

Binding Contract

These terms and conditions set forth the sole terms for the sale of goods and services by Plant Development Services, Inc., an Alabama corporation ("Plant Development Services"), and any contract made for the sales of goods and services by Plant Development Services is expressly conditional on Buyer's assent to the terms stated herein. Plant Development Services disclaims, objects and rejects any Buyer document, including a purchase order or confirming order that in any way adds to, varies, conflicts with or attempts to alter these terms. In the event of any dispute between these terms and any document of Buyer, these terms shall control.

Prices and Taxes

All prices are FOB Plant Development Services' place of business. All future orders will be confirmed immediately but are subject to applicable prices at the time of shipment. All prices are subject to change without notice. The amount of any local, state or federal tax levied on the goods is not charged by Plant Development Services due to its agricultural designation and shall remain the sole responsibility of Buyer. Packing and shipping charges are not included in the prices and will be added to the invoice at the time of shipment. Cash in advance accounts will prepay the packing/shipping charge. If actual shipping charges exceed our estimate, Buyer will be responsible for all additional charges incurred.

Minimum Order

Plant Development Services' minimum order is 2 trays of a cultivar and a total order of not less than 12 trays.

Credit Accounts

Orders will be accepted on a CASH IN ADVANCE basis only unless a written confidential credit application has been submitted to and approved by Plant Development Services. Processing time is approximately 6 weeks. If Buyer has established credit in the manner described in this paragraph, the payment terms are 2% 10 NET 30. Any portion of the price not paid in accordance with these payment terms shall bear interest from the due date in the amount of 1.5% per month or at a rate not to exceed lawful limits until paid. Payment on delinquent accounts is applied first to accrued interest. The early payment discount does not apply when credit cards are used for payment on credit accounts. Buyer shall reimburse Plant Development Services for all actual costs and attorneys' fees incurred in enforcing any term of this agreement. A \$25.00 charge will be assessed for all payments returned for insufficient funds.

Cash in Advance Accounts; Visa and Mastercard Accounts

Orders for future delivery will not be considered confirmed until a 25% deposit has been received by Plant Development Services. Payment in full must be received 30 days prior to shipping date. Orders for which timely payment in full is not received will be cancelled. Cancelled orders may be charged a processing and/or restocking fee. Visa and Mastercard will also be accepted as forms of payment. Credit card orders will also be required to make a 25% deposit at the time of order and the balance 30 days prior to shipment. Freight and packaging for credit card orders will be charged upon shipment.

Shipping and Delivery

All shipments are FOB Plant Development Services' place of business, and all risk of loss and damage to the goods passes to Buyer upon delivery of goods to the common carrier. Any dates or schedules that are specified for delivery of services or goods are stated only approximately, calculated from the date of receipt of Buyer's order. All plant varieties are not available for fall or dormant winter/spring shipment. Plant Development Services will attempt to deliver plants as close as possible to a requested ship date, but reserves the right to adjust the shipping date based on the quality and readiness of the plants. Each tray of plants is boxed, stacked on pallets or racked, and then stretch-wrapped, or netted together as one shipping unit. Palletized or racked shipments are normally a better value than UPS if Buyer's order exceeds 15 trays. Buyer must notify us in advance if unable to accept a pallet shipment. Plant Development Services ships UPS in customer designed boxes. Four trays per box, specially packed in an upright position travel to Buyer's door.

Shipping Damages Claims

All shipping damages must be noted at the time of receipt of goods from the carrier. Any box breakage or other obvious damages must be noted in writing on the carrier's bills of lading. Claim forms are available from the carrier.

Force Majeure

Plant Development Services shall not be responsible or liable for any delays in service completion due to any cause or condition beyond its control, including, without limitation, fire, flood, earthquake, labor dispute, shortage of materials or supplies, riot or other civil disturbance, war, acts of God or nature, accident, or any acts of any government.

Plant Royalties/Marketing Fees

Royalties/marketing fees on patented or trademarked plants are charged in addition to the listed plant price. Royalty/marketing fee charges are subject to change without notice.

Encore Azalea Brand

Upon the purchase of any patented or trademarked plants from Plant Development Services, Buyer agrees to the following: (a) To purchase and affix the trademark and/or patent tag, which properly identifies the plant, to each plant sold. (b) To clearly identify proper plant names including plant patent numbers and trademark names in all sales literature. (c) To feature the Encore Azalea branded product line and not affix other branded tags or co-brand with any other brand. (d) To not propagate or aid in the illegal propagation of any Plant Development Services plant without a license. (e) To sell Plant Development Services plants in approved Encore Azalea branded containers. NOTE: FEDERAL LAW STRICTLY PROHIBITS THE ASEXUAL PROPAGATION OF PATENTED PLANTS, WITHOUT A LICENSE. STATE AND/OR FEDERAL LAW PROHIBITS THE UNAUTHORIZED USE OF TRADEMARKS.

Limited Warranty

Plant Development Services warrants its plants to be true to name, to be inspected by the Alabama Department of Agriculture and certified to be apparently free of dangerous insects and dangerously contagious plant diseases, and to be in good living condition at the time of delivery to the common carrier. Buyer's remedy is limited, in the sole discretion of Plant Development Services, to replacement of any plants determined to be defective and covered by this limited warranty. Replacement plant material will be provided as soon as production plans permit and will be shipped by Plant Development Services at no cost to Buyer.

EXCLUSION OF OTHER WARRANTIES. THE LIMITED WARRANTY STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND PLANT DEVELOPMENT SERVICES HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR FUTURE GROWTH. NO WARRANTIES OR REPRESENTATIONS MADE AT ANY TIME BY ANY REPRESENTATIVE OF PLANT DEVELOPMENT SERVICES SHALL BE EFFECTIVE TO VARY OR EXTEND THE LIMITED WARRANTY OR OTHER TERMS.

Limitation of Claims for Defective Plants

No plant claims covered by the limited warranty may be brought against Plant Development Services more than ten (10) days after shipment. Claim notification must be in writing.

Limitation on Liability

Under no circumstance shall Plant Development Services' liability to Buyer exceed the value of this agreement. Under no Circumstances, whether arising in contract, tort, equity or otherwise, shall Plant Development Services be liable for consequential, incidental or special damages (including loss of use, lost profits, increased operating or maintenance expense), related to the provision of services or goods.

Applicable Law

This agreement shall be deemed made in Baldwin County, Alabama and shall be governed by Alabama law without regard to its conflict of laws principles.

Dispute Resolution

Any action arising out of it shall be governed by Alabama law and shall be brought in the District or Circuit Court for Baldwin County or in the U.S. District Court for Alabama. Buyer consents that such courts shall have personal jurisdiction over Buyer as to any such action and that the mailing of any process to Buyer's last known address by registered mail shall constitute lawful and valid service of process.

Miscellaneous

All notices shall be provided to the addresses set forth in this agreement and if none is provided, to the party's resident. Wherever possible, all terms shall be interpreted consistently. If a conflict arises as to price, payment or delivery, the typed terms on the front page shall control over printed provisions on this side. For any other conflict, these Terms and Conditions shall control. No usage in trade shall create a conflict with these terms. Plant Development Services reserves the right to correct any typographical error in this Agreement. If any provision is determined to be unenforceable, the remainder of this agreement shall remain in full force and effect.

Entire Agreement and Amendment:

This agreement contains all of the terms of the agreement between Plant Development Services and Buyer as to its subject matter and supersedes all prior oral or written representations, agreements, and other communications between Plant Development Services and Buyer. This agreement may be amended only by a writing Signed by Plant Development Services and an officer of Buyer.