

Gabriel A/S

Standard sales and delivery terms

Valid from 1 October 2022

The sales and delivery terms for Gabriel A/S (company registration number 12721307, address: Hjulmagervej 55, 9000, Aalborg, Denmark), hereinafter called Gabriel, shall apply to all orders and take precedence over other conditions etc. from a customer unless otherwise agreed in writing. The sales and delivery terms may be changed as necessary without notice.

1. Order confirmation and consulting

Once an order has been placed, it shall be binding on the customer. The customer shall place orders on the basis of an offer in writing prepared by Gabriel or directly on the basis of Gabriel's catalogues, website or similar. Orders shall be placed subject to access to goods and raw materials etc. After the order has been placed, the customer will receive an order confirmation. It is the customer's responsibility to check that the order confirmation is consistent with the order placed by the customer, whether the order is placed via the Customer Portal, via email or in any other written form. In the event of errors relating to the entry of the order, the customer must contact Gabriel immediately after receipt of the order confirmation. In the event of unforeseen problems, or if an unsatisfactory credit rating of the customer is received after order confirmation, Gabriel shall be entitled to cancel the order without any liability whatsoever or to demand a bank guarantee issued for the full amount, or payment in advance. Only in exceptional cases may the customer cancel a confirmed order, subject to Gabriel's consent in writing. Any consulting service provided by Gabriel on the products' applicability for or at the customer shall be deemed to be for guidance only. Gabriel shall not be liable for the customer's or its customers' specific use of the products.

2. Product information, quantities, measurements and statutory requirements

All product information in our catalogues, sample cards, drawings, website and similar is approximate and commercial tolerances must be expected.

For orders for entire rolls, Gabriel shall be entitled to deliver and invoice +/- 10% to the customer. Small quantities cut to order shall mean piece goods measured/cut to the customer's requests. Cut length orders are only available to a single decimal point.

The customer shall be invoiced for the quantities/lengths actually delivered to the customer. For deliveries of goods which are non-standard products or colours, the customer shall accept the entire production.

The customer shall advise Gabriel of special requirements and standards and of any existing statutory requirements in relation to the use of Gabriel's products, and the customer shall also ensure that the statutory requirements so advised shall be specified in the written agreement which is prepared by Gabriel and which forms the basis for the order.

3. Delivery terms, delivery time and delays

Unless otherwise specified in the order, the products shall be delivered EXW Gabriel's current and relevant warehouses in accordance with ICC Incoterms 2020.

The delivery time shall be specified in Gabriel's order confirmation in accordance with its best estimate, and minor deviations therefrom to a maximum, in exceptional cases, of fourteen (14) days for fabric deliveries shall be deemed to be delivery on time, and Gabriel will inform the customer of the postponement in writing as soon as possible. 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.

If delivery has not been made within fourteen (14) days of the agreed time, this shall be deemed to be a major delay. If the customer has subsequently sent Gabriel a reminder in writing and delivery has not been made within seven (7) days from receipt by Gabriel of the reminder, the customer shall be entitled to cancel the order.

4. Retention of title

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

An extended retention of title will apply to customers established in the United Kingdom, Guernsey, Isle of Man and Jersey:

Title to the delivered products shall not pass to the customer until Gabriel receives payment in full (in cash or cleared funds) for (a) the delivered products; and (b) and any other goods that Gabriel has supplied to the customer, in which case title to the delivered products shall pass at the time of payment of all such sums.

In addition to the extended retention of title above, a broadened retention of title will apply to customers established in Germany:

Customer shall only be allowed to sell the products, which are all subject to retention of title, within normal and proper business transactions. Customer is not entitled to pledge the products, grant chattel mortgages on them or make other dispositions endangering Gabriel's title to such products. Customer hereby assigns its receivables arising from the resale of the products to Gabriel, and Gabriel hereby accepts such assignment. Should customer sell the products after processing or transformation or joining or mixing of such products with other goods or together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between Gabriel and customer plus a safety margin of 10 % of this price. Customer is granted the revocable authorization to collect in trust the claims assigned to Gabriel in his own name. Gabriel may revoke such authorization and the right to resell the products if customer is in default of the performance of material obligations such as making payment to Gabriel.

Any processing or transformation of the products by customer shall always be performed for Gabriel. If products are processed with other goods, Gabriel shall acquire joint ownership of the new goods in the ratio of the value of the products to the other processed goods at the time of processing. The new goods created by way of processing shall be subject to the same provisions as applicable to the products.

Should the products be joined or mixed with other goods, Gabriel shall acquire joint ownership of the new goods in the ratio of the value of the products to the other goods at the date of joining or mixing. Should the joining or mixing of the goods occur in such manner that customer's goods are to be viewed as the main goods, it shall be deemed to be agreed that customer assigns proportionate joint ownership to Gabriel. Customer shall hold the joint ownership created in such manner in custody for Gabriel.

Customer shall provide Gabriel at all times with all desired information concerning the products or receivables assigned to Gabriel under these sales and delivery terms. Customer shall immediately notify Gabriel of any attachments of or claims to the products by third parties and shall provide the necessary documents in this regard. Customer shall at the same time advise the third party of Gabriel's retention of title. The costs of a defence against attachments and claims shall be borne by customer.

