

Buyer Agreement

*For Sales in the Kingdom of Cambodia
Last updated 08 February 2017*

IMPORTANT: Additional information applicable to the *Sale* may be set out in the online *Catalogue of Products* for the *Sale*. You should be alert to the possibility of changes.

1. THE CONTRACT

1.1. These terms govern the contract between *The Stove Auction* and the *Buyer*, being the person to whom a *Lot* has been *Knocked Down* by the *Auctioneer*.

1.2. Throughout this *Agreement* *The Stove Auction* is referred to as "we" or "us" or "our" and the *Buyer* is referred to as "you" or "your".

1.3. The Glossary of Terms contained in Appendix 1 are incorporated into this Agreement. Where words and phrases which are defined in the Glossary of Terms are used in this Agreement, they are printed in italics. Reference is made in this Agreement to information published in the online Guidelines for Buyers, published in the online *Catalogue of Products* for the *Sale*, and where such information is referred to it is incorporated into this Agreement.

1.4. Except as specified in paragraph 0 of the online Guidelines for Buyers the *Contract for Sale* of the *Lot* between you and the *Seller* is made on the fall of the Auctioneer's hammer in respect of the *Lot*, when it is *Knocked Down* to you. At that moment a separate contract is also made between you and *The Stove Auction* on the terms in this *Buyer Agreement*.

1.5. We, *The Stove Auction*, facilitate the *Sale* of Property between you and the *Seller* and are not answerable or personally responsible to you for any breach of contract or other default by the *Seller*.

1.6. Our personal obligations to you are governed by this Agreement and we agree, subject to the terms below, to the following obligations:

1.6.1. we will, until the date and time specified in the online Guidelines for Buyers or otherwise notified to you, store the *Lot* in accordance with paragraph 5;

1.6.2. subject to any power of the *Seller* or us to refuse to release the *Lot* to you, we will release the *Lot* to you in accordance with paragraph 0 once you have paid to us, in cleared funds, everything due to the *Seller* and to us;

1.6.3. we will provide guarantees in the terms set out in paragraph 9.

1.7. We do not make or give and do not agree to make or give any contractual promise, undertaking, obligation, guarantee, warranty, representation of fact in relation to any *Description* of the *Lot* or any *Estimate* in relation to it, nor of the accuracy or completeness of any *Description* or *Estimate* which may have been made by us or on our behalf or by or on behalf of the *Seller* (whether made orally or in writing, including in the online *Catalogue of Products* or otherwise), and whether made before or after this Agreement or prior to or during the *Sale*. No such *Description* or *Estimate* is incorporated into this Agreement between you and us.

2. PERFORMANCE OF THE CONTRACT FOR SALE

2.1. You undertake to us personally that you will observe and comply with all your obligations and undertakings to the *Seller* under the *Contract for Sale* in respect of the *Lot*.

3. PAYMENT

3.1. Unless agreed in writing between you and us or as otherwise set out in the online Guidelines for Buyers, you must pay to us the *Hammer Price* (collected by us on the *Seller's* behalf) and the *Buyer's Premium* plus VAT by not later than 4.30pm on the seventh working day following the *Sale*:

3.1.1. The *Buyer's Premium* and VAT on the *Buyer's Premium* are in accordance with the rates set out in the online Guidelines for Buyers.

3.2. You must also pay us on demand any *Expenses* payable pursuant to this Agreement.

3.3. All payments to us must be made in United States Dollars (USD), using, unless otherwise agreed by us in writing, one of the methods of payment set out in the online Guidelines for Buyers. Our invoices will only be addressed to the registered *Bidder* unless the *Buyer* is acting as an agent for a named principal and we have approved that arrangement, in which case the invoices will be addressed to the principal.

3.4. Time will be of the essence in relation to any payment payable to us. If you do not pay the *Hammer Price* or the *Buyer's Premium* plus VAT, or any other sum due to the *Seller* or to us in accordance with this paragraph 3, we will have the rights set out in paragraph 7 below.

