CONTRACT FOR SALE

For Sales in the Kingdom of Cambodia
Last updated 25 October 2016

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 for Sale of the Lot by the Seller to the Buyer.

1.2. Throughout this Agreement 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 are used which are in the Glossary of Terms, they are printed in italics.

1.4. The Seller sells the Lot as the principal to the Contract for Sale, such contract being made between the Seller and you through The Stove Auction which facilitates the Sale of the Lot between you and the Seller and not as an additional principal.

1.5. The contract is made on the fall of the Auctioneer’s hammer in respect of the Lot when it is won by you.

2. SELLER’S UNDERTAKINGS

2.1. The Seller undertakes to you that:

2.1.1. the Seller is the owner of the Lot or is duly authorised to sell the Lot by the owner;

2.1.2. the Seller has complied with all requirements, legal or otherwise, relating to any export or import of the Lot, and all duties and taxes in respect of the export or import of the Lot have (unless stated to the contrary in the online Catalogue) been paid;

2.1.3. subject to any alterations expressly identified as such made by an insert in the online Catalogue of Products, the Lot corresponds with the Contractual Description of the Lot, which includes the Product Description section in the online Catalogue of Products along with any photograph of the Lot and the User Manual, Product Specifications, and Warranty Card documentation provided to the Buyer in the online Catalogue of Products.

3. DESCRIPTIONS OF THE LOT

3.1. Paragraph 2.1.3 sets out what is the Contractual Description of the Lot. In particular, the Lot is not sold as corresponding with that part of the online Catalogue of Products which is not printed in the Product Description section, or any photographs or videos not in the online Catalogue of Products, or the User Manual, Product Specifications, and Warranty Card documentation provided to the Buyer in the online Catalogue of Products. The remainder of information in the online Catalogue of Products such as the laboratory test results and controlled cooking test results, merely sets out (on the Seller’s behalf) third-party research and opinion about the Lot and which is not part of the Contractual Description upon which the Lot is sold. Any statement or representation other than that part of the Entry referred to in paragraph 2.1.3 (together with any express alteration to it as referred to in paragraph 2.1.3), including any Description or Estimate, whether made orally or in writing, including in the online Catalogue of Products or otherwise, and whether by or on behalf of the Seller or The Stove Auction and whether made prior to or during the Sale, is not part of the Contractual Description upon which the Lot is sold.

3.2. Except as provided in paragraph 2.1.3, the Seller does not make or give and does not agree to make or give any contractual promise, undertaking, obligation, guarantee, warranty, or representation of fact, or undertake any duty of care, 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 or on behalf of the Seller including by The Stove Auction. No such Description or Estimate is incorporated into this Contract for Sale.

4. TITLE AND INSURANCE

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

4.2. 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.

5. PAYMENT

5.1. Your obligation to pay the Hammer Price to The Stove Auction on the Seller’s behalf and pay the Buyer’s Premium plus VAT and any Expenses directly to The Stove Auction arises when your winning bid for a Lot is accepted by The Stove Auction at the end of each Sale.

5.2. Time will be of the essence in relation to payment. All such sums must be paid by you and funds cleared in United States Dollar (USD) currency in which the Sale was conducted by not later than 4.30pm on the seventh business day following the Sale. Payment must be made to The Stove Auction by one of the methods stated in the online Buyer’s Guidelines unless otherwise agreed with you in writing by The Stove Auction. If you do not pay any sums due in accordance with this paragraph, the Seller will have the rights set out in paragraph 7 below.

6. COLLECTION OF THE LOT

6.1. Unless otherwise agreed in writing with you by The Stove Auction, the Lot will be released to you or your specified agents only when the The Stove Auction has received cleared funds in the full amount of the Hammer Price, Buyer’s Premium plus VAT and any Expenses and all other sums owed by you to the Seller and to The Stove Auction.

6.2. The Seller is entitled to withhold possession from you of any other Lot he has sold to you at the same or at any other Sale and whether currently in The Stove Auction’ possession or not until payment due to The Stove Auction on the Seller’s behalf and/or The Stove Auction in respect of the Lot is paid in full and the funds are cleared.

