

Gabriel North America Inc.

## Standard sales and delivery terms

Valid from December 1, 2017

### 1. Definitions:

- a. "Gabriel" means Gabriel North America Inc., 560 5th St NW, Grand Rapids, MI 49504.
- b. "Confirmation" means the order confirmation document Gabriel sends to the Customer upon receipt of the Customer's order.
- c. "Customer" means the person or organization buying goods or services from Gabriel pursuant to this Contract.
- d. "Contract" means these Standard Sales and Delivery Terms, Gabriel's published price list, the terms on Gabriel's Confirmation, and additional terms or conditions that may be imposed by Gabriel. No other written or oral terms, conditions, or provisions form any part of the Contract.
- e. "Standard Sales and Delivery Terms" means the terms and conditions below entitled "Standard Sales and Delivery Terms."
- f. "Terms and Conditions" means all of the terms and conditions that appear in the Standard Sales and Delivery Terms, Gabriel's published price list, and Gabriel's Confirmation, and any additional terms or conditions imposed by Gabriel.
- g. "Parties" means Gabriel and the Customer.

### 2. No conflicting terms, conditions, or other provisions

THE TERMS AND CONDITIONS AS DEFINED ABOVE ARE THE ONLY TERMS AND CONDITIONS UPON WHICH GABRIEL WILL SELL ANY GOODS OR SERVICES. THEREFORE, GABRIEL'S AGREEMENT TO PROVIDE GOODS OR SERVICES IS EXPRESSLY MADE CONDITIONAL ON THE CUSTOMER'S ASSENT TO SUCH TERMS AND CONDITIONS EVEN IF THEY ARE ADDITIONAL TO OR DIFFERENT FROM ANY OF THE CUSTOMER'S PROPOSALS. GABRIEL IS UNWILLING TO PROCEED UNLESS THE CUSTOMER ASSENTS TO THE TERMS AND CONDITIONS CONTAINED HEREIN. THE CUSTOMER MUST THEREFORE ADVISE GABRIEL IMMEDIATELY IF ANYTHING IN THESE TERMS AND CONDITIONS IS INCORRECT OR OTHERWISE UNACCEPTABLE. THE TERMS AND CONDITIONS MAY BE CHANGED BY GABRIEL AS NECESSARY WITHOUT NOTICE. ANY REASONABLE METHOD OF ASSENT BY CUSTOMER, INCLUDING EMAIL ACKNOWLEDGEMENT OR SILENCE, SIGNIFIES ASSENT TO THE TERMS AND CONDITIONS, INCLUDING AS THEY MAY BE CHANGED BY GABRIEL, AS THE SOLE AND EXCLUSIVE TERMS AND CONDITIONS OF THE CONTRACT BETWEEN GABRIEL AND THE CUSTOMER.

### 3. Order confirmation

Once the Customer requests goods or services from Gabriel, the Customer's request is binding on the Customer and these and the other terms and conditions of the Contract as defined at Section 1 above are binding on the Customer as well. The Customer shall place orders on the basis of an offer in writing prepared by Gabriel or directly on the basis of Gabriel's catalogs, website or similar sources of Gabriel's. Gabriel has the discretion, but not the obligation, to immediately fulfill such order, and if so, orders shall be confirmed subject to access to goods and raw materials etc.

### 4. Information on goods, quantities, measurements and statutory requirements

All information in our catalogs, sample cards, drawings, quotations, project specifications, product and service specifications, website, and similar sources is approximate and commercial tolerances must be expected. Without limiting the generality of the provisions at sections 11 and 12, any advice on goods or services provided by Gabriel must be considered consultative and Gabriel can under no circumstances be held liable for any consultative advice or claims relating to the Customer's design/construction and intended use of the goods or services provided by Gabriel. The Customer is responsible for ensuring that the design/construction of the goods or services is appropriate for the intended use. The same shall apply to the extent that the Customer supplies or prescribes raw materials, components or products which Gabriel must purchase, supply services for or otherwise process, treat or use in connection with providing services for the Customer.

