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**Appendix F - Terms & Conditions**

**January 2016**

**TERMS AND CONDITIONS.** Unless accepted in writing by the corporate home office of the Company, no term or condition (including but not limited to all terms and conditions set forth in any offer, purchase order, confirmation or other document) other than the terms and conditions set forth in this Invoice shall be binding upon Company. All other terms and conditions are hereby explicitly rejected and acceptance is limited to the terms and conditions herein stated. All conflicts with the terms and conditions herein shall be resolved in favor of this Invoice. Upon acceptance of the subject goods and services, Customer thereby acknowledges and agrees that the prices and charges set forth in this Invoice for the goods and services are the reasonable value for such goods and services and the other terms and conditions herein set forth are consistent with the parties' prior course of dealing, prior course of performance and/or usage of trade. If any term or condition herein is not acceptable, Customer shall give Company written notice thereof within ten (10) business days after receipt of the respective goods and services and if not, Customer shall be deemed to have unconditionally accepted the respective goods and services upon and subject to the terms and conditions hereof.

**PRICING POLICY.** Spears® maintains a policy to try and provide stable pricing for its products which can reasonably be relied upon by customers and end users. Irrespective of such policy, unforeseen events could occur which may necessitate immediate price increases without notice and/or cause interruption of Spears® ability to furnish products on a timely basis. Unforeseen events may be destructive acts of nature, labor disruptions, raw material or power shortages. In the event of the situations described, Spears® cannot be held liable for effecting immediate price increases or for costs incurred due to delays in delivery of products.

**SPECIAL ORDERS.** Orders for non-current products or exceptional runs of current products are custom orders, and as such, cannot be canceled or returned by Customer except upon Company's prior written approval. Company reserves the right to charge back Customer all costs incurred in the cancellation or return of such custom orders, including without limitations the charges applicable to returned goods.

Not all of the Fabricated Fittings listed in this catalog are carried in Spears® Distribution Center inventories. When ordering Fabricated Fittings, please check your servicing Distribution Center for availability. ALL ORDERS FOR NON-STOCKED Fabricated Fittings are NON-CANCELABLE and NON-RETURNABLE.

**CUSTOM PRODUCTS.** Orders for custom-made products are accepted only under the following conditions:

- A. Determination of the custom products' suitability for the user's intended application is the sole responsibility of the purchaser or end user.
- B. Spears® warranty for custom products is strictly limited to workmanship. Buyout components, devices, raw materials, etc. are covered by the warranties of those manufacturers.
- C. Products made on a custom basis are non-returnable once produced and shipped. Customers will be charged for all expenses incurred up to the time of notification to Spears® to cancel a custom product order.
- D. Prior to production of custom products, the following documents must be submitted to Spears®:
  - Customer's signed acceptance of Spears® part drawing submittal;
  - Customer's purchase order acknowledging acceptance of Spears® custom product conditions and any other conditions as may be set forth in the Spears® custom product quotation.

**PACKAGING.** Spears® standard method of packaging will apply for all orders shipping via normal surface means at no additional charge.

**SPECIAL PACKAGING.** Packaging charges will be invoiced on orders for

- Custom Products;
- Any packaging requirement specifications submitted to Spears® that exceed Spears® standard methods of packaging.

**MINIMUM INVOICE.** \$50.00 Net

**SALES TAX.** Spears® is required to charge applicable national, state, and local tax on all purchased items for which a U.S. sales tax exemption certificate for the Purchaser is not on file. When ordering, please indicate clearly which items are tax exempt and provide the required valid resale certificate and/or number.

**TERMS OF PAYMENT.** Terms of payment are 2% 35 days, net 45 days from date of invoice, past due at 46 days on open accounts unless otherwise agreed in writing. Company's monthly cut-off is the 25th, and as such, all invoices dated after the 25th will be considered the next month's business.

