



3550 Round Bottom Road Cincinnati, OH 45244

Gamco Incorporated **Terms and Conditions of Rental/Sale ("Terms")**

These terms apply to all Gamco sales and rentals of products ("Product(s)"). If Gamco issues a quotation or proposal ("Quotation") to its ("Customer") that the Customer timely accepts by issuance of a purchase order or by acceptance of Products (or by other means acceptable to Gamco), the quotation of these Terms will constitute the entire agreement between Gamco and Customer with respect to the Products (collectively, the "Contract"). Otherwise, the entire Contract shall consist of Gamco's order acknowledgement and these Terms. By issuing a purchase order against a Quotation or accepting Products, Customer expressly agrees that these Terms govern and that no other terms shall apply unless in writing and signed by an authorized representative of Gamco. Gamco expressly rejects any additional, inconsistent or conflicting terms proposed by Customer. Clerical errors are subject to correction in all cases.

1. **Purchase Price or Rental Charge; Payment.** Quoted prices or rental charges are firm only for orders placed against the Quotation within 30 days after it is issued and are valid only if all items, quantities and sizes listed in the Quotation or order acknowledgement are purchased or rented and only if the Products are to be shipped within Gamco's normal production and shipping schedule. Orders otherwise are subject to revised pricing. Quotation prices and rental charges do not include, but are subject to, taxes and all other governmental charges that may be imposed at any time, including sales, use and similar taxes. Gamco shall invoice and Customer shall pay or reimburse Gamco for any such amounts. Purchase charges shall be invoiced at time of shipment. Customer is responsible for payment of all made-to-order products, even if customer cancels the order and the products do not ship. Rental charges shall be invoiced monthly, with charges beginning on the date of shipment and ending on the date the Products are returned to Gamco's warehouse, as shown on shipping documents. Customer agrees to pay for a minimum of one month's rental, with any additional partial months being pro-rated, with each week assumed to have seven days and each month assumed to have twenty-eight days. Except as expressly agreed otherwise in the Quotation or order acknowledgement. Customer shall pay each invoice within 30 days after the date of invoice. All payments shall be made without set-off, deduction or counterclaim. Interest at rate 1-1/2% per month, or the maximum allowable by law, shall apply to balances on invoices 31 days past due until paid.

2. **Delivery; Risk of Loss; Inspection and Claim.** Unless expressly agreed in the Contract, Gamco does not guarantee or assume liability for failure to meet any delivery date proposed or requested by Customer of Gamco. In the case of paving Products, Customer shall provide Gamco with a requested delivery date at the time of order. Prior to the order entering production, Gamco will contact Customer to verify the requested delivery date and Customer shall, by electronic mail, fax or letter, confirm in writing the requested delivery date. Gamco will not begin production on the order until this written confirmation is received from the Customer.

Unless otherwise agreed at the time of order, all Products will ship FOB Gamco's shipping point, prepaid, via Gamco's selected carrier and Customer shall pay all transportation charges from Gamco's shipping point to destination, with shipping charges added to Customers invoice. Title and risk of loss shall pass to Customer upon delivery to the carrier at Dayton's shipping point.

3. **Customer Pick-up/3rd Party Carriers.** At the time of order, Customers may arrange to pick up orders when available at identified Gamco facilities and/or request collect or 3rd party billing on a Customer-specified carrier if preferred (FOB Origin). For LTL/parcel shipments requested 3rd party bill, Gamco will make the arrangements directly with Customer-specified carrier. For truckload shipments, the Customer may make their own arrangements or provide carrier information for Gamco to make the arrangements. The following guidelines will also apply.

a. **Accessory and Chemical Products** – In case of Customer pick-up or Customer arranged freight, Gamco will hold the ordered Products on its docks for maximum of (5) business days from the date of order. If the Customer/Carrier fails to pick up the ordered Products by the end of the fifth business day, Customer agrees that either (i) by the end of the sixth business day, Customer will instruct Gamco to arrange for freight and have the freight charges added to the Customer's order and invoice, (ii) if the Products are not made-to-order, the order will be cancelled and Customer agrees to pay Gamco a restocking fee of 25% of the value of the order, which will be invoiced to the customer, or (iii) if the Products are made-to-order, the order will be cancelled, Customer shall pay Gamco the full price of the order and Gamco shall have no obligation to retain or store the Products.

b. **Paving Products** – In the case of Customer pick-up or Customer arranged freight, Gamco will hold the ordered Product on its docks for a maximum of 10 (10) business days from the date of the order. If the Customer/Carrier fails to pick up the ordered Products by the end of the tenth business day, Customer agrees that either (i) by the end of the eleventh business day, Customer will instruct Gamco to arrange for freight and have the freight charges added to the Customer's order and invoice, or (ii) it will incur a \$500.00 per day handling and storage charge that will be added to the Customer's invoice until the order is picked up or delivered.

