

Gheen Terms & Conditions of Sale

These terms and conditions (Sales Terms) cover all sales of goods and services by Gheen Irrigation Works, Inc., doing business as Gheen Irrigation Works, Lake-Eugene, Lake-Lubbock and MWH Fabrication (Gheen).

Offer. Gheen offers all products for sale on the terms and conditions set out below. Other terms such as products purchased, quantity, price and delivery date shall be as agreed between Gheen and the buyer.

Acceptance. Gheen expressly conditions acceptance of its offer to sell on acceptance of these Sales Terms. Gheen hereby objects to any different or additional terms contained in any response to this offer. By accepting products shipped by Gheen, the buyer accepts these Sales Terms.

Warranty. All products purchased from Gheen are subject to Gheen's Limited Warranty which provides that the sole and exclusive remedy in the event of breach is repair or replacement of defective parts during the warranty period and in no event will Gheen be liable for consequential damages. Copies of Gheen's Limited Warranty is set out in Gheen's current catalog and can also be found at www.GheenIrrigation.com/warranty.

Delivery. Gheen reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve buyer of buyer's obligations to pay for delivered installments and accept and pay for remaining deliveries.

Shipping & Risk of Loss. All products are sold *F.O.B.* Gheen's plant. The buyer is responsible for shipping costs and risk of loss.

Corrosion Notice. Corrosion in pipes and components has become a major concern. It appears to be caused primarily by current environmental and chemigation practices. Gheen has never, and will not, warrant or cover any claims for corrosion damage to pipes or components. The buyer should test water conditions and consult with manufacturers of products that will come in contact with pipes and components to determine their compatibility.

Payment. Payment is due 30 days after the invoice date (Net 30). If paid within 15 days of the invoice date, a 2% cash discount is allowed on product purchases, not including freight, custom galvanizing or powder-coating (2% 15 days). Payments are timely when postmarked on or before the due date or discount date. If discounts are taken on payments that are not timely, the discount taken will be left as a remaining balance and will be subject to finance charges. Past due invoices are subject to a minimum finance charge of \$10 or 18% of the past due balance, whichever is greater. Any check returned for nonsufficient funds (NSF) will be subject to a \$35 handling charge. All claims for corrections and deductions must be made within 10 days of receipt of goods.

Prices & Quotations. All prices quoted by Gheen and listed in Gheen's catalog are in United States Dollars (USD). All prices, including quoted and catalog prices, are subject to change at any time without notice.

Minimum Orders. All orders must be \$50 or more, after any discounts and before shipping charges.

Default. The failure of buyer to perform any obligation or to pay any amount or installment required when due under any agreement between buyer and Gheen shall constitute a default. In the event of a default, or if, in Gheen's opinion, there is a material adverse change in buyer's financial condition, Gheen shall have the right to exercise one or more of the following remedies: (1) Suspend further shipments and installments to buyer. (2) Cancel the sale without prejudice to Gheen's other remedies. (3) Require buyer, at its expense, to promptly clean any and all fittings and equipment and return to Gheen. (4) Enter upon the premises where the fittings or equipment are located, and without notice to buyer, and with or without legal process, take possession of the fittings and equipment without liability to Gheen. (5) Proceed by appropriate action at law or in equity to force performance by buyer and to recover damages for breach. (6) Recover all costs of collection, attorney fees, expenses incurred in retaking

possession of fittings and equipment, the replacement cost of fittings and equipment which buyer fails to return to Gheen and all other amounts then payable by buyer to Gheen. The remedies described above shall be cumulative and in addition to any other remedy referred to above or otherwise available to Gheen in law or in equity.

Delay. Gheen shall not be liable for failure to deliver or delays in delivery caused by events or conditions beyond Gheen's control. This includes, without limitation, strikes, lockouts, fires, floods, embargoes, war or other outbreak of hostilities, acts of God, inability to obtain shipping space, machinery breakdowns, delays of carriers or suppliers, casualty losses and domestic or foreign or governmental acts or regulations. In the event of any delay in delivery due to a cause beyond Gheen's control, the time for delivery shall be extended for a period of 60 days. If delivery is not made within this 60-day period, the contract shall be deemed cancelled without liability to either party. Buyer will pay for all goods received and costs incurred prior to cancellation.

Waiver. All buyer claims shall be deemed waived unless made in writing, delivered to Gheen within ten (10) days after receipt of goods by buyer.

Errors & Omissions. Gheen reserves the right to correct clerical or stenographic errors or omissions in any sales transaction.

Taxes. Unless otherwise stated on the invoice for any sale, the agreed purchase price does not include any sales or use tax. In the event that any sales or use tax is imposed on Gheen for any sale, buyer agrees to reimburse Gheen upon invoice from Gheen in the amount of liability incurred by Gheen as a result of the tax.

Safety Recommendations. All products purchased from Gheen shall be used in accordance with Gheen's *Safety Recommendations*. The *Safety Recommendations* are set out in Gheen's current catalog and can also be found at www.GheenIrrigation.com/safety. Buyer and all subsequent purchasers shall deliver a copy of the *Safety Recommendations* to each of their buyers.

Attorney Fees. In the event any action or legal proceeding is commenced to enforce or interpret any provision of these Sales Terms, the prevailing party shall be entitled to recover in the proceeding, or any appeal, a reasonable attorney fee to be set by the court, including a reasonable sum for post-judgment collection, in addition to the costs and disbursements allowed by law.

Entire Agreement. These Sales Terms and Gheen's *Limited Warranty* constitute a final and complete statement of the agreement between the parties and fully supersede all prior agreements or negotiations, written or oral.

Cancellation & Return. Orders which have been sent to production cannot be canceled except with Gheen's written consent and upon terms that will reimburse Gheen for labor, materials, energy, overhead and other costs. All returns must be authorized in advance and shipped to Gheen *F.O.B.* Gheen's plant. The buyer will retain ownership of the goods, pay shipping costs and be responsible for risk of loss until received by Gheen. Saleable merchandise will be subject to a 50% restocking fee. Returned goods may also be subject to a rework charge if Gheen's inspection upon receipt of the goods shows that the parts are not in saleable condition. One year after goods have been shipped by Gheen, they may not be returned. Custom items may not be returned or canceled. Requests for return must refer to the original invoice number and date of purchase.

Negotiation & Arbitration. Any claims between the parties arising out or relating in any way to these Sales Terms or matters set out in these Sales Terms shall be resolved by direct personal negotiations. If that is not successful, the claim shall be resolved by arbitration administered by the American Arbitration Association in Eugene, Oregon, under its then current Commercial Arbitration Rules.