

**South Dakota Science and Technology Authority  
630 East Summit Street  
Lead, South Dakota, 57754**

***Compact Loader*  
SDSTA Purchase Order # 26756 - DRAFT**

**PURCHASE ORDER TERMS AND CONDITIONS**

*These terms and conditions will be included on the purchase order to the selected Vendor(s).*

**I. PURCHASE ORDER AS AGREEMENT**

This Purchase Order constitutes the SDSTA's acceptance of the Bid of COMPANY NAME dated DATE, attached hereto as Exhibit A, to furnish the items or commodities specified in the Bid, but subject to the terms and conditions stated in this Purchase Order and the attachments, including, if applicable, the Specifications for Materials shown on Exhibit B. Upon written acceptance by the Vendor, this Purchase Order and the attachments hereto shall constitute a legally binding agreement between the SDSTA and the Vendor. The SDSTA agrees that the items or articles specified in the Bid are identical to those specified in the SDSTA's solicitation or are acceptable on an "as equal" basis.

**II. DELIVERY TIME AND PLACE**

All deliveries are to be made to:

South Dakota Science & Technology  
651 Ellison St  
Lead, SD 57754

**III. INVOICES AND STATEMENTS**

Invoices and statements shall reference the number of this Purchase Order and are to be addressed to the South Dakota Science and Technology Authority, 630 East Summit Street, Lead, SD, 57754 and may be submitted by email to: [ap@sanfordlab.org](mailto:ap@sanfordlab.org). If possible, invoices are to be submitted to the SDSTA on the 3rd day of the month for work performed in the previous month. Invoices received after the 3rd day of the month will be considered to have been received the following month.

**IV. SDSTA REPRESENTATIVE**

The SDSTA shall, from time to time, designate in writing an SDSTA Representative. The SDSTA Representative shall be responsible for providing SDSTA-supplied information and approvals in a timely manner to permit Vendor to fulfill its obligations pursuant to this Agreement. The SDSTA Representative shall also provide Vendor with prompt notice if it observes any failure on the part of the Vendor to fulfill its contractual obligations, including any errors, omissions or

defects in the performance of the work provided for in this Agreement. Unless changed in writing by the SDSTA.

## **V. INSPECTION**

Items or commodities purchased hereunder are subject to inspection and acceptance at the delivery point. The SDSTA reserves the right to reject and refuse acceptance of items or commodities which do not conform to the SDSTA's solicitation and related instructions, specifications, drawings and data, or with Vendor's warranty (expressed or implied). The Vendor shall be responsible for the SDSTA's reasonable costs incurred in inspecting items or commodities which the SDSTA deems to be nonconforming. Items or commodities which are rejected will be returned to Vendor at Vendor's expense and Vendor agrees to accept the same. Payment for any item or commodity delivered pursuant to this Purchase Order shall not be deemed an acceptance thereof.

## **VI. WARRANTY**

Vendor expressly warrants that all articles, assemblies, parts and materials furnished under this Purchase Order (a) will correspond with the description thereof contained in the Bid and with the additional specifications, if any, attached hereto and made a part hereof; (b) will be free from defects in labor, materials or fabrication; and (c) will be free and clear of all liens and encumbrances, Vendor hereby warranting to SDSTA good and merchantable title thereto. All of said warranties shall survive acceptance and shall run in favor of the SDSTA, its successors and assigns. Vendor shall carefully study and compare all manufacturers' numbers, quantities, descriptions and special instructions with its Bid and this Purchase Order, and will at once report to the SDSTA in writing any discrepancies, inconsistencies or omissions discovered by the Vendor.

SDSTA may reject any Product which does not meet the Specifications, and no charge will be made for Product so rejected. Since SDSTA may obtain devices which have the capability of testing whether Product meets the Specifications, no claim of any kind with respect to the conformance of the Product to the foregoing Specifications, whether or not based on negligence, warranty, strict liability or any other theory of law, will be greater than the price of the quantity of nonconforming Product in respect to which such claim is made. The foregoing constitutes SDSTA's exclusive remedy and Vendor's sole obligation with respect to any such claim. THERE ARE NO EXPRESS WARRANTIES BY VENDOR OTHER THAN THOSE SPECIFIED IN THIS ARTICLE. WARRANTIES BY VENDOR (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

## **VII. INDEMNITY**

To the fullest extent permitted by law, Vendor (the "Indemnifying Party") agrees to hold harmless and indemnify the Homestake Indemnified Parties, the SDSTA, the State of South Dakota, and the elected officials, directors, officers, employees, agents and representatives of SDSTA and the State of South Dakota (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, negligent errors or omissions of the Indemnifying Party and of any officer, agent, subcontractor of any tier, consultant or employee of the Indemnifying Party but only to the extent of the Indemnifying Party's negligence: misconduct, negligent errors or omissions or the negligence, misconduct, negligent errors or omissions of the of an officer; agent, subcontractor of any tier, consultant, or employee of the Indemnifying Party. This section does not require the Indemnifying Party to indemnify an Indemnified Party from claims or liability to the extent the claim or liability arises out of the negligent acts or omissions of the Indemnified Party.