c. **Forming Products** – In the case of Customer pick-up or Customer arranged freight, Customer shall provide Gamco with a requested delivery date at the time of order. Gamco will contact Customer to verify requested delivery date and Customer shall by electronic mail, fax or letter, confirm in writing the requested delivery date. Gamco will not begin pulling the order for shipping until this written confirmation is received from the Customer. Gamco will hold the ordered Products on its docks for a maximum of ten (10) business days from the date of order. If the Customer/Carrier fails to pick up the ordered Products by end of the tenth business day, Customer agrees that either (i) by the end of the eleventh business day, Customer will instruct Gamco to arrange for freight and have the freight charges added to the Customer's order and invoice, or (ii) it will incur a \$500.00 per day handling and storage charge that will be added to the Customer's invoice until the order is picked up or delivered.

4. **Ownership and Use of Rental Products.** Gamco shall retain title to rental Products. Customer shall have the option to purchase rental Products if and to the extent set forth in the Contract, subject to these Terms. Customer shall not make any alterations, additions or improvements to, and shall not deface, remove or cover any Gamco markings on, rental Products without Gamco's prior written consent. Upon request, Customer shall advise Gamco as to the exact location of rental Products and agrees not to move rental Products without Gamco's prior written consent. Gamco shall have the right to enter Customer's premises or other location of the rental Products at reasonable times and with reasonable notice to Customer, to inspect Gamco rental Products. Customer shall keep rental Products free and clear of all liens, levies and encumbrances (other than those of Gamco). Customer irrevocably authorizes Gamco to execute and/or file a financing statement or other notice in any jurisdiction with respect to the lease created by the Contract. Rental Products do not include wood of any kind, except as part of a prefabricated panel or other prefabricated rental Product. Customer shall be responsible for unloading, cleaning, assembling and erection of rental Products. Customer shall cause rental Products to be used only by competent operators in a safe and proper manner in compliance with all applicable laws, rules, regulations and the manufacturer's instructions (including maintenance) and solely for purposes for which they are intended.

5. **Limited Warranty.** Gamco warrants, for a period of 60 days from date of shipment (three years from date of shipment in the case of formwork, excluding any consumable Products included with such formwork), that Products and any associated application drawings and engineering services provided by Gamco ("Ancillary Services") will be free from defects in material and workmanship and, in the

case of custom designed formwork, that the formwork will meet the specifications set forth in the design drawings approved by Gamco and Customer. Any claim under this warranty must be made in writing within such warranty period. If any Product and/or Ancillary Service covered by timely claim are found to be defective, Gamco will, within reasonable time, make necessary repairs or corrections or, at Gamco's option, replace the Product. Unless pre-authorized by Gamco in writing, Gamco will not accept any charges correcting defects or accept the return of any Product this warranty will not apply to any Products that have been subjected to misuse, neglect, storage damage, misapplication, accident or any other damage caused by any person other than Gamco or that have not been maintained in accordance with Dayton's specifications. **THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AS TO THE PRODUCTS AND ANCILLARY SERVICES. GAMCO MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDED ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE REPAIR/REPLACEMENT REMEDIES SET FORTH IN THIS SECTION ARE CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.**

