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2010 Ecke Ranch Summer Poinsettia Products Terms and Conditions of Sale

The following Terms and Conditions of Sale apply to the 2010 Ecke Ranch Summer Poinsettia Program, related products and operations, and are in effect beginning shipweek May 24, 2010 and concluding shipweek September 27, 2010, unless otherwise noted. Please contact Paul Ecke Ranch (PER) Customer Service directly regarding clarification of any of the stated terms and conditions below or for additional questions you may have regarding compliance.

1. Pricing

2010 Ecke Ranch summer poinsettia season pricing is applicable to products used in the production of finished or bloomed plants only and is effective for shipweeks May 24, 2010 through September 27, 2010 (October 4, 2010 for Prefinished products).

Published pricing forms (*2010 Poinsettias Order Form – Standard, 2010 Poinsettias Order Form – Euro & DS, 2010 Poinsettias Order Form – Fischer, 2010 Poinsettias Order Form – Prefinished*) reflect the direct price per one invoiced tray (per pot for Prefinished).

All products are inclusive of Intellectual Property Fees (IPF; previously referred to as “royalty”).

All prices are F.O.B. point of origin (freight is additive).

Prices are subject to change without notice.

2. Discounts

Early Order Discount (EOD)

For all non-quoted orders received on or before end-of-business of February 5, 2010, a 5% Early Order Discount is available on Unrooted, Rooted, and Callused poinsettia products; Specialty Collection varieties and Prefinished products are not subject to the Early Order Discount.

Volume Discounts

Volume discounts are determined annually and are based on a customer's total purchase volume from the previous summer poinsettia season. Volume discounting is not available for Specialty Collection varieties and Prefinished products.

Prompt Pay Discount

A 2% early pay discount is allowed on product pricing only if paid within ten (10) days of invoice. This discount is applied only to the cutting price not inclusive of Intellectual Property Fee, tag, or freight charges. Please refer to the discount value on the bottom of each invoice.

3. Payment Terms

For customers with terms, payment is due thirty (30) days from invoice date unless otherwise stated.

For prepay customers, payment is due prior to plant date based on an estimated invoice. Standard terms apply for any balances.

To arrange for credit card payment, please contact Accounts Receivable at:
accountsreceivable@eckeranch.com.

All customers will be required to pay interest on any amounts outstanding after the 30-day post-invoice period. Interest on outstanding balances shall be calculated at a rate of 1.5% per month.

4. Shipping

For customers with approved credit, freight is prepaid by PER and added to the invoice at line item level.

PER shall not be liable for damages or costs arising from the non-delivery or late delivery of goods due to acts of God, riots, insurrection, strikes, labor difficulties, and shortages of material, government regulations, or any other reason beyond our reasonable control.

Air Shipments

Customers are advised not to use air shipment for unrooted cuttings within the continental United States. If this option is selected, a quote must be obtained from PER Customer Service. PER is not responsible any damage resulting from flight delays or box heating or freezing that occurs in transit.

No truck delivery service is available from the airport to the customer. Customers are responsible for coordinating shipment pick up with air carriers. Air freight minimums will apply.

Air freight claims must be made by notifying PER Customer Service within forty-eight (48) hours after receipt of shipment. In addition, a written intent to file a claim against the air carrier must be filed within eight (8) days after receipt of shipment.

For quotes on shipments to Europe, Asia, and Africa, please contact PER Traffic at:
traffic@eckeranch.com.

Shipping Conditions

The following variables may prohibit PER from delivering your order based on your preferences for mode of transportation, carrier or service level: weather conditions, flight capacity or delay, flight schedules, truck capacity, unavailability of preferred parcel service level to specific zip codes, holiday operation, embargoes or backlog of freight. In the event your preferred carrier cannot be utilized, PER will attempt to provide the best and most reliable alternative service in delivering your orders. This may result in a freight rate higher than those stated in the *2010 Summer Poinsettias Freight Rates* document. The final routing of your order will be defined one week prior to ship week.