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Freight charges are net and not subject to any volume adjustment. THERE IS NO 2% CASH REBATE ON C.O.D. OR C.I.A. ORDERS. Company reserves the right to levy a late charge on any past due balances equal to the lower of one point five percent (1.5%) per month or the highest rate permitted by law. Customer agrees to pay all costs of collection incurred by Company, including all reasonable attorney's fees and costs but in no event less than Seven Hundred Fifty Dollars (\$750) and costs, regardless of whether formal legal action is instituted. Customer agrees to honor and to pay this Invoice according to the terms of payment contained herein. All payments must be made in U.S. legal currency and by readily available funds. In the event shipment is made hereunder in multiple lots, payment for each lot received shall be made in accordance therewith. Furthermore, Customer agrees not to debit or offset against any amount due Customer from Company on account of any claim or defense that Customer now has or may have in the future against Company. In the event Customer's account is assigned to a collection agency or commercial lender, Customer also agrees not to assert any such claims or defenses against its account with such collection agency or commercial lender.

**FREIGHT AND DELIVERY.** All orders are FOB point of shipment. Title of goods and risk of loss passes to Customer when order is picked up by freight carrier. Company shall determine the type of container and arrange for suitable packing of the goods for transport and delivery. Company will attempt to expedite all back-ordered items. All back-ordered items will be subject to product availability and Company does not assume any liability for any damage or additional cost resulting from non-delivery or late delivery.

**FREIGHT TERMS:**

**Prepaid and Allowed: Pipe Excluded. (Freight Charges Borne by Spears®).** Freight charges will be prepaid and allowed on customer orders for Spears® products when the following conditions are met (see exclusions):

- A. Shipment is to a single destination from the designated Spears® servicing Regional Distribution Center.
- B. Shipment is by surface means via a freight carrier selected by Spears®
- C. \$2,000.00 USD net order value is met for shipments within the Continental USA and to nearest port for Alaskan shipments. Customer is responsible for freight from the port to the Alaskan destination.
- D. \$2,500.00 USD net order value is required for exclusive orders of PVC-DWV Molded Fittings (Mixed orders of PVC-DWV and other Spears® products qualify for \$2,000.00 prepaid and freight-allowed). Alaska orders ship to nearest port. Customer is responsible for freight from the port to the Alaskan destination.
- E. \$3,000.00 USD net order value is met for shipments to Hawaii.
- F. \$3,000.00 USD net order value is required for exclusive orders of PVC-DWV Molded Fittings to Canada. (Mixed orders of PVC-DWV and other Spears® products qualify for \$2,500.00 prepaid and freight-allowed.)

**Prepaid and Allowed — Pipe Included (SEE ADDITIONAL CONDITIONS BELOW\*):**

- A. Pipe Only, \$6,000.00 Continental USA and nearest port for Alaska; \$7,000.00 Canada.
- B. Pipe, with qualified Spears® product, \$5,000.00 Continental USA and nearest port of Alaska; \$6,000.00 Canada.
- C. Hawaii — No Prepaid and Allowed Shipments.

**\*Pipe Shipments.** In order to contain shipping costs, the following conditions have been implemented:

- A. Pipe orders for 10,000 pounds or more will generally be shipped on flatbed trailers at Spears® discretion and expense.
- B. Orders for smaller quantities of pipe, which qualify for Full Freight Allowed shipment, will generally be shipped in closed containers.
- C. Customers may request flatbed delivery of any shipment of pipe. However, despite an order qualifying for FFA under our normal terms, any increase in shipping cost over the cost of a closed truck will be invoiced to the customer. If requested, customer will be advised of this cost prior to shipment. It should also be noted that, due to limited availability of flatbed trailers in some areas, delays in shipping and delivery may occur.



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**Exclusions.** The following products do not qualify for freight allowance regardless of net order value amount or if included in an order with other Spears® products. Actual freight charges will be billed on orders for these products. Upon request, a freight charge estimate will be provided on inquiries or orders for these products.