6. **Limitation of Liability.** Gamco's liability under any Contract and at all times with respect to the Products and the Ancillary Services shall in any event be limited to direct damages (which expressly excludes lost profits, revenues, incentives and back charges) and then only to, at most, the purchase/rental price of the relevant Products paid by Customer. Gamco shall have no other liability to or through Customer whatsoever, whether based on breach of contract, negligence, gross negligence, strict liability or otherwise. **IN NO EVENT SHALL DAYTON BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, REVENUES, LOST INCENTIVES OR BACK CHARGES) ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, THE PRODUCTS OR THE ANCILLARY SERVICES.**
7. **Contingencies.** Gamco shall not be responsible for delays in performance caused, directly or indirectly, by any act of God, accident, war, force of arms, fire, elements, riot, labor dispute, strike, sabotage, civil commotion, act of terrorism, government action, transportation interruption, inability to obtain materials or labor, Customer's failure or delay in approving any design or other drawings or any other contingencies beyond Gamco's reasonable control.
8. **Risk of loss and insurance.** From the date rental Products are shipped until returned to Gamco, Customer shall bear the risk of loss/damage to Products, whether or not insured. Customer shall, at its expense, maintain rental Products in good repair, condition and working order, normal wear & tear expected. In the event of any loss/damage to rental Product, Customer shall place the same in good repair, condition and working order, or, if Customer fails to do so, shall, at Gamco's election, pay to Gamco the full, un-depreciated replacement cost of the Products plus all unpaid rent through the date of payment. Customer shall keep rental Products insured against all risk of loss/damage by customary property and casualty insurance for the full un-depreciated replacement value (new) and shall carry public liability insurance, both personal injury and property damage, covering the rental Products and their use. All such insurance shall name Gamco as an additional insured/loss payee, shall provide Gamco not less than 30 days' written notice of cancellation and shall be of a type and form, with terms and in the amounts, and with companies reasonably satisfactory to Gamco.
9. **Indemnification by Customer.** Customer shall be responsible for, indemnify, defend and hold Gamco harmless from and against all liabilities, claims, judgments, costs, damages and expenses (including reasonable attorney's fees and expenses), including for personal injury, death, property damage or otherwise, arising out of or relating to the use of the Products and/or the Ancillary Services and any other act, or omission by Customer or any subcontractor, agent, sublessee, employee, or purchaser of or from Customer with respect to the Products and/or the Ancillary Services, unless resulting from the gross negligence or willful misconduct of Gamco. If Customer subleases rental Products or resells purchased Products, Customer shall include language in an agreement with its purchaser that makes these Terms (Including the limitations set forth in paragraph 5) binding on Customer's sublessee or purchaser and any subsequent purchasers of the Products, including binding sublessee or purchaser to these obligations of indemnification in addition to Customer.
10. **Documentation; Product Data.** Any specifications, plans, drawings or application recommendations furnished by Gamco to Customer ("Documentation") are provided only as a service to Customer to conceptually illustrate the assembly and use of Products. Such Documentation is not intended to be fully directive nor to cover all engineering details on Products, on products or materials not furnished by Gamco, or on their interconnection. Inasmuch as Gamco does not control jobsite assembly or procedures, grade or quality of materials, or equipment supplied by others, it is the responsibility of Customer to integrate Documentation into composite drawings and information suitably complete for construction purposes. In the case of custom designed formwork, design drawings will be furnished by Gamco for Customer's approval prior to any fabrication by Gamco. Gamco shall not be responsible for any deviations, changes or alterations to the recommended assembly details described in forming layout drawings unless such deviations, changes or alterations are illustrated in a revised design drawing provided by Gamco or are approved in writing by Gamco. Gamco shall at all times retain ownership of all documentation and other technical data ("Product Data") with respect to the Products and the Ancillary Services, and unless duly authorized by Gamco, Customer shall not disclose any such Product Data to any other person. Upon Dayton's request, Customer promptly shall return to Gamco all copies of Product Data.
11. **Default; Termination.** If Customer fails to timely pay any invoice or to perform any other obligation under the Contract, or if Gamco deems itself insecure or determines that any rental Products are the risk of being damaged, lost or removed from customer's control, Customer shall pay immediately upon notice from Gamco an amount equal to the sum of (i) all uninvoiced and unpaid amounts, including rental charges, through the later date of payment or the return of Products. In such event, all rights of Customer in the rental Products shall terminate absolutely and, upon any termination (whether by expiration of the rental period, Customer's failure to perform any obligation under the Contract or otherwise), Gamco shall have the right, without notice or demand, to take possession of rental Products, wherever located, at the expense of Customer. Notwithstanding, Customer shall promptly return rental Products, at Customer's expense and at Gamco's instruction, and pay for any damage to the Products, ordinary wear and tear excepted.
12. **Expenses.** Customer shall reimburse Gamco's expenses (including, but not limited to, court costs, interest and reasonable attorneys' fees and expenses) in collecting any amounts owed by Customer arising out of the Contract, including, but not limited to, expenses incurred by Gamco in protecting its rights under the Contract and/or recovering and/or repairing any rental Products.
13. **Compliance with Governmental Requirements.** To apply, any standards or requirements of law or governmental regulations must be expressly and specifically set forth in writing in the Contract. Otherwise, Gamco shall have no liability or obligation to Customer with respect to the failure of the Products to comply with any such standards or requirements.
14. **Governing Law and Exclusive Jurisdiction.** The Contract shall be governed by, and construed in accordance with, the laws of the State of Ohio without giving effect to the conflict of law principles, shall be binding upon any and all successors and assigns of the parties hereto and shall not be construed in whole or in part against any party solely because of the fact that the party drafted it. The exclusive jurisdiction for any dispute arising out of the Contract shall be in a court of competent jurisdiction located in Hamilton County, Ohio, the parties agree to personal jurisdiction and that all discovery, including depositions, shall be conducted therein.
15. **Miscellaneous.** The contract may not be amended except in writing and signed by an authorized representative of Gamco. Customer may not cancel orders under this Contract for customized Products without Gamco's written consent. Customer shall not assign the Contract or sublease any rental Products without Gamco's prior written consent and the full release of Gamco from any obligations with respect to the products. Any provisions of the Contract that is invalid under applicable law or court order shall not in any way invalidate or affect the remaining provisions of the Contract.