

Terms and Conditions of Sale – Fly Ash

1. All sales are subject to these Terms and Conditions of Sale (“Terms”); all other terms, including any contained in Buyer’s purchase order, are excluded. Notwithstanding the foregoing, Buyer’s credit is subject to the terms of Buyer’s credit agreement with Seller, if any. These Terms will be governed by and construed in accordance with the laws of Virginia. In the event of any dispute regarding the sale of goods hereunder, Buyer consents to the exclusive jurisdiction and venue of the state and federal courts for the Seller’s location issuing the goods.
2. **Permitted Use.** Buyer represents and warrants that all fly ash ordered from Seller will be used solely as a cement replacement in concrete and/or concrete products.
3. **Payment Terms.** Payment is due in full the last day of the month following the month in which delivery is made, without deduction, retainage, set off or charge backs. A service charge at the lesser of 1.5% per month or the maximum legal rate may be imposed delinquent invoices from the date due until paid. In addition to any other rights, Seller will be entitled to recover from Buyer all costs of collection and litigation including, but not limited to, reasonable attorneys' fees. Seller reserves the right to require payments in advance or to cancel further sales in the event of default by Buyer of any of the Terms, or, if Buyer’s financial status becomes impaired or deemed unsatisfactory to Seller. Failure by Seller to exercise any right will not be deemed a waiver of such right. Buyer is responsible all applicable federal, state and local sales and use taxes.
4. **Shipment.** Buyer will give Seller shipping instructions within a reasonable time prior to desired delivery date. Shipments will be invoiced on the basis of scale weight nearest to the point of origin. Deliveries will be loaded during the loading site’s regular operational hours. An additional charge may be added for requests for loading outside of these hours. Buyer is responsible for full payment of orders not cancelled at least twelve hours prior to delivery time.
5. **Force Majeure.** Seller will not be liable for any failure or delay in the manufacture or delivery of fly ash, or any damages relating thereto, caused by fire, labor disputes, acts of government, delay or failure by any supplier or hauler of Seller, war, civil unrest, acts of God, or any other cause beyond Seller’s reasonable control. Seller will have the right, not the obligation, to ship fly ash from other plants in the event of a supply shortage or interruption.
6. **Limited Warranty.** Seller has no control over the use of the fly ash and does not guarantee the finished work in which it is used, nor will Seller be responsible for the condition of the fly ash after delivery to Buyer. Seller warrants that the fly ash delivered hereunder will meet **ASTM C618 Class F or Class C specifications, as applicable, or as otherwise mutually agreed upon in writing.** In the event any fly ash fails to meet this limited warranty, Buyer’s sole remedy will be replacement by Seller of such nonconforming ash. **ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.**
7. **Claims.** Buyer must give written notice to Seller within 48 hours after delivery of any claim against Seller as a result of any alleged nonconforming materials or any other cause (other than failure to meet compressive strength, in which event the time for notice will be within 48 hours after the customary time for analysis of the test cylinder), time being of the essence. Seller will be given reasonable opportunity to investigate all claims. Any failure to give such written notice within said 48 hour period will be deemed a conclusive waiver by Buyer of all such claims against Seller. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications will be paid by Buyer.
8. **Limitation of Liability.** Seller will not be liable for any special, indirect, punitive or consequential damages, whether based on statute, tort, contract, or other theory of law. Seller’s liability for any claims will be limited to the purchase price of the goods sold under the corresponding purchase order.
9. **Notices.** All notices will be sent to Seller in writing at the sales office issuing the price quotation, with a copy to Credit Department, 188 Summerfield Court, Suite 201, Roanoke, Virginia 24019.

WARNING: MAY CAUSE SKIN IRRITATION - INJURIOUS TO EYES.

AVOID INHALATION AND CONTACT WITH SKIN WHERE POSSIBLE. WASH EXPOSED AREAS PROMPTLY WITH WATER. IF ANY ASH GETS IN THE EYE, RINSE IMMEDIATELY WITH WATER AND GET PROMPT MEDICAL ATTENTION. KEEP OUT OF REACH OF CHILDREN.

**MATERIAL SAFETY DATA SHEETS (MSDS) ARE AVAILABLE AT WWW.TITANAMERICA.COM
OR UPON REQUEST AT 1-888-477-6274.**