- Fabricated Duct Fittings and Duct Pipe
- Custom Fabricated Manifolds
- Custom Molded & Fabricated Fittings
- Custom Manual & Actuated Valves
- Large Quantities Fabricated Fittings
- Neutralization Tanks

**Prepaid and Charged Back (Charges Borne by Customer).** All orders not meeting the requirements for freight charges being allowed will be invoiced with the carrier's actual freight charges. Exceptions to this policy are noted below and will be invoiced the actual freight charges incurred:

- A. All orders shipping to Alaska or Hawaii with a net value less than \$2,500.00. (\$3,000.00 for PVC-DVW exclusive orders.)
- B. All orders shipped to Hawaii via customer's requested carrier.
- C. Customer-requested special freight regardless of order's net value (Air Freight, Bus, etc.).
- D. Original orders and backorders regardless of net value that are shipped at the customer's request from a Spears® warehouse other than the designated servicing warehouse.
- E. All C.O.D. shipments not meeting minimum for full freight allowance.

**Freight Collect:**

- A. All orders shipping to CANADA with a net value of less than \$2,500.00 USD. (\$3,000.00 for PVC-DWV exclusive orders.)
- B. As requested by the customer.
- C. Customer-requested routings for shipment of goods via a non-contracted freight carrier (not normally used by Spears® Manufacturing Company) regardless of value.

**Freight carrier fees** and small package carrier fees on all C.O.D. shipments must be paid by the customer upon delivery of the order. FREIGHT TERMS FOR ORDERS SHIPPED OUTSIDE THE CONTINENTAL USA, OTHER THAN THOSE LOCATIONS NOTED ABOVE, WILL BE QUOTED ON A "PER ORDER BASIS".

**INSPECTION AND REJECTION.** Customer shall inspect all goods promptly upon delivery. If Customer does not object in writing, stating all its reasons, to the goods as delivered and/or the services provided within ten (10) days of delivery, Customer shall be deemed to have irrevocably accepted the goods and services as satisfactory and in full compliance with its requirements, and to have waived all objections thereto which may be patently observable by a thorough and reasonable inspection. In the event Customer timely rejects any of the goods or is otherwise entitled to reject any of the goods, Customer agrees to and shall hold such rejected goods, free of charge, at Customer's place of business until Company has been notified in writing of the rejection and has had a reasonable opportunity to arrange for suitable transportation. Customer shall, under no circumstance, be entitled to resell, destroy, or discard any rejected goods without the prior written consent of Company.

**CARRIER CLAIMS.** Company will not be liable for any damage, loss or delay caused by any freight carrier. Claims for damaged goods, suspected damages, container shortages or pilferage within the container on delivery must be so noted on the carrier's delivery receipt and the carrier's claims representative should be notified immediately. Upon receipt of this Invoice, Customer shall make timely payment to Company notwithstanding any claims due to any carrier's responsibility. Claims proven to be the responsibility of Company shall be resolved as expeditiously as possible through replacement or credit of goods involved.

**RETURNED GOODS.** See Distributor Program Sheet for details.

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**FORCE MAJEURE.** Spears® shall not be liable for any delay in or impairment of performance resulting in whole or in part from Acts of God, severe weather conditions, labor disruptions, governmental decrees or controls, insurrections, war risks, shortages, inability to procure or ship product or obtain permits and licenses, supplies or raw materials, or any other circumstances or causes beyond the control of Spears® in the conduct of its business.

