

TERMS AND CONDITIONS OF SALE

A. EXPRESS LIMITED WARRANTY

1. This concrete is supplied in accordance with the relevant A.C.I. Code and Standards and unless otherwise stated on the face of the delivery ticket the A.C.I. Standard 304 will apply.
2. Testing will not be performed automatically. However, upon request, a testing program will be arranged at purchaser's expense. Charges for this testing service will be in accordance with Gavco Materials, Inc.'s scale of rates. Gavco Materials, Inc. does not recognize and will not be bound by test results performed by persons other than Gavco, Materials, Inc. unless concrete is sampled at the agitator chute and sampled in accordance with the ASTC C-172 and tested strictly in accordance with C-39.
3. The strength characteristics of the concrete are those shown on the face of the delivery ticket and upon signing the invoice the purchaser expressly accepts the strength characteristics shown thereon. Since the purchaser shall have no claim for refund or damages due to the nonconformance of the strength characteristics shown on the delivery ticket with the strength characteristics required for the particular purpose for which the concrete is used, purchaser should insure that the strength shown accords with the job requirements.
4. Gavco Materials, Inc.'s guarantee of the strength of the concrete becomes inoperative if the concrete is not poured in place within one and one half hours of leaving the plant or if any of the events referred to in Clause B.1. below shall occur. The time of leaving plant is shown on the delivery ticket.
5. Although Gavco Materials, Inc. undertakes to supply concrete in accordance with Clause A.1. above, if to do so necessitates an addition of a cooling or a heating agent, the cost thereof will be charged as an extra.
6. Unless otherwise stated in the quotation, prices are based upon slumps of 4". Slumps in excess of 4" are subject to an extra charge where specified strength is still required.

B. LIMITATIONS OF REMEDY AND DISCLAIMER OF WARRANTY, INCLUDING WARRANTY OF MERCHANTABILITY.

(IMPORTANT. See Clause E.3. for additional disclaimer.)

1. Any warranty, whether expressed or implied, is hereby expressly disclaimed with regard to any concrete which is altered materially by the purchaser on any third person who is not an authorized agent of Gavco Materials, Inc. In addition, Purchaser expressly agrees to indemnify and hold harmless Gavco Materials, Inc. from and against any claims, demands, causes of action, losses or costs of whatever kind or nature, foreseeable or unforeseeable, incident to or resulting from the material alteration of any concrete by Purchaser, its Subcontractor, or any third party other than an authorized agent of Gavco Materials, Inc.

For purposes of this sales contract, and "authorized agent" is defined as any Plant Manager or person in a higher position of authority than a Plant Manager. Authorized agent shall not include the mixer truck driver making delivery of the concrete.

For purposes of this section, a "material alteration" is defined as:

- (a) Faulty handling, placing or curing of the concrete by the purchaser or its subcontractors of any other person.
 - (b) The addition of any water or other material to the concrete before or after discharge from the delivery unit without the express instructions of the authorized agent of Gavco, Materials, Inc.
 - (c) The addition of any additives to concrete after request or specifications of the purchaser, unless an authorized agent of Gavco Materials, Inc. confirms the same in writing.
2. Any damages which may be sought by any purchaser or third person are hereby specifically limited to the return of the purchase price, it being understood that Gavco Materials, Inc. shall not be liable for any incidental and/or consequential damages (as such damages are defined in the Uniform Commercial Code) resulting from the breach of any warranties contained herein.
 3. The implied warranties of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED with regard to all concrete sold.

C. DELIVERY

1. Gavco Materials, Inc. will not be liable in any manner whatsoever for delay in delivery or non-delivery which is attributable to transport delays, plant or equipment breakdowns, unavailability of materials, or any other cause whatsoever which is beyond the control of Gavco Materials, Inc.
2. Delivery must be accepted and effected by the purchaser as soon as possible from the time of arrival of the delivery vehicle on site. If delivery is not effected as quickly as possible, the purchaser will pay to Gavco Materials, Inc. compensation at the then current waiting time rate charged by Gavco Materials, Inc.
3. No charge shall be made for waiting time if the discharge is completed within twenty minutes or at the rate of seven minutes per cubic yard, whichever period is the greater. Waiting time in excess thereof will be charged at the then current rate.
4. Delivery will be made only to the curb side. If, at the request of the purchaser, the delivery vehicle enters the job area, or any other privately owned property the purchaser will indemnify Gavco Materials, Inc. against all claims for any person which arise out of such entry or by the presence of the vehicle in the job area, including but not limited to, claims arising from the negligence of Gavco Materials, Inc. or of the driver of Gavco Materials, Inc. vehicles.
5. An approved area for washout, must be provided by the Purchaser. If area used for washout has not been previously approved, the purchaser will be held responsible.