For orders relating to fabrics with a unit of measurement of YARDS or METERS exceeding 27.34 yards or 25.0 meters which resembles a full fabric roll, Gabriel shall be entitled to deliver and invoice +/-10% to the Customer. Cut orders with the unit of measurement of YARDS or METERS shall mean fabrics measured and cut to length upon the Customer's request. Cut orders are only available to a single decimal point.

The Customer shall be invoiced for the quantities actually delivered to the Customer. For deliveries of goods which are non-standard goods, the Customer shall accept the entire production batch.

The Customer shall advise Gabriel of special requirements and standards and of any existing statutory requirements in relation to the use of any goods, and the Customer shall also ensure that the statutory requirements so advised shall be specified in the Confirmation and/or specifications signed by Gabriel prior to receiving the Customer's order.

For design/creative consultancy and proposals, all intellectual property rights (e.g. to designs, trademarks, copyright, patentable inventions etc.) shall accrue to and be retained by Gabriel Holding A/S or Gabriel North America, Inc., depending on which is the owner, and the Customer shall have no right or license to use any such intellectual property without a separate written agreement with Gabriel clearly allowing such use.

### 5. Delivery terms, delivery time and delays

Unless otherwise specified in the order, the goods shall be delivered EXW (Ex Works) Gabriel's current and relevant warehouses in accordance with ICC Incoterms 2010.

The delivery time shall be specified in the Confirmation in accordance with Gabriel's best estimate, and minor deviations therefrom to a maximum of fourteen (14) days for fabric deliveries shall be deemed to be delivery on time. In the event of force majeure (see below), the delivery time may, however, be postponed until the obstacle ceases to exist and normal trade and transport are again possible.

## 6. Retention of title

Gabriel shall retain title in the delivered goods until the Customer has made full payment. All costs associated with enforcement of the retention of title shall be borne by the Customer.

## 7. Prices and payment

Prices specified in price lists and/or other material from Gabriel are inclusive of all packaging costs but exclusive of sales or other applicable taxes. Gabriel shall be entitled to change the prices in the price list with immediate effect. Gabriel has the discretion to change prices for a variety of reasons, including, without limitation, changes in the raw materials, components, duty and freight and taxes. Prices may be increased until delivery is made. Gabriel will notify the Customer of all price changes.

The Customer agrees that it will be deemed to have accepted the goods upon their delivery. Payment shall be made immediately upon delivery. Default interest will be charged on late payment at the rate of 1.2% per month from the due date until payment is made. Without limiting the generality of the remedies at Section 15 below, Gabriel may postpone all deliveries of orders or cancel orders in writing without incurring any liability for the action if the Customer has unpaid overdue invoices for previously delivered orders. Full compensation for all consequent losses suffered by Gabriel shall be paid by the Customer. The Customer agrees to pay Gabriel for all direct and indirect consequential costs incurred by Gabriel in relation to the preparing, production and carriage of for example but not limited to: samples, prototypes, reference samples and tests that are not included in Gabriel's standard test program on [www.gabriel.dk](http://www.gabriel.dk). The prices for these goods shall be indicated in Gabriel's offer to the Customer or in the absence of such indication they shall be refunded on the basis of documented expenses within 30 days after such documentation is provided to the Customer.

## 8. Notice of defects and remedies

The Customer shall thoroughly inspect the goods immediately after delivery and before use. A thorough inspection shall, without limitation, include checking the quantity received, the quality, colors, sizes, and workmanship of the goods.

In the event the Customer believes there is a defect in any goods or services provided by Gabriel, including any transport damage and also including anything violative of the ten-year guarantee described at Section 10 below ("Alleged Defect"), the Customer shall document the Alleged Defect by photos and a clear, specific, and accurate written description in English to Gabriel ("notice"). Possible transport damages are noted on the carrier's waybill.

All notices shall be made in writing and sent to Gabriel. The notice shall be sent as soon as the Customer becomes aware, or ought to have become aware, of the Alleged Defect, and in any event not later than fourteen (14) days after delivery. In the event of non-visible Alleged Defects, the notice shall be submitted not later than fourteen (14) days from the date on which the defect could have been discovered after a thorough inspection, but not later than three (3) months from the delivery date.

