

*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's* 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's* custody in accordance with *The Stove Auction's* 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*' 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>