6.3. You will collect and remove the Lot at your own expense from The Stove Auction’ custody in accordance with The Stove Auction’ instructions or requirements.

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

6.5. You will be wholly responsible for any removal, storage or other charges or expenses incurred by the Seller if you do not remove the Lot in accordance with this paragraph 6 and will indemnify the Seller against all charges, costs, including any legal costs and fees, expenses and losses suffered by the Seller by reason of your failure to remove the Lot including any charges due under any storage contract. All such sums due to the Seller will be payable on demand to The Stove Auction on the Seller’s behalf.

7. FAILURE TO PAY FOR THE LOT

7.1. If the Hammer Price, Buyer’s Premium plus VAT and any Expenses for a Lot is not paid in full in accordance with the Contract for Sale the Seller will be entitled, with the prior written agreement of The Stove Auction but without further notice to you, to exercise one or more of the following rights (whether through The Stove Auction or otherwise):

7.1.1. to terminate immediately the Contract for Sale of the Lot for your breach of contract;

7.1.2. to resell the Lot by auction, private treaty or any other means;

7.1.3. to retain possession of the Lot;

7.1.4. to remove and store the Lot at your expense;

7.1.5. to take legal proceedings against you for any sum due under the Contract for Sale and/or damages for breach of contract; and/or
7.1.6. 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 the Seller by himself and to his servants or agents to enter upon all or any of your premises (with or without vehicles) during normal business hours to take possession of the Lot or part thereof;

8. **FITNESS FOR PURPOSE AND SATISFACTORY QUALITY**

8.1. The Seller warrants that the Property is in new condition and is good quality and are the same Stove Unit model that was tested in the laboratory test and controlled cooking test, which were reviewed by The Stove Auction as part of its stove selection criteria for participation in The Stove Auction.

9. **PRODUCT WARRANTY AND AFTER-SALES SERVICES**

9.1. The Property delivered are covered by a warranty against material and latent defects in material and workmanship, the seriousness of which prevents the Property from being used normally as specified by the Seller in the User Manual, for a period of twelve (12) months from the moment they are delivered to you or to the end-consumer, except in the event that:

9.1.1. the Property have been modified by you following delivery and/or subject to improper handling, storage, installation, operation, or maintenance of the Property by you or the end-consumer;

9.1.2. when an item which is a component part of the Property has been furnished by you;

9.1.3. no warranty of a component part shall extend beyond the warranty period of the device in which such component part is incorporated.

9.2. Upon receipt of the Property by you, you shall examine the Property and satisfy itself that the Property received are in conformity with the Contractual Description stated by the Seller. In the event and to the extent that the Property fail to meet the Contractual Description, the Seller may at its own option, within a reasonable time to be determined at the Seller’s sole discretion, either repair or replace the Property at no charge to you or refund you in the amount of the original invoice subject to the provisions of paragraph 9.5.

9.3. Any notice to the Seller with regards to relevant defects observable upon reasonable inspection of the Property following receipt the Property shall be made in writing within six (6) months following the delivery of the Property, and shall include a complete description of the alleged defects, on default of which any claim in this respect shall become void.

9.4. In regard to the discovery of relevant latent defects, you shall have no more than twelve (12) months from the date of delivery of the Property to provide the Seller with notice of defect of the Property. In this regards, complaints shall be made in writing within thirty (30) days after their discovery, and shall include a complete description of the alleged defects. Failure to inform the Seller of any defects as per the above provisions within the periods stated in paragraphs 9.3 and 9.4 above shall render any claim in this respect void. Notwithstanding the above, failure by you to timely provide the Seller with said notice or the use or processing of the Property by you shall constitute an unconditional acceptance of the Property and a waiver of all claims in respect of the Property.