Upon receipt of the notice, Gabriel shall decide, at its sole discretion, whether a defect actually exists and, if so, whether a remedy of any kind will be offered. If, for a project or an order process, a reference sample for approval has been made and the sample has been approved by the Customer, the reference sample shall be deemed to be the standard in relation to assessment of e.g. defects.

Gabriel shall be entitled, at its option and sole discretion, to remedy the defect, deliver replacement goods, or grant the Customer a proportionate reduction in the agreed purchase price. The Customer shall not be entitled to cancel the purchase if Gabriel exercises one of the above remedies within a reasonable time of having had the opportunity to assess and qualify the notice of defect. Further, Gabriel does not cover any indirect costs resulting from non-conforming goods.

Notwithstanding the above, nothing in this Section invalidates or changes in any way the disclaimer of warranty provisions at Section 12 below or the limitation of damages provisions at Section 13 below.

## 9. Force majeure

Gabriel shall not be liable if the following force majeure events prevent or delay performance of the agreement (the list is non-exhaustive): war and mobilization; rebellion and civil disobedience; terrorism; natural disasters; strike and lockout; shortage of goods; defective or delayed deliveries from suppliers or if suppliers are otherwise affected by circumstances; fire; lack of transportation; currency restrictions; import and export restrictions; death, illness or absence of key employees; computer virus or other circumstances beyond Gabriel's direct control. In these events, the affected party, Gabriel, shall be entitled to postpone the performance of its obligation until the obstacle has ceased to exist, or alternatively to cancel the agreement in full or in part without incurring liability if the obstacle results in postponement of performance for more than six (6) months.

## 10. Ten-year guarantee on fabrics

Gabriel provides a ten-year guarantee against wear-through on selected fabrics during normal office or home use\* and with normal maintenance and appropriate upholstery. This shall only apply to fabrics labeled with or specifically marketed with a ten-year guarantee. See [www.gabriel.dk](http://www.gabriel.dk) for further details, or contact Gabriel's Customer service for separate information.

A further condition is that the upholstery fabric has been properly maintained in accordance with Gabriel's stain guide, including keeping it entirely free of dust and soiling. It is also a condition that the upholstered object does not have sharp edges or corners, and that the foam used remains unchanged for at least ten years and does not crumble. The guarantee does not cover costs of reupholstering or other costs associated with the complaint, including remedying of the defect.

Due to anticipated natural wear, Gabriel makes a 10% reduction in the credited original invoiced price per meter per annum after delivery of the fabric about which the complaint was made (i.e. 10% after one year, 20% after two years etc.).

*\*Normal office or home use covers daily use for 8-9 hours in the office or home. The guarantee does not cover spot wear on limited areas (e.g. caused by sharp objects, studs, zips or similar).*

## 11. Limitation of liability

The Customer's sole and exclusive remedy in the event of any breach by Gabriel of any term or provision of this contract is the right to recover the amount the Customer paid for the goods or services and only to the extent such amount is covered by insurance. In no event will Gabriel be liable for any other damages, including, without limitation, consequential, incidental, indirect, special, or punitive damages, or lost profits, damages related to business interruption, or damage – perceived or real – to reputation or goodwill.

Without limiting the generality of the foregoing, Gabriel shall not assume liability for damage or loss arising from the Customer's incorrect application, unusual or rough use or wear of the goods delivered and in no event will Gabriel be liable in any amount in excess of \$75,000 per incident or series of incidents arising from the same delivery. In the event of a third party raising a claim against Gabriel in excess of the specified maximum amount, the Customer shall be liable for the difference and reimburse it to Gabriel.

## 12. Disclaimer of warranties

EXCEPT FOR THE GUARANTEE DESCRIBED AT SECTION 10 ABOVE, GABRIEL MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS OR SERVICES SUPPLIED TO THE CUSTOMER. GABRIEL EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, WARRANTY OF TITLE, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY, AND WARRANTY OF WORKMANLIKE PERFORMANCE. ALL GOODS AND SERVICES ARE PROVIDED "AS IS."

