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SPECIFICATION S-00-001
GENERAL TERMS AND CONDITIONS

FOR
EFP SYSTEM DEMONSTRATION FACILITY

Donated By:
Herbert Rogers Jr.
Rogers Engineering Co.

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ROGERS ENGINEERING CO., INC. 111 PINE STREET SAN FRANCISCO, CALIF. 94111	General Terms & Conditions EFP System Demonstration Facility	SPECIFICATION S-00-001	REV. 0
JOB NO. S-81012	Client EFP Systems Date 6/29/81	SHEET 1 OF 10	

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GENERAL TERMS AND CONDITIONS

FOR

EFP SYSTEMS DEMONSTRATION FACILITY

1. PRICE

The price fixed in or by this Purchase Order is not subject to change except as expressly provided herein or by amendment as provided herein. Seller warrants that the price complies with all laws and regulations.

2. QUANTITIES

Quantities ordered must not be exceeded without written permission except on bulk items where Industrial Specifications set forth standard allowable overages. Quantities must not be less than ordered unless Seller has received written permission from Buyer's Purchasing Department.

3. TAXES

Unless otherwise specified herein, all taxes which Seller may be required to pay or collect are for Seller's account and shall be deemed to be included in the price stipulated, whether or not they are required to be separately stated. However, this equipment or service is being purchased under contract for Los Alamos Scientific Laboratory (LASL) which is a U. S. Government funded organization, and Rogers Engineering Co., Inc. (hereinafter called Buyer), as a subcontractor to LASL, is exempt from payment of state and local sales or use taxes.

4. TERMS

Unless otherwise specified herein, payment is due only on final completion, delivery and acceptance. Method of payment will be ninety percent (90%) of the component price thirty (30) days after invoice date and receipt of supporting bill of lading evidencing shipment, provided the equipment and/or material is received at work site and no apparent defects or damage are observed. The invoice date shall be the date of delivery to the carrier. Ten percent (10%) will be paid thirty (30) days after operation and acceptance. In the event such acceptance is delayed more than ninety (90) days after shipment and the equipment does not appear damaged, defective, or nonconforming with the contract, the final payment will then become payable. Unless otherwise agreed, no payment shall be deemed to constitute an acceptance of the equipment or any component part thereof or a release of any responsibility or obligation of Seller. Discounts are calculated not earlier than date each correct invoice

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reaches Buyer. If Buyer requires, Seller shall furnish complete and/or partial lien waivers from Seller and from its suppliers and subcontractors as a condition of payment. Buyer may withhold payment in whole or in part without Buyer becoming liable to Seller if Buyer has reasonable grounds to believe that Seller may be liable to the Buyer or has or may default or that a lien may be filed, provided that such withholding shall only be to the extent and for so long as is necessary in Buyer's reasonable judgment.

5. DELIVERY

Time is of the essence on all delivery or deliveries hereunder. If Buyer reasonably believes deliveries would not be so made and Seller is not able to prove this belief unreasonable, Buyer, in addition to other remedies, may terminate all or part of Seller's further performance and Buyer's further obligations under this order by notice to Seller subsequently confirmed in writing and obtain substitute items elsewhere and charge Seller with the loss and expense.

6. PRECEDENCE OF DOCUMENTS

The order of precedence of documents shall be in the following order:

- (1) Conditions in Purchase Order, with attached Material Requisition and specifications.
- (2) Complementary drawings and data sheets as approved by Buyer.
- (3) Seller's equipment specifications as approved by Buyer.

7. AMENDMENTS

Amendments or changes shall bind Buyer only if (a) it is in writing, (b) it states that it amends this Order and (c) it is signed by Buyer's authorized agent.

8. CHANGES

Buyer may make changes within the general scope of this Purchase Order. If Seller accepts Buyer's terms for the change, or commences performance of the change without objection to such terms, or if Seller does not object to such terms in writing within ten (10) days after notice of such change is sent to the Seller, Seller shall be bound by Buyer's proposed terms. If Seller objects to Buyer's terms, and if Buyer so directs in writing, the change shall be effective on Seller but the price, time of performance and other liabilities of Seller will be equitably adjusted, provided that Seller promptly responds in reasonably accurate and complete detail to Buyer's requests for information concerning such adjustments. Changes and corrections which do not affect the Seller's costs shall be made without charge.