9.5. Upon receipt of a notice of defect and only upon the Seller's express request, you shall promptly return the Property by the method designated by the Seller. Upon return of the Property to the Seller, the Seller shall have the right to re-inspect the Property claimed to be defective to determine the cause of such alleged defect before allowing or disallowing your claim. All Property replaced or repaired by the Seller under its warranty shall be replaced or repaired at the Seller’s sole cost and expense or the Seller shall refund you in the amount of the original invoice.

9.6. Defects in parts of the Property shall not entitle you to reject the entire delivery of the Property. Claims, if any, do not affect your obligation to pay the Hammer Price, Buyer’s Premium plus VAT and any Expenses as defined in paragraph 3.

9.7. The Seller agrees to have a representative based in the Kingdom of Cambodia that is responsible for performing after-sales services and can receive phone calls from you or your affiliates and/or end-consumers. The Stove Auction (SNV Netherlands Development Organisation or affiliates or GIZ/Energising Development) are not liable for providing after-sales services.
10. THE SELLER’S LIMITED LIABILITY

10.1. The Seller’s liability under its warranty is expressly limited to the repair, replacement, or refund of the Hammer Price of the purchased Property, which prove to be defective in materials or workmanship, within a period of ninety (90) days following receipt of written confirmation of defect by the Seller. The repair, replacement or refund of the Property shall be at the Seller’s sole discretion. The Seller’s obligation to repair or replace defective Property or refund the invoice price constitutes agreed and liquidated damages for any breach of warranty by the Seller.

10.2. In no event shall the Seller be liable for any kind of special, indirect, incidental, consequential or punitive damages or loss, cost or expenses of any kind including without limitation breach of any obligation or warranty imposed on the Seller hereunder or in connection herewith. Consequential damages for purposes hereof shall include without limitation, loss, injury or death to any person, loss or damage to property, loss of goodwill, lost sales or profits, work stoppage, production failure, impairment of other goods or otherwise whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.

10.3. Except for breach of the express undertaking provided in paragraph 2.1.3, the Seller 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 or on behalf of the Seller (whether made in writing, including in the online Catalogue of Products, 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.

11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

11.1. All Product related information provided to you in connection with the Lot, as well as special instructions by the Seller remain the property of the Seller. You are not permitted to use these Products for any other purposes than that for which the Products have been manufactured, or to duplicate them or make them available to third parties for duplication. Furthermore, you are bound to respect the Seller’s intellectual property rights, in particular patents, drawings and models and trademarks regarding the Products.

11.2. You must treat as strictly confidential any and all information such as but not limited to documents, studies, drawings, data, samples and information of a technical, commercial or financial nature which has been disclosed to you by the Seller, regardless of the form of disclosure and regardless of the manner in which you obtained the information. You are not entitled to disclose any information to any third (3rd) parties (including subcontractors) without the prior written consent of the Seller. You shall be liable for all damage caused to the Seller as the result of the breach of any of these obligations.

12. MISCELLANEOUS

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

12.2. The Seller’s failure or delay in enforcing or exercising any power or right under the Contract for Sale will not operate or be deemed to operate as a waiver of his rights under it except to the extent of any express waiver given to you in writing. Any such waiver will not affect the Seller’s ability subsequently to enforce any right arising under the Contract for Sale.

12.3. If either party to the Contract for Sale is prevented from performing that party’s respective obligations under the Contract for Sale 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 5.

12.4. Any notice or other communication to be given under the Contract for Sale must be in writing and may be delivered by hand or by email, if to the Seller, addressed c/o 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.
12.5. If any term or any part of any term of the Contract for Sale 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.

12.6. References in the Contract for Sale to The Stove Auction will, where appropriate, include reference to The Stove Auction’s officers, employees and agents.

12.7. The headings used in the Contract for Sale are for convenience only and will not affect its interpretation.

12.8. In the Contract for Sale “including” means “including, without limitation”.

12.9. 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.

12.10. Reference to a numbered paragraph is to a paragraph of the Contract for Sale.

13. GOVERNING LAW

13.1. All transactions to which the Contract for Sale 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 where the Sale takes place.
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