your customers may use to display standard products for sale. We supply toolbars free of charge but our toolbars are and shall remain at all times our property. You and your customers may only use our toolbars to display standard products. If we find that you or any of your customers are using a toolbar to display third party products then we may remove, or require you to remove, [the third party products from the toolbar. You and your customers must keep our toolbars in good condition at all times and return them to us promptly upon our request. We may recover toolbars from you and your customers at any time. If you allow one of your customers to use a toolbar then you shall be responsible, and liable to us, for ensuring that the customer uses it in accordance with this clause.

18.4 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 18.1, 18.2 and/or 18.3.

## 19 Intellectual Property Rights

19.1 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.

19.2 We will own all intellectual property rights that we create during the design, manufacture and sale of bespoke products.

19.3 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.

19.4 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 19.2 and/or 19.3.

## 20 Our liability to you

20.1 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.

20.2 Subject to clause 20.1, we will not be liable to you under any statute or in contract, tort or otherwise for any:

20.2.1 loss of profits, business revenue, business opportunity, contracts, goodwill and/or anticipated savings; and/or

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

20.3 Subject to clause 20.1, 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 total price payable by you under that contract of sale.

20.4 Subject to clause 20.1, 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.

## 21 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.

## 22 General

22.1 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

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circumstances beyond our reasonable control, which shall include, without limitation, labour disputes, shortages of materials or labour and problems with our sub-contractors.

- 22.2 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.
- 22.3 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.
- 22.4 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.
- 22.5 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 22.6, you and us hereby submit to the exclusive jurisdiction of the English courts in respect of the same.
- 22.6 If you fail to pay us for any products or services 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.