D. PRICE AND PAYMENT

1. Prices referred to herein are based on current material, labor, administration and transport costs. In the event of any increase in any of these costs, these prices no longer shall be valid and prices charged shall increase in accordance with the increase in such costs effective on the date of delivery of the concrete.
2. Surcharges at rates currently being charged from time to time are payable by the purchaser to Gavco Materials, Inc. in the following events:
 - (a) The purchaser's requiring deliveries before the hour of 6:00 a.m. or after the hour of 4:00 p.m.
 - (b) The purchaser's requiring deliveries on Saturdays & Sundays.
 - (c) The purchaser's requiring deliveries the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas.
 - (d) The purchaser's requiring delivery of less than six (6) six cubic yards.
3. The amount charged is based upon the quantity shown on the face of the delivery ticket. Upon signing the delivery ticket, or otherwise accepting the concrete, the purchaser acknowledges that purchaser has independently verified the amount of concrete delivered, agrees to be bound by the information as shown on the delivery ticket, and agrees that no claims for short deliveries will be entertained by Gavco Materials, Inc.
4. In the event of orders being placed and then cancelled, purchaser will pay to Gavco Materials, Inc. all costs incurred by Gavco Materials, Inc. up to the time of cancellation and Gavco Materials, Inc.'s good faith assessment of these costs shall be binding on the purchaser.
5. The purchaser will pay the price of the concrete to Gavco Materials, Inc. either prior to discharge or, if credit arrangements have been made, within 10th proxy (10th day of the month following delivery). Interest will be charged on all invoices not paid by the 30th day after the invoice is due and payable, at the rate of Twelve (12%) Percent per annum, unless such interest ever exceeds the maximum rate allowable under applicable state or federal law and in such event interest will be charged at the maximum allowed rate.
6. In the event of any dispute arising between Gavco Materials, Inc. and the purchaser, the purchaser will pay to Gavco Materials, Inc. the amount then owing to Gavco Materials, Inc. which amount will be held by Gavco Materials, Inc. until the determination of the dispute and the purchaser shall not commence any action against Gavco Materials, Inc. in court whatsoever before paying such amount to Gavco Materials, Inc.
7. In the event Gavco Materials, Inc. shall have to collect any outstanding monies owed by purchaser, Gavco Materials, Inc. shall be entitled to collect, in addition to any monies owed by purchaser, any reasonable costs and attorneys' fees incurred by Gavco Materials, Inc.

E. GENERAL

1. Purchaser must notify Gavco Materials, Inc., in writing, of any alleged breach of any warranty or term hereof within forty-five (45) days after such alleged breach is discovered or should have been discovered by purchaser, or be barred from any remedy for such alleged breach. Any action for breach or warranty, terms and conditions contained herein must be commenced within one (1) year after the cause of action has accrued.
2. Any reference to the purchaser in these terms and conditions means and includes the purchaser, the purchaser's employees, agents, and subcontractors. The actions or signatures of any person appearing to have the authority of the purchaser shall bind the purchaser. In addition, it is purchaser's responsibility to have an authorized representative at the delivery location at the time of delivery to sign delivery tickets. If there is no such authorized representative available, or if for any reason said individual fails to sign the delivery ticket as noted on the delivery ticket by Gavco Materials, Inc.'s driver, purchaser will be bound in every respect as if an authorized representative of purchaser had signed the delivery ticket. Purchaser also agrees that for purposes of these terms and conditions, "signature" shall include pump numbers or similar notations made by purchaser.
3. THESE TERMS AND CONDITIONS ARE THE ONLY TERMS AND CONDITIONS OF THE CONTRACT BETWEEN GAVCO MATERIALS, INC. AND THE PURCHASER FOR THE SALE OF CONCRETE AND THERE SHALL BE NO CONTRACT BETWEEN PURCHASER AND GAVCO MATERIALS, INC. EXCEPT UPON THE TERMS AND CONDITIONS CONTAINED HEREIN AND NOT OTHERS. ALL OTHER GUARANTEES, WARRANTIES, OR UNDERTAKINGS EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR EITHER AND WHETHER ARISING BY STATUTE OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED AND CONDITIONS CANNOT BE ALTERED EXCEPT BY GAVCO MATERIALS, INC. DULY AUTHORIZED AGENT IN WRITING.
4. Should any provisions of the agreement be void or unenforceable, such provisions shall be deemed omitted and this agreement with provision omitted shall remain in effect.