52.246-18 Warranty of Supplies of a Complex Nature.

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

Warranty of *Supplies* of a Complex Nature (*May* 2001)

(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 and identified *supplies*, or approves specific services rendered, 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) The Contractor warrants that for _____ *[Contracting Officer shall state the specific warranty period 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]* all *supplies* furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract; provided, however, that with respect to Government-furnished property, the Contractor's *warranty shall* extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's *warranty shall* extend to the modification or other work.

(2) Any *supplies* or parts thereof corrected or furnished in replacement *shall* be subject to the conditions of this clause to the same extent as *supplies* initially delivered. This *warranty shall* be equal in duration to that set forth in paragraph (b)(1) of this clause and *shall* run from the date of delivery of the corrected or replaced *supplies*.

(3) The Contractor *shall* not be obligated to correct or replace *supplies* if the facilities, tooling, drawings, or other equipment or *supplies* necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor *shall* promptly notify the *Contracting Officer*, *in writing*, of the nonavailability.

(4) The Contractor *shall* also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price.

(5) When *supplies* are returned to the Contractor, the Contractor *shall* bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of *acceptance*) to the Contractor's plant and return.

(6) 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) In the event of a breach of the Contractor's *warranty* in paragraph (b)(1) of this clause, the Government *may*, at no increase in contract price-

(i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of *acceptance*) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming *supplies*; or

(ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.

(2) If the *Contracting Officer* does not require correction or replacement of defective or nonconforming *supplies* or the Contractor is not obligated to correct or replace under paragraph (b)(3) of this clause, the Government *shall* be entitled to an equitable reduction in the contract price.

(3) The *Contracting Officer shall* notify the Contractor *in writing* of any breach of the *warranty* in paragraph (b) of this clause within _____. *[Contracting Officer shall insert specific period of time in which notice shall be given to the Contractor; e.g.,"45days after delivery of the nonconforming supplies."; "45days of the last delivery under this contract."; or "45days after discovery of the defect."]* The Contractor *shall* submit to the *Contracting Officer* a written recommendation within _____ *[Contracting Officer shall insert period of time]* as to the corrective action required to remedy the breach. After the notice of breach, but not later than _____ *[Contracting Officer shall insert period within which the warranty remedies should be exercised]* after receipt of the Contractor's recommendation for corrective action, the *Contracting Officer may*, *in writing*, direct correction or replacement as in paragraph (c)(1) of this clause, and the Contractor *shall*, notwithstanding any disagreement regarding the existence of a breach of *warranty*, comply with this direction. If it is later determined that the Contractor did not breach the *warranty* in paragraph (b)(1) of this clause, the contract price will be equitably adjusted.

(4) If *supplies* are corrected or replaced, the period for notification of a breach of the Contractor's *warranty* in paragraph (c)(3) of this clause *shall* be _____ *[Contracting Officer shall insert period within which the Contractor must be notified of a breach as to corrected or replaced supplies]* from the furnishing or return by the Contractor to the Government of the corrected or replaced *supplies* or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for _____ *[Contracting Officer shall insert period within which the Contractor must be notified of a breach of warranty as to corrected or replaced supplies]* thereafter.

(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 the 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)(5) for paragraph (b)(5) of the basic clause:

(5) 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 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 adjustments 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 IV (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* III is also 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]