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9. CONTACTS

No contacts shall be made directly with Buyer's client unless authorized by Buyer in writing. Any and all contacts pertaining to the specifications, terms, conditions, prices, or delivery on this order shall be made by Seller only with the approval of the authorized agent of Buyer's Purchasing Department. No changes, additions, deductions, "hold-up of work" instructions, etc. on this order shall be deemed binding until authorized in writing by a Supplemental Sheet to the Purchase Order signed by the Buyer's authorized agent.

10. INSPECTION

Buyer and its designees, including its Client, may at any time inspect or have inspected items or work covered by this Purchase Order at place of work or fabrication prior to acceptance. Seller shall advise the Purchasing Department of the Buyer of the expected fabrication starting date, the other dates of the tests which are performed during fabrication, and the dates of readiness for final inspection and provisional acceptance tests. Such advice shall be given as required by this Purchase Order. Seller shall provide and bear the cost, including charges of third parties, or any testing or inspection, facilities, equipment and personnel required in connection with any testing or inspection to be carried out by Buyer or Seller hereunder. Seller shall prepare and furnish without additional charge such test reports and analysis certificates in such number as Buyer may require. All of the above, on reasonable notice, may be done by the Buyer while work or fabrication is progressing, prior to packing, or prior to shipping. Without prejudice to its other rights, Buyers may reject non-conforming goods or work in whole or in part, and they shall remain at Seller's risk including cost of return. Final acceptance of the supply will take place after the material and/or equipment supplied has been put in operation. Buyer's authorization to ship after inspection or Buyer's failure to inspect, or on inspection failure to reject, shall not relieve the Seller from the responsibilities set forth in the Buyer's Purchase Order. Seller's orders to Subsuppliers shall include all of the foregoing provisions in this section, including provisions for Buyer's inspection.

11. EXPEDITING

Seller shall assist Buyer and his designees in expediting. This obligation includes the furnishing of such information and such access to the plants of Seller and its Subsuppliers as Buyer may require.

12. TRANSPORTATION

Unless otherwise specified in the Purchase Order, the price stated includes packing, insurance, and freight, and delivery F. O. B.

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address specified by the Buyer. Consideration shall be given for special packaging for items sensitive to transit impact loads since access road to work site from main highway is 12 miles of unimproved road.

13. SHIPMENTS

Goods shipped without proper release and documentation will be at Seller's risk and expense and if received may be held at Seller's risk and expense including all demurrage and storage charges until the proper documents are received.

14. WARRANTIES

Workmanship and Materials: Seller shall warrant that the equipment and/or material and all parts thereof furnished by Seller, whether or not manufactured by Seller, shall be of the kind and quality described in the Purchase Order or contract (which shall include this Specification), will be free of defects in workmanship, material, and title, and shall perform in the manner hereinafter set forth. All material and equipment shall be of good and merchantable quality, and shall be fit for its intended purpose.

Performance: Seller shall warrant that when the equipment and/or material is placed in operation or used it will perform in the manner set forth in the purchase order or contract, which shall include this Specification.

Remedies: Seller shall agree that if it shall appear within twelve (12) months from the date the work is placed in operation, provided the same is not unreasonably delayed by Buyer, that the equipment and/or material delivered hereunder does not meet the warranties specified above and Buyer notifies Seller promptly upon the discovery of the defect or nonconformity, Seller shall acknowledge receipt of such notice of defect or nonconformity and shall inform Buyer in writing within five (5) days of receipt of such notice as to whether:

