

**Trade Account Sales**  
**Terms and Conditions**

These Conditions shall apply to all quotations, Pro-Forma Invoices, Orders and sales of the Goods by Touched Interiors to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document or otherwise. For the avoidance of doubt the Customer acknowledges and agrees that Touched Interiors shall not be bound by any terms or conditions that the Customer may purport to apply except for these Conditions set out herein.

**1. Definitions**

1.1 The following terms shall have the following meanings:

**Touched Interiors:** Touched Interiors Limited of 26 Blackfriars Street, Manchester, Lancashire, M3 5JS, UK;

**Conditions:** means the terms and conditions set out in this document and any other terms and conditions agreed in writing by Touched Interiors relating to the Pro-Forma Invoice or the Order;

**Customer:** the customer identified in the Pro-Forma Invoice;

**Delivery:** means delivery of the Goods to the Delivery Address subject to clause 4 of these Conditions and, where the Customer rejects the Goods contrary to these Conditions, the time when Touched Interiors has tendered delivery of the Goods;

**Delivery Date:** means the delivery date agreed between the Parties;

**Delivery Address:** means the delivery address agreed between the Parties;

**Goods:** means the goods identified in the Pro-Forma Invoice;

**Intellectual Property Rights:** means all the intellectual property rights in the Goods which are owned or licensed by Touched Interiors including copyright, design right, patents, confidential information, trademarks, patent rights, database right and similar rights whether registerable or not throughout the World;

**Order:** means the Order placed by the Customer on acceptance of the Pro-Forma Invoice;

**Pro-Forma Invoice:** means the document with the title "Pro-Forma Invoice" which is attached to these Conditions;

**Parties:** means the Customer and Design Provision together;

**Pro-Forma Payment:** means the payment of the Price which is paid by the Customer to Touched Interiors in accordance with clause 3;

**Price:** means the price for the Goods set out in the Pro-Forma Invoice subject to variation in accordance with clause 2 of these Conditions.

**Working Days:** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

1.2 The headings used in these Conditions are for ease of reference only and shall not affect its interpretation.

1.3 Unless the context otherwise requires, in these Conditions a reference to any gender includes all genders, words importing the singular number include the plural number and vice versa, words importing persons include firms, companies and corporations and vice versa, references to numbered clauses are references to the relevant clause in these Conditions, any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment, where the word 'including' is used in these Conditions, it shall be understood as meaning 'including without limitation'.

**2. Pro-Forma Invoice**

2.1 Unless otherwise agreed by Touched Interiors in writing and subject to the terms of this clause 2 the price for the Goods which shall be the Price as set out on the Pro-Forma Invoice and not any alternative price that may be stated in any estimate, documentation or otherwise given orally or in writing.

2.2 The Customer must ensure that the details set out in any Order or Pro-Forma Invoice are complete and accurate. Touched Interiors shall not be liable to the Customer for any delay, loss or damage whatsoever suffered by the Customer due to inaccuracies on a Pro-Forma Invoice or Order.

2.3 Touched Interiors reserves the right to make reasonable alterations to the Price due to any administrative/printing errors on the Pro-Forma Invoice or factors which are beyond the reasonable control of Touched Interiors including without limitation foreign exchange fluctuations, market fluctuations, fluctuations in taxes and duties and the cost of labour, materials and other manufacturing costs.

**3. Pro-Forma Payment and Deposit**

3.1 On the date of the Order the Customer shall pay the Pro-Forma Payment to Touched Interiors by electronic bank transfer into an account identified by Touched Interiors in writing to the Customer.

3.2 No payment shall be deemed to have been received until Touched Interiors has received cleared funds.

3.3 In the event that the Customer wishes to cancel the Order then the Customer must notify Touched Interiors in writing within one (1) Working Days of Touched Interiors receiving payment of the Pro-Forma Payment (the "Cancellation Period").

3.4 The Customer agrees and acknowledges that in the event that the Order is not cancelled within the Cancellation Period then the Customer shall not be entitled to a refund for the Pro-Forma Payment. The Customer shall still be entitled to defer the Delivery Date or to nominate a third party to accept Delivery of the Goods provided that such third party agrees to be bound by these Conditions.

