

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

**10,000 – 12,000 LB Straight Mast Multi-Directional Forklift
SDSTA Purchase Order # 27860 - **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, attached hereto as Exhibit A, serves as the South Dakota Science and Technology Authority's (SDSTA) acceptance **COMPANY's BID, dated [MMM, DD, YYYY]**, for the provision of the specified items or commodities. This acceptance is subject to the terms and conditions outlined in this Purchase Order Agreement.

Upon written acceptance by the Vendor, this Purchase Order Agreement and its attachments shall constitute a legally binding agreement between the SDSTA and the Vendor. The SDSTA affirms that the items specified in the Bid are identical to those outlined in the SDSTA solicitation or are deemed 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 must reference the number of this Purchase Order and are to be addressed to:

South Dakota Science and Technology Authority
630 E Summit St
Lead, SD, 57754

Invoices may be submitted by email to: ap@sanfordlab.org.

Whenever possible, invoices should be submitted to SDSTA by 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

From time to time, SDSTA shall designate, in writing, an SDSTA Representative responsible for providing SDSTA-supplied information and approvals in a timely manner to enable the vendor to fulfil its obligations under this agreement. The SDSTA Representative shall also promptly notify the Vendor of any observed failure to meet contractual obligations, including errors, omissions, or defects in performance. Unless otherwise changed in writing by the SDSTA.

V. INSPECTION

Items or commodities purchased under this Purchase Order are subject to inspection and acceptance at the designated delivery point. The SDSTA reserves the right to reject and refuse acceptance of any items or commodities which do not conform to the SDSTA's solicitation, related instructions, specifications, drawings, data, or with Vendor's expressed or implied warranty. The Vendor shall be responsible for the SDSTA's reasonable costs incurred by SDSTA in inspecting nonconforming items or commodities. Any rejected items will be returned to the Vendor at the Vendor's expense, and the Vendor agrees to accept their return. Payment for any item or commodity delivered under this Purchase Order shall not be deemed as 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. The 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 sub-tier 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:

Company
Address
City, ST #####
email@email.com

If to SDSTA:

Mike Headley
Executive Director
630 East Summit Street
Lead, SD 57754
mheadley@sanfordlab.org

Timothy M. Engel
Counsel for the SDSTA
503 S. Pierre Street, P.O. Box 160
Pierre, SD 57501
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 to 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

By: _____
Mike Headley Date
Executive Director

Exhibit A
Purchase Order