In the event of a claim against an Indemnified Party by an employee of the Indemnifying Party or any subtier contractor or consultant, anyone directly or indirectly employed by the Indemnifying Party, any sub-tier contractor or consultant of the Indemnifying Party, or anyone for whose acts the Indemnifying Party may be liable, the obligation to indemnify set forth in this indemnification clause shall not be subject to any limitation on amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party or any sub-tier contractor or consultant under workers compensation acts, disability benefit acts, or other employee benefit acts.

As used in this indemnification clause, the term "Homestake Indemnified Parties" means Barrick Gold Corporation ("Barrick"); Homestake Mining Company of California ("Homestake"); the affiliates of Barrick or Homestake, and the invitees, licensees, contractors, directors, officers, employees, agents, and any other person that Barrick or Homestake invites upon or authorizes to enter SURF.

## **VIII. TITLE AND RISK OF LOSS**

The risk of loss shall remain with the Vendor until upon completion of Vendor's obligations with respect to delivery or installation, as required, at which time title and the risk of loss shall be deemed transferred to the SDSTA.

## **IX. NOTICE**

**If to Vendor:**

NAME COMPANY NAME  
ADDRESS  
CITY, ST ZIP  
Email

**If to SDSTA:**

Mike Headley  
Executive Director  
630 East Summit Street  
Lead, SD 57754  
[mheadley@sanfordlab.org](mailto:mheadley@sanfordlab.org)

Timothy M. Engel  
Counsel for the SDSTA  
503 S. Pierre Street, P.O. Box 160  
Pierre, SD 57501  
[tme@mayadam.net](mailto:tme@mayadam.net)

Either party may change the addresses set forth for notice herein upon written notice thereof to the other.

**X. NON-DISCRIMINATION STATEMENT – DISBARMENT**

The SDSTA requires that all Vendors, and suppliers employing fifteen or more persons and doing business with the SDSTA provide a statement of non-discrimination. By submitting the attached Vendor's Bid, the Vendor certifies they do not discriminate in its employment practices with regard to race, religion, age, sex, national origin or disability. By executing this Purchase Order, the Vendor certifies that it is not ineligible, debarred or suspended from participating in agreements involving the expenditure of federal funds and that it is eligible to participate in federally funded contracts. Vendor further agrees that Vendor will not employ, hire, contract with or engage any designer, consultants, subconsultants, vendors, subcontractors or other person to perform work in connection with this Purchase Order which is ineligible, debarred or suspended from participating in such agreements.

**XI. MISCELLANEOUS**

This Purchase Order and the attachments specifically referred to herein constitute the entire agreement of the parties concerning its subject matter. The terms of this Purchase Order may only be amended by a written document, executed with the same formalities as this Purchase Order. Time is of the essence in the performance of the covenants, terms and conditions of this Purchase Order. If the Vendor attempts to alter these terms and conditions or substitute any terms and conditions of its own that are contrary, its Bid will be considered unresponsive. The terms of this Purchase Order are to be construed under and governed by the laws of South Dakota. Any lawsuit arising out of or related to this Purchase Order must be brought in the state courts of South Dakota.

*Documents, information and data provided to the SDSTA pursuant to the terms of this Agreement may be subject to examination and review by representatives of the Homestake Mining Company of California pursuant to the terms of the Property Donation Agreement or by representatives of federal, state or local governmental entities, including, but not limited to, the South Dakota Department of Legislative Audit. Anything elsewhere in this Agreement to the contrary notwithstanding, any such documents, information or data may become public records open to public inspection.*

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in one original counterpart the day and year above first written.

COMPANY NAME

SOUTH DAKOTA SCIENCE AND  
TECHNOLOGY AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: title

\_\_\_\_\_  
Mike Headley Date \_\_\_\_\_  
Executive Director

Exhibit A  
Purchase Order