3.5. Bank fees are the responsibility of the *Buyer*.

4. COLLECTION OF THE LOT

4.1. Subject to any power of the *Seller* or us to refuse to release the *Lot* to you, once you have paid to us, in cleared funds, everything due to the *Seller* and to us, we will release the *Lot* to you or as you may direct us in writing.

4.2. You must collect and remove the *Lot* at your own expense by 4.30pm on the seventh working day after the *Sale*.

4.3. For the period referred to in paragraph 4.2, the *Lot* can be collected from the warehouse address in the Kingdom of Cambodia, referred to in the online Contacts page.

4.4. If you have not collected the *Lot* by 4.30pm on the seventh working day following the *Sale*, the *Lot* will be subject to storage charges at the rate of US\$0.50 per *Stove Unit* per day. These storage fees form part of our *Expenses*.

4.5. Until you have paid the *Hammer Price*, *Buyer's Premium* plus VAT and any *Expenses* in full the *Lot* will not be released to you.

4.6. You will be wholly responsible for packing, handling and transport of the *Lot* on collection.

5. STORING THE LOT

5.1. We agree to store the *Lot* at our cost until the earlier of your removal of the *Lot* or until 4.30pm on the seventh working day following the *Sale*. If you do not collect the *Lot* before this time and date you will be subject to storage charges per paragraph 4.4.

6. RESPONSIBILITY FOR THE LOT

6.1. Title to the *Lot* remains in and is retained by the *Seller* until the *Hammer Price*, the *Buyer's Premium* plus VAT, and any *Expenses* are paid by you to *The Stove Auction* in relation to the *Lot* and have been paid in full and received in cleared funds.

6.2. *The Stove Auction* shall provide insurance coverage on the *Lot* in its possession until the *Sale* is concluded and possession of the *Lot* is transferred either to the *Buyer* or to the shipping carrier.

6.3. You are advised to obtain insurance in respect of the *Lot* as soon as possible after the *Sale*.

7. FAILURE TO PAY OR TO REMOVE THE LOT AND PARTIAL PAYMENTS

7.1. *The Stove Auction* does not accept partial payments.

7.2. All sums payable to us must be paid in full at the time they are due or the *Lot* is not removed in accordance with this Agreement, we will without further notice to you be entitled to exercise one or more of the following rights:

7.2.1. to terminate this agreement immediately for your breach of contract;

7.2.2. to facilitate the *Sale* of the *Lot* by auction, private treaty or by any other means;

7.2.3. to retain possession of the *Lot*;

7.2.4. to remove, and/or store the *Lot* at your expense;

7.2.5. to take legal proceedings against you for payment of any sums payable to the Seller or to us by you (including the *Hammer Price*, *Buyer's Premium plus VAT*, and any *Expenses*) and/or damages for breach of contract;

7.2.6. to repossess the *Lot* (or any part thereof) which has not become your property, and for this purpose you hereby grant an irrevocable licence to us, by ourselves, our servants or agents, to enter upon all or any of your premises (with or without vehicles) during normal business hours to take possession of any *Lot* or part thereof; and/or

7.2.7. to reject your participation in a future *Sale* or to require you to pay a deposit before any bid is accepted by us at any future *Sale* in which case we will be entitled to apply such deposit in payment of the *Purchase Price* of any *Lot* of which you are the *Buyer*.

8. CLAIMS BY OTHER PERSONS IN RESPECT OF THE LOT

8.1. Whenever it becomes apparent to us that the *Lot* is the subject of a claim by someone other than you and other than the *Seller* (or that such a claim can reasonably be expected to be made), we may, at our absolute discretion, deal with the *Lot* in any manner which appears to us to recognise the legitimate interests of ourselves and the other parties involved and lawfully to protect our position and our legitimate interests. Without prejudice to the generality of the discretion and by way of example, we may:

8.1.1. retain the *Lot* to investigate any question raised or reasonably expected by us to be raised in relation to the *Lot*; and/or

8.1.2. deliver the *Lot* to a person other than you; and/or

8.1.3. commence proceedings with arbitrators to determine ownership or rights over the *Lot*.

