

## 52.249-8 Default (Fixed-Price Supply and Service).

As prescribed in 49.504(a)(1), insert the following clause:

Default (Fixed-Price Supply and Service) (Apr 1984)

(a)

(1) The Government *may*, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Deliver the *supplies* or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, *may* be exercised if the Contractor does not cure such failure within 10 days (or more if authorized *in writing* by the *Contracting Officer*) after receipt of the notice from the *Contracting Officer* specifying the failure.

(b) If the Government terminates this contract in whole or in part, it *may* acquire, under the terms and in the manner the *Contracting Officer* considers appropriate, *supplies* or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those *supplies* or services. However, the Contractor *shall* continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor *shall* not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) *freight* embargoes, and (9) unusually severe weather. In each instance the failure to perform *must* be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor *shall* not be liable for any excess costs for failure to perform, unless the subcontracted *supplies* or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government *may* require the Contractor to transfer title and deliver to the Government, as directed by the *Contracting Officer*, any (1) completed *supplies*, and (2) partially completed *supplies* and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of

this contract. Upon direction of the *Contracting Officer*, the Contractor *shall* also protect and preserve property in its possession in which the Government has an interest.

(f) The Government *shall* pay contract price for completed *supplies* delivered and accepted. The Contractor and *Contracting Officer* *shall* agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government *may* withhold from these amounts any sum the *Contracting Officer* determines to be necessary to protect the Government against loss because of outstanding liens or *claims* of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties *shall* be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

*Alternate I* (Apr 1984). If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a)(1) The Government *may*, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause, *may* be exercised if the Contractor does not cure such failure within 10 days (or more if authorized *in writing* by the *Contracting Officer*) after receipt of the notice from the *Contracting Officer* specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor *shall*, upon direction of the *Contracting Officer*, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and *Contracting Officer* *shall* agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

**Parent topic:** [52.249 \[Reserved\]](#)