52.246-17 Warranty of Supplies of a Noncomplex Nature.

As prescribed in 46.710(a)(1), insert a clause *substantially as follows*:

Warranty of *Supplies* of a Noncomplex Nature (June 2003)

(a) *Definitions*. As used in this clause-

Acceptance means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing *supplies*, or approves specific services as partial or complete performance of the contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. The word does not include "data."

(b) Contractor's obligations.

(1) Notwithstanding *inspection* and *acceptance* by the Government of *supplies* furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____ *[Contracting Officer shall state specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g.,the number of miles or hours of use, or combinations of any applicable events or periods of time]-*

(i) All *supplies* furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, *shipment* of such *supplies* will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the *supplies* while in transit *shall* be borne by the Contractor. However, the Contractor's liability for the transportation charges *shall* not exceed an amount equal to the cost of transportation by the usual commercial method of *shipment* between the place of delivery specified in this contract and the Contractor's plant, and return.

(3) Any *supplies* or parts thereof, corrected or furnished in replacement under this clause, *shall* also be subject to the terms of this clause to the same extent as *supplies* initially delivered. The *warranty*, with respect to *supplies* or parts thereof, *shall* be equal in duration to that in paragraph (b)(1) of this clause and *shall* run from the date of delivery of the corrected or replaced *supplies*.

(4) All implied *warranties* of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) Remedies available to the Government.

(1) The *Contracting Officer shall* give written notice to the Contractor of any breach of *warranties* in paragraph (b)(1) of this clause within _____ *[Contracting Officer shall insert specific period of*

time; e.g.,"45days of the last delivery under this contract," or "45days after discovery of the defect"].

(2) Within a reasonable time after the notice, the *Contracting Officer may* either-

(i) Require, by written notice, the prompt correction or replacement of any *supplies* or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such *supplies* and reduce the contract price by an amount equitable under the circumstances.

(3)

(i) If the contract provides for *inspection* of *supplies* by sampling procedures, conformance of *supplies* or *components* subject to *warranty* action *shall* be determined by the applicable sampling procedures in the contract. The *Contracting Officer*-

(A) *May*, for sampling purposes, group any *supplies* delivered under this contract;

(B) *Shall* require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of *supplies* on which *warranty* action is proposed;

(C) *May* project *warranty* sampling results over *supplies* in the same *shipment* or other *supplies* contained in other *shipments* even though all of such *supplies* are not present at the point of reinspection; provided, that the *supplies* remaining are reasonably representative of the quantity on which *warranty* action is proposed; and

(D) Need not use the same lot size as on original *inspection* or reconstitute the original *inspection* lots.

(ii) Within a reasonable time after notice of any breach of the *warranties* specified in paragraph (b)(1) of this clause, the *Contracting Officer may* exercise one or more of the following *options*:

(A) Require an equitable adjustment in the contract price for any group of *supplies*.

(B) Screen the *supplies* grouped for *warranty* action under this clause at the Contractor's expense and return all nonconforming *supplies* to the Contractor for correction or replacement.

(C) Require the Contractor to screen the *supplies* at locations designated by the Government within the *contiguous United States* and to correct or replace all nonconforming *supplies*.

(D) Return the *supplies* grouped for *warranty* action under this clause to the Contractor (irrespective of the f.o.b. point or the point of *acceptance*) for screening and correction or replacement.

(4)

(i) The *Contracting Officer may*, by contract or otherwise, correct or replace the nonconforming *supplies* with similar *supplies* from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor-

(A) Fails to make redelivery of the corrected or replaced *supplies* within the time established for their return; or

(B) Fails either to accept return of the nonconforming *supplies* or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the *Contracting Officer may* authorize *in writing*) after receipt of notice from the *Contracting Officer* specifying such failure.

(ii) Instead of correction or replacement by the Government, the *Contracting Officer may* require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the *Contracting Officer may* dispose of the nonconforming *supplies* for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming *supplies*, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)

Alternate I [Reserved]

Alternate II (Apr 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a *warranty* would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(2) for paragraph (b)(2) of the basic clause:

(2) If correction or replacement is required and transportation of *supplies* in connection with correction or replacement is necessary, transportation charges and responsibility for the *supplies* while in transit *shall* be borne by the Government.

Alternate III (Apr 1984). If the *supplies* cannot be obtained from another source, substitute a paragraph substantially the same as the following paragraph (c)(4) for paragraph (c)(4) of the basic clause:

(4) If the Contractor does not agree as to responsibility to correct or replace the *supplies* delivered, the Contractor *shall* nevertheless proceed in accordance with the written request issued by the *Contracting Officer* under paragraph (c)(2) of this clause to correct or replace the defective or nonconforming *supplies*. In the event it is later determined that the *supplies* were not defective or nonconforming within the terms and conditions of this clause, the contract price will be equitably adjusted.

Alternate IV (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause *shall* be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause *shall* be at no increase in the total final price. Any equitable adjustment made under paragraph (c)(2) of this clause *shall* be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate V (Apr 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a

paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as "(c)(7)" if *Alternate* IV is also being used.

(6) The Contractor *shall* be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the *supplies* to be inspected and/or returned for correction or replacement.

Parent topic: 52.246 [Reserved]