8.2. The discretion referred to in paragraph 8.1:

8.2.1. may be exercised at any time during which we have actual or constructive possession of the *Lot*; and

8.2.2. will not be exercised unless we believe that there exists a serious prospect of a good arguable case in favour of the claim.

9. OUR LIABILITY

9.1. We will not be liable for any breach, or lack of conformity with, or inaccuracy, error, misdescription or omission in any *Description* of the *Lot* or any *Entry* or *Estimate* in relation to the *Lot* made by us or on our behalf or on behalf of the *Seller* (whether made in writing, including in the online *Catalogue*, or other parts of the *Website*, or orally, or by conduct or otherwise) and whether made before or after this Agreement or prior to or during the *Sale*.

9.2. You shall indemnify, and hold harmless, *The Stove Auction* and its members, managers, employees and agents, against any and all claims, actions, damages, losses, liabilities and expenses arising out of or resulting from any and all claims raised by you or your affiliates or end-consumers, including but not limited to: OWNERSHIP OR RIGHT TO POSSESSION OF ANY OF THE PROPERTY, ANY ALLEGED BREACH BY THE SELLER OF ANY OBLIGATION, REPRESENTATION OR WARRANTY PURSUANT TO THIS AGREEMENT OR FROM *THE STOVE AUCTION'S* OFFERING FOR SALE OR

SELLING THE PROPERTY, WHETHER OR NOT IT HAS BEEN RETURNED TO THE SELLER, AND; NEGLIGENCE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS THAT RESULT FROM OR ARE RELATED TO THE SALE, DISTRIBUTION, USE OF, OR INABILITY TO USE ANY PRODUCT. *The Stove Auction's* warranties and indemnification shall survive the completion of the transactions contemplated by this Agreement, and shall apply to the Property sold or consigned for sale pursuant to this Agreement.

10. SUSTAINABLE DEVELOPMENT IMPACTS

10.1. You hereby assign and transfers all rights, title and interest in carbon credits, health credits, or other co-benefits that can be claimed, marketed or monetized arising from the use of the stoves to SNV Netherlands Development Organisation (or any affiliate it so designates) and hereby permanently waives any claim or right to such credits.

11. INFORMATION RIGHTS

11.1. All end-consumer and stove use data collected by *The Stove Auction* during its monitoring and verification processes, are the sole property of *The Stove Auction*, of SNV Netherlands Development Organisation and GIZ/Energising Development (EnDev).

12. REGISTERED BIDDER ELIGIBILITY AND AUTHORIZATION

12.1. You may register as a *Bidder* of *The Stove Auction* if:

12.1.1. Your company or organisation is legally registered or in the process of becoming legally registered in the Kingdom of Cambodia, and is able to show proof thereof; and

12.1.2. Your company or organisation has a tax identification number and/or patent number or in the process of obtaining either one, and is able to show proof thereof.

12.2. *The Stove Auction*, in its sole and absolute discretion, reserves the right to deny any registration, without reason.

12.3. Businesses or organisations that are registered as Registered *Bidder* may authorize up to two (2) individuals to submit bids on their behalf. Authorization of more than two (2) individuals to submit bids is subject to *The Stove Auction's* discretion. All individuals authorized to bid must be at least 18 years of age.

12.4. Registered *Bidders* shall comply with all applicable laws, statutes, ordinances, and regulations regarding their use of *The Stove Auction's* services.

12.5. *The Stove Auction* reserves the right to suspend or revoke a Registered *Bidder's* bidding privileges, which can be either an individual from a registered entity or the entity in its entirety, if there is a proven violation of the terms and conditions within this Agreement or the *Contract of Sale*.

13. CASH INCENTIVE

13.1. As a Registered *Bidder*, you are eligible to receive a cash incentive for every Stove Unit you purchase from *The Stove Auction* and sell to an end-consumer that can later be independently verified. The cash incentive is calculated based on the performance of the stove and are categorized into Standard or Premium level categories according to the online stove selection criteria. The cash incentive amounts for each category are listed in the online Guideline for Buyers.