**RECOMMENDATIONS FOR INSTALLERS AND USERS.** PLASTIC PIPING SYSTEMS SHOULD BE ENGINEERED, INSTALLED, AND OPERATED IN ACCORDANCE WITH INDUSTRY ESTABLISHED DESIGN AND ENGINEERING STANDARDS AND PROCEDURES. SUITABILITY FOR THE INTENDED SERVICE APPLICATION SHOULD BE DETERMINED PRIOR TO INSTALLATION. WITH RESPECT TO SOLVENT WELD CONNECTIONS, THE USE OF SPEARS® QUALITY PRIMER AND SOLVENT CEMENT FORMULATED FOR THE TYPE OF CONNECTION IS RECOMMENDED, WITH THE CORRECT SIZE APPLICATOR. READ AND FOLLOW ALL OF THE SOLVENT CEMENT APPLICATION INSTRUCTIONS. WITH RESPECT TO THREADED CONNECTIONS, COMPANY RECOMMENDS THE USE OF SPEARS® BLUE 75™ THREAD SEALANT. CHOICE OF OTHER PRIMERS, SOLVENT CEMENTS, OR THREAD SEALANT IS AT THE DISCRETION OF THE INSTALLER. THE MANUFACTURER'S LITERATURE FOR THESE PRODUCTS SHOULD BE REVIEWED FOR PROPER SELECTION AND APPLICATION PROCEDURES. WARNING: SOME PIPE JOINT COMPOUNDS OR PTFE PASTES MAY CONTAIN SUBSTANCES, WHICH COULD CAUSE STRESS CRACKING TO PLASTIC. ONE (1) OR TWO (2) TURNS BEYOND FINGER TIGHT IS GENERALLY ALL THAT IS REQUIRED TO MAKE A SOUND PLASTIC THREADED CONNECTION. UNNECESSARY OVER TIGHTENING WILL CAUSE DAMAGE TO BOTH PIPE AND FITTING. **CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR INFORMING ALL INSTALLERS AND OTHER END USERS OF THE FOREGOING AND ALL OTHER PRECAUTIONARY INSTRUCTIONS AND DISCLOSURES.**

**LIMITED LIFETIME WARRANTY.** Except as otherwise mandated by law or herein provided, Spears® Manufacturing Company ("Company") warrants Standard Catalog Products ("Products") which have been directly manufactured by them to be free from defects in material and workmanship for as long as the original intended end user of the Products ("End User") retains ownership and possession of the Products and complies with this Warranty ("Warranty Period"). Each other person or entity acquiring or employing the Products, including buyers, contractors and installers ("Buyer") and End Users ("Buyer/End User") agrees that this Warranty shall be effective only during the Warranty Period so long as the Products are used solely for the normal purposes for which they are intended and in conformance with industry established standards, engineering, installation, operating, and maintenance specifications, recommendations and instructions including explicit instructions by the Company; the Products are properly installed, operated and used, and have not been modified; and all the other terms of this Warranty are complied with. Any violation thereof shall void this Warranty and relieve Company from all obligations arising from this Warranty and the Products.

Upon receipt or discovery of any Products that appear questionable or defective each Buyer/End User shall promptly inspect and return any such Product to the Company at 15853 Olden Street, Sylmar, California 91342, accompanied by a letter stating the nature of any problems. If the Products are determined by Company to be defective in materials or workmanship directly provided by Company, Company, at its sole option, may either repair or replace the defective Products, or reimburse applicable Buyer/End User for the cost of such Products. The applicable Buyer/End User shall bear all applicable shipping costs. THIS SHALL BE BUYERS/END USERS' SOLE REMEDY. EACH BUYER/END USER AGREES THAT COMPANY WILL NOT BE RESPONSIBLE FOR ANY OTHER OBLIGATIONS RELATING TO THE PRODUCTS, INCLUDING ANY OTHER MATERIALS OR LABOR COSTS, LOSS OF USE OR ANY OTHER ITEM OR FOR ANY DELAYS IN COMPLYING WITH THIS WARRANTY BEYOND COMPANY'S REASONABLE CONTROL.

COMPANY SHALL NOT BE LIABLE FOR, DOES NOT ASSUME, AND EXPRESSLY DISCLAIMS, ANY LIABILITY, RESPONSIBILITY AND DAMAGES: DUE TO ANY BUYER/END USER'S FAILURE TO COMPLY WITH THIS WARRANTY, INCLUDING IMPROPER INSTALLATION, USE OR OPERATION; USE WITH PRODUCTS FROM OTHER MANUFACTURERS THAT DO NOT MEET ASTM OR OTHER APPLICABLE PRODUCT STANDARDS; IMPROPER CONTROL OF SYSTEM HYDRAULICS, IMPROPER WINTERIZATION PROCEDURES, IMPROPER VOLTAGE SUPPLY, CONTACT WITH INCOMPATIBLE MATERIALS OR CHEMICALS, EXCAVATION/DIGGING, EXCESSIVE WEIGHT, AND VANDALISM; DUE TO REASONABLE WEAR AND TEAR AND DUE TO ANY ACTS OF NATURE, INCLUDING LIGHTNING, EARTHQUAKES, GROUND MOVEMENT, FROST HEAVE, OR FLOODS.