3.5 The Customer agrees and acknowledges that there is a lead time between placing the Order and Delivery. Touched Interiors shall not proceed with processing the Order and no work shall be done in respect of the Goods until Touched Interiors has received payment of the Pro-Forma Payment in full from the Customer. Touched Interiors shall not be liable for any delay caused by the failure of the Customer to pay the Pro-Forma Payment.

3.6 In the event that Touched Interiors, at its absolute discretion, agrees to staged payments the following additional terms shall also apply:

3.6.1 Time for payment shall be of the essence.

3.6.2 If the Customer fails to pay Touched Interiors any sum due pursuant to the Order the Customer shall be liable to pay interest to Touched Interiors on such sum from the due date for payment at the annual rate of 6% above the base lending rate from time to time of the Bank of England accruing on a daily basis until payment is made, whether before or after any judgment.

3.6.3 Touched Interiors may also at its absolute discretion withhold or refuse to accept any Order until all overdue accounts are paid.

3.6.4 The Customer shall not be entitled to withhold payment in whole or in part on the grounds that it has a claim, counterclaim or set-off against Touched Interiors.

3.6.5 Please note all accounts beyond our credit terms will be passed to our debt collection agency, Sinclair Goldberg Price Ltd. All accounts, without exception, will be subject to a surcharge of 15% plus vat to cover our costs in recovery. These accounts will also be subject to any legal costs incurred in obtaining settlement. The customer hereby consents to the jurisdiction of the Manchester County Court for the resolution of any disputes.

#### **4. Delivery**

4.1 Touched Interiors shall use all reasonable commercial endeavours to procure Delivery on or before the Delivery Date subject to the Customer paying all sums due to Touched Interiors on time.

4.2 Unless otherwise agreed in writing by the Parties, Touched Interiors shall arrange for the Delivery of the Goods to the Delivery Address.

4.3 For the avoidance of doubt, the Delivery Date is an estimate only and time shall not be of the essence for the Delivery of the Goods.

4.4 The quantity of any consignment of Goods as recorded by Touched Interiors on despatch from Touched Interior's place of business shall (in the absence of manifest error) be conclusive evidence of the quantity received by the Customer on Delivery.

4.5 In the event that the Customer notifies Touched Interiors that it shall arrange for collection of the Goods from the premises of Touched Interiors or such other premises as may be agreed by the Parties, with such collection to be made either by the Customer or its representative or agent, Delivery shall occur once Touched Interiors has tendered Delivery of the goods ready for collection.

4.6 The Customer must immediately notify Touched Interiors in writing if the Goods are not received by the date on which Delivery is expected to occur.

#### **5. Examination**

5.1 The Customer must notify to Touched Interiors in writing any loss or damage to the Goods within Two (2) Working Days of Delivery and hold the Goods for inspection at Touched Interior's discretion.

5.2 If the Customer does not report any loss or damage to the Goods in accordance with clause

5.1 above the Customer shall be deemed to have accepted the Goods and the Goods shall be deemed to be in conformity with the contract description, in good order and condition, of satisfactory quality and fit for any purpose for which they may be required.

5.3 At Touched Interior's request the Customer shall return the Goods to the premises of Touched Interiors or any other premises as directed by Touched Interiors. The Customer shall be liable for all costs involved for inspection of the Goods by Touched Interiors including the cost of transit of the Goods for inspection by Touched Interiors.

5.4 The Customer shall not be entitled to return any Goods which comply with the Pro-Forma Invoice or the Order unless agreed to in writing by Touched Interiors.

#### **6. The Goods**

6.1 The quantity and description of the Goods shall be as set out in the Pro-Forma Invoice.

6.2 The Customer acknowledges and agrees that the Goods are made to order accordingly:

6.2.1 the description used to identify the Goods on the Pro-Forma Invoice is only for the purpose of identifying the goods and is not relied on by the Customer when placing the Order.

6.2.2 where a sample of the Goods has been shown and/or inspected by the Customer the sole purpose of so doing was to enable the Customer to judge the quality of the bulk and the Pro-Forma Invoice and the Order does not constitute a sale by sample.

6.2.3 Touched Interiors does not give any warranty or condition as to the quality or fitness for any purpose of the Goods.

#### **7. Risk and Title**

7.1 The risk in the Goods shall pass to the Customer on Delivery.

7.2 The property in the Goods shall not pass to the Customer until the later of Delivery or payment of all sums due or owed to Touched Interiors by the Customer in full in accordance with these Conditions.