13.2. The cash incentive cannot be claimed for stoves that are:

13.2.1. Sold to an end-consumer either directly by the Buyer or indirectly through resellers or other middle-men at a price that is less than what the stove was purchased for at auction;

Given away for free either directly by the Buyer or indirectly through resellers or other middle-men to an end-consumer, or combined with other subsidies directed to the end-consumer. This includes but not limited to the Buyer selling stoves to institutional buyers such as to Government agencies, political parties, NGOs, or any other entity that gives the stove away for free to end-consumers or combines them with other end-consumer subsidies.

13.3. In order for you to claim cash incentive payments you must submit transaction records to *The Stove Auction*. Transaction records can be submitted no more frequent than once a month. The key transaction records include:

13.3.1. Customer Registration / Warranty Card. Digital copies of the cards must be provided to *The Stove Auction*. They can be scanned copies or digital photographs and submitted to *The Stove Auction* via WeTransfer, Dropbox, Google Docs are another program used to transfer large data files. Each digital version of a card shall be its own file and the file name should be the serial number. The Stove Auction does not accept hard copies nor are we responsible for digitizing your hard copies.

13.3.2. Sales Report. Your sales report must contain consolidated information on the transactions with end-consumers, and includes the following information:

13.3.2.1. Serial Number (The Serial Number must match the Serial Number format written on the Goods Receipt.)

13.3.2.2. Stove Model

13.3.2.3. Distributor or Retailer Company Name

13.3.2.4. Product Retail Price

13.3.2.5. Date of Purchase (by the customer)

13.3.2.6. Stove User Name

13.3.2.7. Stove User Mobile Number

13.3.2.8. Stove User Village

13.3.2.9. Stove User Commune

13.3.2.10. Stove User District

13.3.2.11. Stove User Province

13.3.2.12. Area Type (The *Buyer* in their best estimate shall classify the geographic location of the customer's household as either Rural or Urban. For guidance, the Buyer may consider all provincial towns, all of Phnom Penh municipality, and the entire provinces of Sihanoukville, Kep and Pailin as urban.)

13.4. This sales report must be in English language, and must be sent to *The Stove Auction* by email as an MS Excel file using the template provided to you by *The Stove Auction*, which will allow *The Stove Auction* to include the information in its database. For each stove sale to an end-consumer, a separate row with unique serial number should be created. In case one end-consumer buys several stoves, each sale will come on a separate row.

14. BONUS PAYMENT FOR PROVIDING END-CONSUMER TRAINING

14.1. As a Registered *Bidder*, you are eligible to receive an end-consumer training bonus for providing end-consumers training on the stove user manual, operations of the stove and warranty and after-sales service information. The bonus is valued at 5% of your total cash incentive claim.

14.2. To earn the training bonus, you or your affiliates need to explain and provide information to the end-consumer about the Stove Unit per the User Manuals provided in the online *Catalogue of Products*. And end-consumers need to state to the independent verification auditors (phone calls and physical inspections) that you or your affiliates provided those explanations and information and also answer a few key questions related to the content of the explanation and information provided.

15. PROCESS AND CALCULATION OF CASH INCENTIVE PAYMENTS

15.1. Your cash incentive claim will be independently verified and payment determined on a per stove model basis. Meaning that when you submit a Sales Report as part of your claim that may include more than one stove model, a sample of customers will be pulled for telephone inspections and physical inspections on a per stove model basis. Thus it is possible for you to fail verification on one stove model and pass verification on another stove model and still receive cash incentive payment for the passing stove model.

15.2. Your cash incentive claims will be paid in full by *The Stove Auction* on a per stove model basis if (1) 80% or more of end-consumers telephoned are able to confirm the purchase of the Stove Unit from you plus confirm the serial number of the stove that matches your transaction records and if (2) 80% or more of all physical inspections are successful confirming the stove is on location and the serial number matches the transaction records.

15.3. In determining a pass or fail during an onsite or phone verification, *The Stove Auction* and the independent verification auditors, in their full discretion will make a distinction between fraudulent behaviour and reporting errors. Fraudulent behaviour could include, false claims to non-existing customers and non-approved products being sold. This will lead to your suspension or revocation from participating in *The Stove Auction*. In case of reporting errors - sales report not fully completed, incorrect spelling or numbers in sales report, miscalculations, etc. - *The Stove Auction* will be more lenient. SNV Cambodia has the final say when determining a pass or failed verification.