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**COMPANY EXTENDS ONLY THIS WARRANTY AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER IMPLIED OR OTHERWISE EXPRESSED, WHETHER ORAL, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OR AFFIRMATIONS FOR SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO AFFIRMATION BY COMPANY OR ANY OF ITS REPRESENTATIVES, BY WORDS, CONDUCT OR OTHERWISE, SHALL CONSTITUTE A WARRANTY. THIS WARRANTY MAY NOT BE TRANSFERRED, EXTENDED, ALTERED OR OTHERWISE MODIFIED IN ANY MANNER, EXCEPT BY WRITTEN AGREEMENT SIGNED BY COMPANY.**

**BY ITS ACCEPTANCE OF THE PRODUCTS, EACH BUYER/END USER EXPRESSLY WAIVES ALL OTHER LIABILITY OR OBLIGATION OF ANY KIND OR CHARACTER OF COMPANY, INCLUDING LIABILITY PREDICATED UPON CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE GROUNDS, AND ALL, IF ANY, DAMAGES AND LOSSES AS A RESULT THEREOF, INCLUDING ALL, IF ANY, COMPENSATORY, GENERAL, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES. WITH RESPECT TO SUCH WAIVERS, EACH BUYER/END USER EXPLICITLY WAIVES CALIFORNIA CIVIL CODE §1542 WHICH STATES "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THIS RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY ADVERSELY AFFECTED HIS SETTLEMENT WITH DEBTOR" AND ALL OTHER SIMILAR STATUTORY, COMMON AND CASE LAW RIGHTS, DEFENSES AND LIMITATIONS.**

Having previously independently inspected the Products, or a sample, as fully as desired, or having the opportunity to and having not done so, upon acceptance of delivery of the Products, and except as otherwise herein explicitly provided, each Buyer/End User by acceptance or use of the Products accepts them in their "AS IS" and "WITH ALL FAULTS" condition without any other warranty, expressed, implied or otherwise, and accepts and assumes the entire risk and cost of all servicing, remediation and consequences thereof. This Warranty shall be governed by California law and any unenforceable provisions severed without affecting the remaining provisions. As used herein, "including" includes "without limitation."

**MATERIALS OF TRADE.** Purchaser represents that it is purchasing goods as its "materials of trade" as defined in the Hazardous Materials Regulations in Title 49 of the Code of Federal Regulations. It further represents that the goods shall be used in direct support of its business, which is not transportation, and that such goods shall not be resold or transported in a vehicle other than the one owned by itself unless it has properly packaged, documented and declared such shipment to the carrier.

**INTERPRETATION.** Except as otherwise explicitly provided herein, this Invoice shall constitute the entire and final understanding of the parties, and shall supersede all prior understanding, as to the subject matter herein stated. Each party hereby acknowledges that there is no other, and that it is not relying on any other, statement, representation or agreement with respect to this Invoice not herein stated or referred to. This Invoice may be modified or amended only in writing signed by the party against whom enforcement of the amendment or modification is sought. This Invoice shall be interpreted under and governed by the laws of California, except as preempted or otherwise controlled by applicable Federal law in which case such Federal law shall apply. Time is of the essence to this Invoice, and unless stated otherwise, the reasonable time required during which to perform any act shall be thirty (30) days after demand. Except as herein explicitly otherwise provided, this Invoice shall not be varied, supplemented, qualified or interpreted by any prior or subsequent oral understanding, course of dealing or performance between the parties, or by any usage of trade. No party shall be entitled to any advantage due to another party's legal representation or preparation of this Invoice. As used herein, certain capitalized words shall have the meaning as herein provided. Any conflict between said capitalized words and any other meaning shall be resolved as herein provided. To the extent that any provision of this Invoice is declared unenforceable, ambiguous, severable or contradictory, and to the extent it is commercially reasonable, said provision and this Invoice shall be deemed amended with such terms and conditions as to effect and enforce the intention, terms and conditions of this Invoice.