In the event severe weather conditions develop that may affect the quality of your delivered product, PER will provide the following options to customers:

- Delaying the shipment for better weather conditions.
- Upgrading of service levels to reduce the time of transit. Customers will be responsible for any additional cost for the new service level.
- Delivery to the nearest parcel service depot. Please contact your broker for the tracking number or refer to our traffic information on-line at: www.eckeglobal.com/EckeTraffic/login.aspx. Customers are responsible for coordinating shipment pick-up with the selected service depot. Claims on damage resulting from unattended shipments at depot locations will not be honored.

All individual orders must be shipped to a single address and have the same delivery date.

Due to shipping and handling considerations, the combination of cutting types into a single box is not permitted.

Minimum Requirements

Shipping rates are based on full box tray quantities for a single ship date and the number of trays per box shipped varies according to product type ordered. Tray totals cannot be accumulated over several ship dates to meet minimums. Individual shipments not meeting stated minimums will be subject to a charge that reflects the difference between the stated minimum shipping charge and the total line item shipping cost for the order. Please see the *2010 Summer Poinsettias Freight Rates* document for minimum freight charges and box volume details.

5. Invoicing

Invoices will be mailed, emailed, or faxed within five to seven (5 to 7) business days from the Monday of ship week.

6. Claims / Returns

All claims are processed through PER headquarters in Encinitas, California.

All claims must be submitted in writing within eight (8) business days of receipt of the shipment.

Well documented claims greatly assist in PER's prompt processing of each claim. The following documentation is required in order to process a claim:

- Purchase order number (when applicable).
- Ecke confirmation or invoice number.
- Statement describing issue(s).
- Quantities listed by varieties.
- Date product was received.
- Photographs and tag with barcode – required for claims relating to quality and freight damage.
- Photograph of box label (red & white) and tray label – required for claims relating to packing issue(s).

Requests for Proof-of-Delivery must be submitted within sixty (60) days of the ship day. All claims for lost or misrouted product will be denied after sixty (60) days.

To protect the integrity of our certified production systems, no returns are accepted.

7. Cancellations

Restrictions

Unrooted Orders: Cancellation or changes of Unrooted orders can be made no later than the production day prior to scheduled shipment.

Rooted and Callused Orders: All order cancellations or changes for Rooted and Callused products must be made no later than five (5) weeks and four (4) weeks prior to shipment, respectively. No cancellations or changes of Rooted or Callused products are allowed after plant date without preapproval by Customer Service and will be subject to a restocking fee (see “Restocking Fees” below).

Prefinished Orders: Due to the long lead time required for Prefinished products, cancellations without penalty **must be made prior to week 21**. Cancellations after this date cannot be made without preapproval by Customer Service and will be subject to a restocking fee (see “Restocking Fees” below).

Restocking Fees

In the event that an exception is made for cancellations after plant for Rooted, Callused, or Prefinished products, all orders will be subject to the following restocking fees:

- Rooted Product (per tray): \$20.00
- Callused Product (per tray): \$10.00
- Prefinished Product (per pot): 50% of invoiced cost

Please contact Customer Service for additional information.

8. Warranty

All orders are subject to crop conditions at time of shipment and confirmation by Paul Ecke Ranch. Paul Ecke Ranch warrants, to the extent of the invoice price, that the plant material is sold as described in the *2010 Ecke Ranch Poinsettia* catalog, within recognized tolerances.

Paul Ecke Ranch makes no other warranty, express, or implied, concerning the cuttings and expressly disclaims any and all other warranties, including any warranty of the merchantability or fitness for customer's particular purpose. Customer's sole and exclusive remedy for any breach of this order agreement, including but not limited to any claim under the warranty in this paragraph, shall be return of the price paid for the affected cuttings. By purchasing products from Paul Ecke Ranch, Customer acknowledges and agrees that the maximum liability of Paul Ecke Ranch for any other claim of defective or non-conforming cuttings, non-delivery, late delivery, or otherwise, shall be limited to the price paid for the affected cuttings. Customer further acknowledges no entitlement to recover any other claimed consequential damages.