Customer is obliged to treat the products with care for the duration of the retention of title.

Should customer be in default of material obligations such as payment to Gabriel, and should Gabriel rescind the contract, Gabriel may, notwithstanding any other rights, request surrender of the products and may make use of them otherwise for the purpose of satisfying its matured claims against customer. In such case, customer shall grant Gabriel or Gabriel's agents immediate access to the products and surrender the same.

On Gabriel's demand, customer is obliged to appropriately insure the products, provide Gabriel with the respective proof of such insurance and assign the claims arising under such insurance to Gabriel.

5. Prices and payment

Prices specified in price lists and other material from Gabriel are exclusive of VAT. If no price agreement has been made, Gabriel's current list prices for the products shall apply. Gabriel shall be entitled to change the prices in the price list with immediate effect. Prices in all materials are subject to changes in the rates of duty and freight and other taxes, and prices may be increased until delivery is made. Gabriel will notify the customer of all price changes.

Unless otherwise agreed in writing and stated in the order, 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.

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.

6. Notice of defects and remedies

The customer shall arrange a thorough inspection of the products immediately after delivery and before use. In particular, the customer shall check the quantity received, the quality of the products, and their colours.

The customer is obliged not to accept a shipment if there are any signs of transport damage. In the event of transport damage, the customer shall document this by photos and write a clear note in English of the damage on the carrier's waybill.

All notices of defects 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 defect, and in any event not later than fourteen (14) days after delivery, or, in the event of delay, actual delivery of the products. In the event of non-visible defects, the notice shall be submitted not later than fourteen (14) days from the date on which the defect could have been discovered on a thorough inspection, but not later than three (3) months from the delivery date.

If a part of the order is delayed or not delivered, or if a part of the order is defective, only this part of the order can be cancelled/terminated. All notices of defect shall be specific, documented, and contain an accurate description of the substance of the notice.

Defective products cannot be returned without Gabriel's prior consent in writing. Conforming products cannot be returned.

Gabriel shall be entitled, at its option, 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.

In the event of non-conformity (delay and/or defects) Gabriel shall not be liable for any direct or indirect business interruption loss, loss of profit, or any other consequential loss whatsoever. In any event, the maximum liability shall be equal to repayment by Gabriel to the customer of the payment made for the delayed or defective part of the order.

7. 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 mobilisation; rebellion and civil disobedience; terrorism; natural disasters; strike and lockout; shortage of goods; defective or delayed deliveries from sub-suppliers or if sub-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, epidemics, pandemics 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.

8. Product liability and limitation of liability

Gabriel shall be liable for injury and damage caused by defective products after the products have been placed on the market to the extent that this is required by law or by the unwritten rules of product liability. Notwithstanding the above Gabriel shall not be liable for any direct or indirect business interruption loss, loss of profit, or any other consequential loss whatsoever.

Gabriel shall not assume liability for damage or loss arising from the customer's incorrect application, unusual or rough use or wear of the products.

Claims for property damage against Gabriel under mandatory product liability cannot exceed EUR 67,500 per incident or series of incidents arising from the same delivery. In the event of 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.

9. Ten-year guarantee on fabrics

Gabriel A/S provides a ten-year guarantee against wear-through on selected products in normal office or home use* and with normal maintenance and appropriate upholstery. This shall only apply to products labelled with or specifically marketed with a ten-year guarantee. See www.gabriel.dk for further details, or contact Gabriel's customer service for separate information.

The guarantee covers replacement fabric or crediting, at Gabriel's option, under an approved complaint. 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 and 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 metre 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).*

10. Data Protection

Processing of personal data may occur for the purposes of executing the customer's order. Accordingly, any personal data may be disclosed to other independent data controllers such as freight carriers etc. for the purposes of fulfilling the customer's order. Any processing of personal data is subject to all necessary security procedures and will be deleted when storage thereof is no longer required or necessary. For further details please review the Gabriel Privacy Policy on www.gabriel.dk.

11. Venue and governing law

Agreements and orders between Gabriel and the customer shall be subject to and construed under Danish law irrespective of the current international private law rules to the extent to which the latter rules would result in governing law other than Danish law. The Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

Any disputes which may arise from or in connection with the contract, including any dispute concerning its existence, validity or termination, shall be decided by a Danish court in the jurisdiction in which Gabriel has its head office. Gabriel may, however, demand at any time that arbitration proceedings be conducted on the dispute before Danish Arbitration in accordance with the rules of Danish Arbitration in force when the arbitration case is brought. The arbitration tribunal shall sit in the home country of Gabriel's head office, and the language of the arbitration proceedings shall be Danish. The arbitration proceedings and award shall be confidential indefinitely. It has been agreed that the award concerning a legal matter can in no way be appealed to a court of law.

In the event that it becomes necessary for Gabriel to collect debts, Gabriel may choose at any time to recover the debt through the customer's home court pursuant to the statutes of the country in question.