

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

***High-Capacity Rough Terrain Telehandler*
SDSTA Purchase Order # 29144**

PURCHASE ORDER TERMS AND CONDITIONS

These terms and conditions will be included in the purchase order to the selected Contractor(s).

I. PURCHASE ORDER AS AGREEMENT

This Purchase Order, attached hereto as Exhibit A, constitutes the SDSTA's acceptance of the Bid of **Company** dated **Month Day, Year**, to furnish the items or commodities specified in the Bid, but subject to the terms and conditions stated in this Purchase Order. Upon written acceptance by the Contractor, this Purchase Order and the attachments hereto shall constitute a legally binding agreement between the SDSTA and the Contractor. 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
ATTN: **Name of person requesting**

Contractor will coordinate delivery requirements with SDSTA at least two weeks prior to shipment by emailing **Name of person requesting, email@sanfordlab.org**.

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. 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 Contractor to fulfill its obligations pursuant to this Agreement. The SDSTA Representative shall also provide Contractor with prompt notice if it observes any failure on the part of the Contractor 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, the SDSTA Representative is **Name (email@sanfordlab.org)**.

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 Contractor's warranty (expressed or implied). The Contractor 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 Contractor at Contractor's expense and Contractor 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

Contractor 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, Contractor 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. Contractor 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 Contractor.

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 Contractor's sole obligation with respect to any such claim. THERE ARE NO EXPRESS WARRANTIES BY CONTRACTOR OTHER THAN THOSE SPECIFIED IN THIS ARTICLE. WARRANTIES BY CONTRACTOR (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, Contractor (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. TERMINATION FOR CONVENIENCE

The performance of this Contract depends upon the continued availability of appropriated funds and expenditure authority from state and federal sources. The SDSTA reserves the right to terminate this Contract in the event of a failure to obtain appropriated funds or grant expenditure authority. In this event, termination shall be made by written notice to Contractor. Termination for this reason is not a default by the SDSTA nor does it give rise to a claim against the SDSTA. In the event of termination of this Contract because of the unavailability of future funding, the SDSTA will make every effort to provide as much notice as possible to the Contractor. The SDSTA will be responsible for all work it authorizes the Contractor to perform, up to the date of Notice of Cancellation, and will cover all work in progress. In turn, the SDSTA would require the Contractor to make reasonable efforts to limit the SDSTA's liability for the work in progress. The SDSTA may terminate this Contract at any time without cause, in whole or in part, upon giving Contractor notice of such termination. Upon such termination, Contractor shall immediately cease work and remove from the project site all of its labor forces and such of its

materials as the SDSTA elects not to purchase or to assume. Contractor shall receive as full compensation for termination and assignment the following:

1. All amounts then otherwise due under the terms of this Contract,
2. Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
3. Reasonable compensation for the actual cost of demobilization incurred by Contractor as a direct result of such termination. Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, the SDSTA shall have no further obligations to Contractor of any nature.
4. Cancellation fee may be applicable if the order is canceled once material is released and in production.

IX. TERMINATION FOR DEFAULT

If Contractor is in material default under the Contract Documents, the SDSTA may, without prejudice to any other right or remedy and upon written notice to the Contractor with a provision of a reasonable time to cure not to exceed 30 days, terminate the Contract.

X. TITLE AND RISK OF LOSS

The risk of loss shall remain with the Contractor until upon completion of Contractor'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.

XI. NOTICE

If to Contractor:

Company Name
Address
City, ST ZIP
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.

XII. NON-DISCRIMINATION STATEMENT – DISBARMENT

The SDSTA requires that all contractors, subcontractors, and suppliers employing fifteen or more persons and doing business with the SDSTA provide a statement of non-discrimination. By submitting the attached Contractor's Bid, the Contractor 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 Contractor 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. Contractor further agrees that Contractor will not employ, hire, contract with or engage any designer, consultants, subconsultants, contractors, subcontractors or other person to perform work in connection with this Purchase Order, which is ineligible, debarred or suspended from participating in such agreements.

XIII. 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 Contractor 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 &
TECHNOLOGY AUTHORITY**

By: _____
Name: _____ Date _____
Title: _____

By: _____
Mike Headley _____ Date _____
Executive Director

Exhibit A
Purchase Order