## 13. Period of limitation for claims

If the Customer wishes to make any claim for breach of contract or any other reason relating to the Contract or the Parties' relationship, the Customer must file such claim with a court of law no later than six months from the date the goods were received or provided. If the Customer does not file such claim within such six-month period, the Customer will be forever barred from making any legal or equitable claim relating in any way to the Contract or the Parties' relationship.

## 14. Cross default

All of the Customer's legal obligations to Gabriel are subject to cross default, meaning that any breach by the Customer of any of its contracts or other legal obligations to Gabriel will constitute a breach of this Contract as well. Without limiting the generality of the foregoing or the remedy provisions described at section 15 below, Gabriel may postpone all deliveries of orders or cancel orders in writing without incurring any liability or third party costs if the Customer has unpaid overdue invoices for previously delivered orders. Full compensation for all consequent losses suffered by Gabriel shall be paid by the Customer.

## 15. Gabriel's remedies

Gabriel may suspend its performance or terminate the Contract if the Customer breaches any term or condition of this Contract. In addition, if the Customer breaches any term or condition of the Contract, Gabriel may also, in addition to termination, recover from the Customer any and all damages Gabriel incurs because of the breach, including, without limitation, lost profits, consequential damages, incidental damages and costs incurred for raw materials, components, and other goods purchased by Gabriel to fill the Customer's order. Without limiting the generality of the foregoing, upon the Customer's breach of any term or condition of the Contract, all sums owing during the entire term of the Contract will become immediately due and payable to Gabriel. In addition, the Customer agrees that it will reimburse Gabriel for any and all attorneys' fees and other legal costs Gabriel incurs as a result of a breach by the Customer, including, without limitation, post-judgment fees and costs for collection, appellate, or other purposes. Gabriel will also have all remedies available to it by law and equity.

Without limiting the generality of the above, in the event of unforeseen problems, or if an unsatisfactory credit rating of the Customer is received after the Confirmation is issued, Gabriel shall be entitled to cancel the order, demand a bank guarantee issued for the full amount, or demand payment in advance without any liability whatsoever.

In addition to the remedies addressed above, in the event of any breach by the Customer, Gabriel will have the right – but not obligation – to repossess any and all goods from the Customer in any manner allowed by law. If Gabriel chooses to repossess, the Customer will be liable for any reduction in the value of the goods from when the Customer took possession of them. Notwithstanding anything above to the contrary, in the event of a breach by the Customer, Gabriel will also have all remedies available to it as provided by law and equity, including, without limitation, such remedies afforded by Articles 2, 2A, and 9 of the Uniform Commercial Code, as applicable.

## 16. No waiver

No delay or failure by Gabriel to demand performance or exercise any of its rights or remedies shall constitute a waiver of its right to demand the Customer's performance or of Gabriel's ability to exercise its rights or remedies at any time.

## 17. Consent to Michigan personal jurisdiction

The Customer consents to the state and federal courts of the State of Michigan exercising personal jurisdiction over the Customer in any dispute that may arise related to the Contract or the relationship of the Parties.

## 18. Forum for dispute resolution

If any Party wishes to initiate legal proceedings related to any dispute between the Parties related to the Contract or the relationship of the Parties, such proceedings must be filed in a court located in the City of Grand Rapids, State of Michigan.

## 19. Michigan law governs

Michigan law shall govern the interpretation of the Contract and any dispute that arises related to the Contract or the relationship of the Parties.

## 20. Entire agreement; integration

The Terms and Conditions described herein constitute the entire understanding between the Parties with respect to the subject of the Contract and completely integrate any and all prior agreements, written and oral. The Contract may not be modified in any manner by the Customer unless an authorized representative of Gabriel expressly consents to the modification in writing signed by such representative. Gabriel may modify the Contract at any time without any assent by the Customer and such modification will be binding on the Customer.

## 21. Consent to electronic signatures and contracting.

The Customer agrees to conduct business with Gabriel, including entering into the Contract, by electronic methods. The Customer therefore agrees, without limitation, that any electronic acknowledgment of Gabriel's Terms and Conditions, including the Customer's email acknowledgement of receiving Gabriel's confirmation, constitutes an electronic signature sufficient to bind the Customer to the Contract.