

Colorado School of Mines (Mines) Purchase Order Terms and Conditions

- 1. Offer/Acceptance.** This Purchase Order (“PO”), together with these terms and conditions, and any other attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the “PO”) shall represent the entire and exclusive agreement between Mines and the Vendor. If this PO refers to Vendor’s bid or proposal, this PO is an ACCEPTANCE of Vendor’s OFFER TO SELL in accordance with the terms and conditions of this PO. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to Vendor’s acceptance, demonstrated by Vendor’s performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order accepting the counter-offer is issued in accordance with §4 accepting a counter-offer. Mines shall not be responsible or liable for goods or services delivered or performed prior to issuance of this PO. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof.
- 2. Order of Precedence.** In the event of a conflict or inconsistency within this PO, such conflict or inconsistency shall be resolved by giving preference to the documents in the following order of priority: (a) the Purchase Order document; (b) these Terms and Conditions; and (c) any attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference. Any terms and conditions included on Vendor’s forms or invoices not included in this PO are void.
- 3. Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.
- 4. Changes.** Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section.
- 5. Delivery.** Unless otherwise specified in this PO, delivery shall be FOB destination, freight prepaid and allowed. Mines is relying on the promised delivery date and any installation or service performance set forth in this PO as material and basic to Mines’ acceptance. If Vendor fails to deliver or perform as and when promised, Mines, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge Vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.
- 6. Intellectual Property.** Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively “materials”) delivered by Vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the “State”), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and reporting requirements.
- 7. Rights to Materials.** *[Not Applicable to POs issued either in whole or in part for Information Technology, as defined in CRS § 24-37.5-102(2); which shall be governed by Addendum 1 §B.]* Unless specifically stated otherwise in this PO, all materials, including without limitation supplies, equipment, documents, content, information, or other material of any type, whether tangible or intangible (collectively “Materials”), furnished by the State to Vendor or delivered by Vendor to the State in performance of its obligations under this PO shall be the exclusive property of the State. Vendor shall return or deliver all Materials to the State upon completion or termination of this PO.

8. **Warranties.** All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 (“UCC”), relating to implied or express warranties for goods are incorporated herein, in addition to any warranties contained in this PO.
9. **Inspection and Acceptance.** Mines’ final acceptance of goods or services is contingent upon completion of all applicable inspection procedures. All goods delivered shall be newly manufactured and the current model, unless otherwise specified. Mines shall have the right to inspect goods or services provided under this PO at all reasonable times and places. Mines shall be the sole judge in determining “equals” with regard to conformance with the specifications outlined in this PO for quality, price, and performance. If any of the goods or services do not conform to this PO, Mines, at its sole discretion, may require Vendor to either **(a)** replace the goods specified by the State or **(b)** perform the services again, without additional payment from Mines. When defects in the quality or quantity of goods or services cannot be corrected by replacement or re-performance, Mines may **(c)** require Vendor to take necessary action to ensure that future performance conforms to this PO and **(d)** equitably reduce the payment due Vendor to reflect the reduced value of the goods or services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.
10. **Taxes.** Mines is exempt from federal excise taxes and from state and local sales and use taxes. Mines shall not be liable for the payment of any excise, sales, or use taxes imposed on Vendor. A tax exemption certificate will be made available upon Vendor’s request. Buyer shall not reimburse such sales or use taxes.
11. **Payment.** Mines shall pay vendor all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the applicable statutory rate. Interest shall not accrue if a good faith dispute exists as to Mines obligation to pay all or a portion of the amount due. Vendor shall invoice Mines separately for interest on delinquent amounts due, referencing the delinquent payment, number of day’s interest to be paid, and applicable interest rate.
12. **Assignment.** Vendor shall not assign its rights or duties under this PO without the express written consent of Mines.
13. **Indemnification [Not Applicable to Inter-governmental POs].** Vendor shall indemnify, save, and hold harmless Mines, its employees, agents and assignees (the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Vendor, or its employees, agents, subcontractors, or assignees in connection with this PO. This shall include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information.
14. **Independent Contractor.** Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of Mines. Vendor shall not have authorization, express or implied, to bind Mines to any agreement, liability, or understanding, except as expressly set forth herein. **Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through Mines and Mines shall not pay for or otherwise provide such coverage for Vendor or any of its agents or employees. Vendor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Vendor shall (a) provide and keep in force workers’ compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by Mines, and (c) be solely responsible for its acts and those of its employees and agents. Regardless of any access, use of Mines facilities, Mines infrastructure, Mines software or email, Vendor shall at all times maintain and control its**