**REMEDIES.** Except as herein otherwise provided, all remedies provided for herein or by law or equity shall be cumulative and non-exclusive and the exercise of one shall not be deemed a waiver of any other remedy. Notwithstanding anything to the contrary, before any default or breach can be declared hereunder against any party and to the extent written demand has not been so made, at least a ten (10) business day prior notice and opportunity to cure demand shall be made of such a party.

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Further, provided that in the case of a non-monetary default or where such cure reasonably requires additional time to cure, if such a party promptly commences within the notice period and thereafter diligently pursues the same, such party shall be entitled to complete such cure. Except for any monetary obligations, neither Buyer nor Company shall be considered in default in the performance of its obligations herein to the extent that performance of such is delayed or prevented due to causes beyond the control of said party, including but not limited to acts of God, war, revolution, civil commotion, blockade or embargo, any law, order, regulation or ordinance of any government, fires, floods, unavoidable casualties, strikes, and labor disputes; provided that within ten (10) business days of such cause, party required to perform hereunder provides the other party with written notice of such cause and the estimated time of the delay or in the case performance is prevented, the termination of this Invoice or the respective part thereof. **THE PARTIES AGREE AND ACKNOWLEDGE THAT ANY PROVISION OF THIS INVOICE WHICH SHALL SEEK TO LIMIT ANY PARTY'S RIGHT TO ANY REMEDY OR RECOVERY SHALL BE INTERPRETED TO THE EXTENT NECESSARY AND MADE ENFORCEABLE AS EITHER A LIMITATION OF REMEDIES OR LIQUIDATED DAMAGES. EACH PARTY ACKNOWLEDGES THAT, AS APPLICABLE, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES IN THE EVENT OF LIQUIDATED DAMAGES AND THAT SUCH LIMITATIONS OR LIQUIDATED DAMAGES PROVISIONS HAVE BEEN REASONABLY DETERMINED AND UNDER THE CIRCUMSTANCES ARE FAIR AND EQUITABLE TO EACH PARTY.**

**WAIVER.** The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent nonperformance of any such term or condition by the other party.

**JURISDICTION AND LITIGATION.** The parties agree that any disputes concerning this Invoice and all goods and services covered by this Invoice shall be litigated only within the County of Los Angeles, California which the parties agree for jurisdictional purposes is the place where this Invoice has been entered into and where it will be substantially performed. All causes of action related to this Invoice and the covered goods and services shall be commenced within two (2) years of the date of the respective shipment or providing to Customer or are all hereby waived.

**NOTICES.** All notices, demands, acknowledgements, approvals, waivers, responses and any other instruments of any kind (collectively "Notices"), which any party may be required, or desires, to be provided, or served on any party shall be written, dated, state its purpose and the time during which to respond, and served on the respective parties at the addresses set forth in this Invoice, or as may otherwise be subsequently directed in writing. Service shall be deemed made if personally at the time of such service; if by certified or registered mail within seventy-two (72) hours after deposit in the United States mail, postage prepaid and properly addressed, and if by telegraph, telefacsimile, telex or other carrier service (such as Federal Express, DHL, etc.) at the time the machine or agency confirms delivery, provided that within three (3) business days thereafter the original thereof shall have been sent by certified mail (as herein provided) to the party to whom such Notice was directed.

For additional information, contact Spears® Manufacturing Company Regional Distribution Center.  
Possession of these Terms & Conditions shall not be construed as an offer to sell Spears® products.