- (1) Seller will, at his expense, immediately repair or replace the equipment and/or material. Such repair shall be effected in such a manner as not to interfere with construction and operations conducted by Buyer and in such a manner as not to interfere or breach any labor agreements between Buyer, his contractors or subcontractors; or
- (2) Seller authorizes Buyer to repair the equipment and/or material, or have it repaired, or otherwise correct the nonconformity, or have it corrected, so that the equipment and/or material will meet and conform to the warranty specified above, and agrees to pay Buyer the cost of such repair, replacement, or correction. All freight charges incurred in connection with

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any such repair or replacement shall be borne by Seller. If Seller is obliged to correct defects as herein provided, the warranty period for the repaired or replacement part shall extend for one year from completion of repair or installation of such part by Seller or Buyer provided the same is not unreasonably delayed by Buyer.

15. PROPERTY FURNISHED BY BUYER

All drawings, specifications, materials and equipment furnished by the Buyer shall remain its property, shall be used only for filling the order, and shall be returned at Seller's expense if Buyer so requests. All such items shall be held at Seller's risk.

16. SECRECY

All designs and data furnished by Buyer shall be used only to fill this order. Such designs and data shall be kept confidential except data which Seller can prove is available to the public or was in writing and already in its possession at the time such designs and data were furnished or was rightfully received from a third party.

17. PATENTS AND SIMILAR RIGHTS

Seller shall indemnify and save harmless Buyer for all cost, loss and expense as a result of any infringement or claim of infringement of any patent or proprietary right including those for litigation (including attorney's fees) and changes or replacements to avoid infringements. At Buyer's request, Seller shall defend any suit or action arising out of any such infringement or claim, but Buyer shall be entitled to be fully advised and to participate in any such suit or action. No such suit or action shall be settled, discontinued, nor shall judgment be permitted to be entered if Buyer's interest would be adversely affected. If Buyer from time to time so elects, those to whom Buyer furnished the items covered by this order or to whom it is correspondingly liable shall have the same rights as Buyer under this clause. Seller's indemnity does not extend to items manufactured to Buyer's own specific design unless originally submitted or suggested by Seller.

18. LAWS AND REGULATIONS

Equipment and/or material furnished hereunder shall be so designed and constructed that when installed it will comply with the applicable laws, rules and regulations of the U. S. Government and the State of Nevada, including without limitation, all "Occupational Safety and Health Standards" promulgated by the U. S. Secretary of Labor. All expenses incurred in complying with these requirements are understood to be included in the Purchase Order or contract price.

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DRAWINGS AND DATA

Drawings and data requirements including time schedule are shown on the Material Requisition. These are considered as part of the quotation and purchased supply. Approval of such drawings by Buyer shall be general only and shall not relieve Seller of responsibility for correct construction and compliance with the Purchase Order or contract, which shall include this Specification. Seller shall pay for any alterations made necessary by his errors. All work shall be done in accordance with such approved drawings in compliance with the intent of this Specification.

Approval of all drawings and data sheets by the Buyer is required. Calling Seller's attention to certain errors does not place responsibility upon Buyer for the correctness of other features not mentioned. Foundation and outline drawings must be certified correct and that as to dimensions and weights the equipment will conform to the drawings. Seller's drawings and data sheets shall show equipment numbers, Material Requisition, purchase order number, Seller's title, drawing and revision number all within a title block in the lower righthand corner of the sheet.

20.

ASSIGNMENT

Seller may not assign its rights hereunder without Buyer's written consent, except those rights to proceeds which by law may be assigned notwithstanding a contractual prohibition against such assignment. Any actual or attempted assignment, attachment garnishment, or claim by a third party with respect to Seller's rights (including rights to amounts due or to become due) under this Purchase Order shall entitle Buyer to withhold all payment until full performance by Seller and thereafter until buyer has determined to its complete satisfaction to whom such funds are payable and that Buyer is fully protected from any possibility of conflicting claims by Seller, its assignee or any third party and from any cost, damage, expense, or loss (including those hereinafter defined) and shall further entitle Buyer to recover out of the funds payable hereunder or otherwise from Seller any cost, expense, or loss which Buyer incurs as a result thereof (including court costs and reasonable attorney's fees) including those attributable to suits by Buyer for declaratory relief. Buyer may assert any counterclaim or set off which Buyer has against any assignee whether or not such counterclaim or set off arose under or with respect to this order.