15.4. Cash incentive claims will be deemed to have failed verification process when greater than 20% of end-consumer claims as inspected both onsite and via phone prove false. For clarity, if either phone or physical verification fails for a specific stove model, then the entire claim as it relates that model only is deemed to have failed.

15.5. Bonus payment for end-consumer training will be reduced based on the number of failed telephone inspections and failed physical inspections when dealing specifically with the end-consumer training questions. An example calculation is provided in the online Guidelines for Buyers.

16. PRIVACY POLICY

16.1. *The Stove Auction* collects information from you when you register as a *Bidder* to *The Stove Auction* and when you use *The Stove Auction's* services. When you register as a *Bidder* to *The Stove Auction*, *The Stove Auction* asks for information such as your company name, names of officers, address, email address, phone numbers, business license information, and other financial information. *The Stove Auction* collects information about your transactions facilitated by *The Stove Auction*, including information regarding items that you are purchasing. *The Stove Auction* uses information for the following general purposes: for monitoring and verification purposes, to facilitate bidding, buying, and selling of items through *The Stove Auction*, and to comply with laws and regulations related to purchasing of items by you through *The Stove Auction*. *The Stove Auction* does not rent, sell, or share personal or business information about you with other people or non-affiliated companies except to provide products or services that you have requested, or when *The Stove Auction* has your permission.

17. MISCELLANEOUS

17.1. You may not assign, sub-contract, delegate or otherwise transfer or dispose of any of your rights or obligation under this Agreement.

17.2. Our failure or delay in enforcing or exercising any power or right under this Agreement will not operate or be deemed to operate as a waiver of our rights under it except to the extent of any express waiver given to you in writing. Any such waiver will not affect our ability subsequently to enforce any right arising under this Agreement.

17.3. If either party to this Agreement is prevented from performing that party's respective obligations under this Agreement by circumstances beyond its reasonable control or if performance of its obligations would by reason of such circumstances give rise to a significantly increased financial cost to it, that party will not, for so long as such circumstances prevail, be required to perform such obligations. This paragraph does not apply to the obligations imposed on you by paragraph 3.

17.4. Any notice or other communication to be given under this Agreement must be in writing and may be delivered by hand or by email addressed to *The Stove Auction* at its address or email in the online *Contact* webpage, and if to you to the address or email given in the *Bidder Registration Form* (unless notice of any change of address is given in writing). It is the responsibility of the sender of the notice or communication to ensure that it is received in a legible form within any applicable time period.

17.5. If any term or any part of any term of this agreement is held to be unenforceable or invalid, such unenforceability or invalidity will not affect the enforceability and validity of the remaining terms or the remainder of the relevant term.

17.6. References in this Agreement to *The Stove Auction* will, where appropriate, include reference to *The Stove Auction's* officers, employees and agents.

17.7. The headings used in this Agreement are for convenience only and will not affect its interpretation.

17.8. In this Agreement "including" means "including, without limitation".

17.9. References to the singular will include reference to the plural (and vice versa) and reference to any one gender will include reference to the other genders.

17.10. Reference to a numbered paragraph is to a paragraph of this Agreement.

18. GOVERNING LAW

18.1. All transactions to which the *Buyer's Agreement* applies and all connected matters will be governed by and construed in accordance with the laws of the Kingdom of Cambodia. Any disputes relating to this Agreement, which could not be solved mutually shall be referred for arbitration of two arbitrators, each party nominating one. The two arbitrators shall nominate the Umpire whose decision shall be final and binding on both parties. The arbitration proceedings shall be conducted in English and shall take place in the Kingdom of Cambodia.

APPENDIX 1. GLOSSARY OF TERMS

For an updated list of terms, please refer to *The Stove Auction's* online Glossary of Terms located at: <http://www.thestoveauction.org/glossary-of-terms.html>