independence from Mines and the State of Colorado and shall not be considered an employee or representative of Mines under any circumstance. Failure by Vendor to represent and hold itself out as an independent contractor for purposes of its work with Mines shall be considered a breach of this Agreement.

- 15. Severability.** The invalidity or unenforceability of any provision of this PO shall not affect the validity or enforceability of any other provision of this PO, which shall remain in full force and effect, provided, that the parties can continue to perform their obligations in accordance with the intent of this PO.
- 16. Survival of Certain PO Terms.** Any provision of this PO that imposes an obligation on a party after termination or expiration of this PO shall survive the termination or expiration of this PO and shall be enforceable by the other party.
- 17. Third Party Beneficiaries.** Except for the parties' respective successors and assigns, this PO does not and is not intended to confer any rights or remedies upon any person or entity other than the parties. Enforcement of this PO and all rights and obligations hereunder is reserved solely to the parties. Any services or benefits which third parties receive as a result of this PO are incidental to this PO, and do not create any rights for such third parties.
- 18. Notice.** All notices given under this PO shall be in writing, and shall be delivered to the contacts for each party listed on the Purchase Order document. Either party may change its contact or contact information by notice submitted in writing to the other party without a formal modification to this PO.
- 19. Compliance with Law.** Vendor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 20. Insurance.** Except as otherwise specifically stated in this PO, Vendor shall obtain and maintain insurance as specified in this section at all times during the term of this PO: (a) workers' compensation insurance as required by state statute, and employers' liability insurance covering all Vendor employees acting within the course and scope of their employment; (b) Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 any one fire; and (c) Automobile liability insurance covering any auto (including owned, hired and non- owned autos) with a minimum limit of \$1,000,000 each accident combined single limit. If Vendor will or may have access to any protected information, then Vendor shall also obtain and maintain insurance covering loss and disclosure of protected information and claims based on alleged violations of privacy right through improper use and disclosure of protected information with limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate at all times during the term of this PO. Mines shall be named additional insured and all insurance policies shall in relation to this PO shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Mines. All insurance policies required by this PO shall be issued by insurance companies with an AM Best rating of A-VIII or better. This insurance requirement shall not apply if this PO is solely for goods, as determined by the Mines, unless specifically stated otherwise in this PO or any attachment or exhibit to this PO. If Vendor is a public agency within the meaning of the Colorado Governmental Immunity Act, then this section shall not apply and Vendor shall instead comply with the Colorado Governmental Immunity Act.
- 21. Termination Prior to Vendor Acceptance.** If Vendor has not begun performance under this PO, Mines may cancel this PO by providing written notice to the Vendor.
- 22. Termination for Cause. (a)** If Vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified

in this PO, Mines may notify Vendor in writing of non-performance and, if not corrected by Vendor within the time specified in the notice, terminate Vendor's right to proceed with this PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated. **(b)** Vendor shall be liable for excess costs incurred by Mines in procuring similar goods or services and Mines may withhold such amounts as Mines deems necessary.