21.

DISPUTES

Seller will and hereby does consent to the service of process from, and the jurisdiction of, such forum as will in Buyer's judgment be in the most competent position to decide any questions of law or fact involved in any actual or possible disputes between Buyer and Seller and Buyer and third parties and does hereby waive the right to bring an action or suit in any other place.

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22. BANKRUPTCY

Buyer may consider Seller in breach if it becomes insolvent or commits any act of bankruptcy or insolvency or fails to obtain dismissal of any involuntary petition in bankruptcy within thirty (30) days of the filing.

23. TERMINATION

Buyer may terminate, in whole or in part, Seller's further performance and Buyer's obligations at any time by notice to Seller confirmed in writing. If such termination is for Seller's breach then to the extent of such termination Seller's right to recover any profit or additional cost hereunder shall end and Buyer shall have against Seller all remedies provided by law and equity. In the event of termination Seller shall upon Buyer's written request immediately transfer and deliver to Buyer free of any liens and encumbrances any goods or portion thereof completed or in process identified to this purchase order and consents to such action including specific performance as may be necessary to give effect to this provision under such conditions as a court may determine to be just. In the event of termination for other than breach, Seller shall be entitled to only that amount which bears the same proportion to the total price determined as of the date of termination as the conforming items reasonably delivered prior to termination bear to the materials or work covered by this Purchase Order determined as of the date of termination. To the extent this Purchase Order specifically states that it specifies items which are to be specially fabricated to Buyer's order, Seller shall only be entitled to an equitable amount to cover its direct costs reasonably expended or committed to third parties prior to termination and Seller's reasonable costs for prompt orderly termination (less salvage value and amounts, recoverable by Seller) plus an equitable profit in relation thereto. If Buyer incorrectly and in good faith terminates Seller for breach, this shall be deemed to be a termination by Buyer for reasons other than breach and payment shall be made as in such case plus an amount as liquidated damages equal to Seller's actual damages and costs of collection which amount in the aggregate shall not exceed the lesser of ten (10) percent of the price then determined or One Thousand Dollars (\$1,000.00). In no event shall Buyer's liability or Seller's recovery under or with respect to this Purchase Order exceed the price determined at the time of the termination or breach. This Section 23 shall not be construed as limiting any other rights or remedies available to Buyer.

24. ACCEPTANCE OF ORDER

Except insofar as may be expressly modified by a provision written by Supplemental Sheet to this Order by an authorized agent of Buyer or amendment by the Purchase Order proper, these terms and condi-

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tions as set forth in this "GENERAL TERMS AND CONDITIONS" shall apply and are made binding on the Seller by its acceptance of the Purchase Order regardless of any provision inconsistent with them which is included in the Seller's catalogs, circulars, quotations, or price lists, or any other document prepared by the Seller.

25. NON-WAIVER

Nothing herein shall be construed as limiting Buyer's rights otherwise provided by law. Buyer's failure to enforce, or waiver of, any right or terms hereof, shall not be considered a continuing waiver of any of Buyer's rights or such terms.

26. FORCE MAJEURE

Subject to the following sentence and Seller's assumption of any greater obligation hereunder, or with respect hereto, Seller's inability to perform or delay or non-delivery in whole or in part because of the occurrence of a contingency, the non-occurrence of which was a basic assumption on which this order was made, or by compliance in good faith with government regulation, is not a breach provided Seller uses its best efforts to remedy the situation and first allocates all available production and deliveries to Buyer.

In the case of casualty to identified goods required for Seller's performance (unless to have been supplied by Buyer) then (unless the situation cannot be remedied by the expenditure of money or other available means) Seller assumes the risk of loss to the extent it would otherwise be liable if Seller breached this order.

27. SEVERABILITY

Since this is a general form, any legally invalid provision shall be considered severable. Other provisions shall not be invalidated by this occurrence.

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