7.3 Touched Interiors shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from Touched Interiors.

## **8. Warranties**

8.1 All warranties, conditions or terms implied by statute or common law or otherwise are excluded to the fullest extent permitted by law, including any which relate to:

8.1.1 the correspondence of the Goods with any description written or oral; and/or

8.1.2 the quality of the goods; and/or

8.1.3 the fitness of the goods for any purpose(s) whatsoever, whether made known to Touched Interiors or not.

## **9. Liability**

9.1 Nothing in these Conditions shall have the effect of excluding or limiting the liability of either Party for death or personal injury caused by negligence.

9.2 Subject to the provisions of clause 9.1 above, under no circumstances shall the liability of Touched Interiors for any breach of these Conditions exceed the Price of the Goods.

9.3 Subject to the provisions of clause 9.1 above, any liability of Touched Interiors for non-delivery of the Goods shall be limited to delivering or redelivering the relevant Goods within a reasonable time or issuing a credit note at the pro rata Pro-Forma Invoice rate against any invoice raised for such Goods.

9.4 Touched Interiors shall not be liable for any delay in Delivery caused by the failure of the Customer to pay all sums due to Touched Interiors and the Customer agrees to indemnify, defend and hold Touched Interiors harmless from all liability and expenses (including, but not limited to, legal fees) arising from any claim resulting from any delay in the Delivery of the Goods.

9.5 Touched Interiors shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Touched Interiors of these Conditions.

## **10. Intellectual Property**

10.1 Nothing in these Conditions shall be construed as conferring any licence or granting any rights in favour of the Customer in respect of any Intellectual Property Rights.

10.2 The Customer undertakes to not claim any right title or interest in or to any Intellectual Property Rights nor attack the validity of the Intellectual Property Rights.

10.3 The Customer undertakes not to infringe the Intellectual Property Rights nor assist any third party to do the same.

10.4 The Customer undertakes to report immediately to Touched Interiors any articles which infringe the Intellectual Property Rights or any other rights in the Goods which the Customer may become aware of.

10.5 The Customer agrees to:

10.5.1 keep confidential all information (written or oral) concerning the business and affairs of Touched Interiors that it shall have obtained or received as a result of its dealings with Touched Interiors (the 'Information');

10.5.2 use the Information solely in connection with the production and supply of the Goods and not for its own benefit or the benefit of any third party.

10.6 The provisions of clause 10.5 above shall not apply to the whole or any part of the Information to the extent that it is trivial or obvious; already in the other's possession other than as a result of a breach of this clause; or in the public domain.

## **11. Termination**

11.1 Touched Interiors may, by written notice, terminate the agreement set out in these Conditions if the Customer:

11.1.1 commits a substantial breach of any of its obligations under these Conditions and has not remedied the breach within one week of receiving a written notice of the breach from Touched Interiors; or

11.1.2 has become bankrupt or entered into liquidation except for the purpose of amalgamation or reconstruction or a receiver and/or manager or administrator is appointed in respect of its assets or any part thereof or it enters into any composition or arrangement with creditors generally or any similar arrangement in any other jurisdiction.

## **12. Force Majeure**

12.1 Touched Interiors reserves the right to defer the Delivery Date or to cancel any Pro-Forma Invoice or Order or to reduce the volume of Goods in any Pro-Forma Invoice or Order (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Touched Interiors, including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **13. General**

13.1 The Customer may not assign, delegate, subcontract, mortgage, charge or otherwise transfer the benefit or burden of the agreement set out in these Conditions without the prior written consent of Touched Interiors. Touched Interiors may assign, delegate, sub-contract, mortgage, charge or otherwise transfer the benefit or burden of the agreement set out in these Conditions at its absolute discretion.

13.2 The agreement set out in these Conditions shall be binding upon and only for the benefit of the successors in title of the Parties hereto.

13.3 No failure or delay by Touched Interiors in exercising any right, power or privilege under these Conditions shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided by these Conditions are cumulative and not exclusive of any rights and remedies provided by law.

13.4 If at any time any part of these Conditions is or becomes unenforceable, such part shall be construed as far as possible to reflect the Parties' intentions and the remainder of these Conditions shall remain in full force and effect.

13.5 The agreement set out in these Conditions shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

13.6 The validity, construction and performance of these Conditions shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

13.7 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of these Conditions the agreement set out in these Conditions does not give any person who is not a party to it any right to enforce any of its provisions.