- 23. Fund Availability.** Financial obligations of Mines payable after the Mines current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. The State represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.
- 24. Choice of Law, Jurisdiction, and Venue [Not Applicable to Inter-governmental POs].** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this PO. The UCC shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference, which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this PO shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against the State.
- 25. External Terms and Conditions (Click-Through/Adhesion).** Notwithstanding anything to the contrary in the PO, in these Terms and Conditions, or incorporated herein, or executed in writing separately by Vendor and Mines; Mines shall not be subject to any provision included in any terms, conditions, or agreements appearing on Vendor's or a Vendor subcontractor's website or any provision incorporated into any click-through or online agreements related to the purpose of the PO.
- 26. Prohibited Terms.** Nothing in this PO shall be construed as a waiver of any provision of CRS §24-106-109. Any term included in this PO that requires Mines to indemnify or hold Vendor harmless; requires Mines to agree to binding arbitration; limits Vendor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with that statute in any way shall be void ab initio.
- 27. Data Protection.** Vendor may receive personally identifiable information or other confidential information that is considered data ("Data"). Vendor will only collect Data necessary to fulfill its duties as considered in the Purchase Order or Quote. If, and only if, in the course of providing services during the term of services, Vendor receives or has access to student "education records", then Vendor shall be deemed a "school official," as defined by the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, et seq. and the regulations promulgated thereunder. Except as permitted under the terms of this Agreement, Vendor is prohibited from using the Data for any other purposes, including mining or scanning of content within the data. Vendor will store and process Data in accordance with industry best practices, including appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will maintain a written incident response plan that requires prompt notification to Mines of any security or privacy incident, as well as best practices for responding to a breach of PII. Vendor agrees to share its incident response plan upon request. Upon expiration of the retention period set forth in this Agreement or within ninety (90) days of termination of this Agreement Vendor and any subcontractors shall return the information in a form that is accessible and readable in accordance with C.R.S. § 24-73-101, 102, and FERPA, and then securely destroy any Data that remains in Vendor's systems and records.

- 28. Conformity with NDAA Section 889.** Mines personnel may not purchase electronic equipment manufactured by the following prohibited companies for use in University systems: Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; Dahua Technology Company; Or any subsidiary or affiliate of such. Vendor commits that it is not providing any electronic equipment from one of the prohibited companies. The relevant prohibition appears in the National Defense Authorization Act for FY 2019, Pub. L. No. 115-232 (NDAA). Specifically, Section 889 of the NDAA restricts the use of “covered telecommunications equipment or services.” Such equipment or services must not be used “as a substantial or essential component of any system, or as a critical technology as part of any system.”
- 29. Public Contracts with Natural Persons.** Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.
- 30. Protection of Minors.** Mines is committed to the safety of all individuals in its community and has implemented a Policy on the Protection of Minors <https://www.mines.edu/policy-library/protection-of-minors/> . The Vendor affirms that that they are aware that individuals under the age of 18 may be present on campus during the performance of this contract and the Vendor has taken reasonable precautions regarding their employees, volunteers, or participants to protect the safety and wellbeing of minors and ensure compliance with applicable laws. By signing this agreement, the Vendor certifies that they are aware of, and will comply with, all aspects of the Colorado School of Mine’s Policy on the Protection of Minors found at <https://www.mines.edu/policy-library/protection-of-minors/> .
- 31. Federal Flowdown Provisions. [*Applicable only to those purchases where Federally Funded Grants are the originating funding source*].** Where Mines has entered into an Agreement with either the U.S. Government, or another entity who has itself entered into an Agreement with the U.S. Government. That Agreement requires that certain federal grant provisions be made a part of any subsequent PO issued by the Mines related to furthering the performance or deliverables required under that Agreement. Where necessary to make the context of these provisions applicable to this PO, the term "contractor" shall mean "vendor," the term "contract" shall mean "this order," and the terms "Government," "contracting officer," and equivalent phrases shall mean "buyer" or "Mines." Vendor hereby agrees to flowdown the applicable clauses to its lower-tier subcontractors, and agrees that the clauses are in effect between it and the buyer, as applicable.

Performance by the vendor under this PO constitutes certification that the seller is presently in compliance with, and will continue to comply with, the Byrd Anti-Lobbying Amendment(31 U.S.C. 1352) and Executive Orders Numbers 12549 and 12689, as well as the Federal Acquisition Regulations (FAR), available at <https://www.acquisition.gov/far/>.