52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

As prescribed in 46.710(c)(1), the *contracting officer may* insert a clause *substantially as follows*:

Warranty of Systems and Equipment under Performance Specifications or Design Criteria (*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.

Defect means any condition or characteristic in any *supplies* or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled *Warranty* of Data, *supplies* also mean "data."

(b) Contractor's obligations.

(1) The Contractor's *warranties* under this clause *shall* apply only to those *defects* discovered by either the Government or the Contractor _____ *[Contracting Officer shall state the warranty period; e.g.,"at the time of delivery;" "within 45 days after delivery," or the specified event whose occurrence will terminate the warranty period; e.g.,the number of miles or hours of use, or combination of any applicable events or periods of time.].*

(2) If the Contractor becomes aware at any time before *acceptance* by the Government (whether before or after tender to the Government) that a *defect* exists in any *supplies* or services, the Contractor *shall-*

(i) Promptly correct the *defect*; or

(ii) Promptly notify the *Contracting Officer*, *in writing*, of the *defect*, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the *Contracting Officer* determines that a *defect* exists in any of the *supplies* or services accepted by the Government under this contract, the *Contracting Officer shall* promptly notify the Contractor of the *defect*, *in writing*, within _____ *[Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g.,"30days after delivery of the nonconforming supplies;" "90days of the last delivery under this contract;" or "90days after discovery of the defect."].* Upon timely notification of the existence of a *defect*, or if the Contractor independently discovers a *defect* in accepted *supplies* or services, the Contractor *shall* submit to the *Contracting Officer*, *in writing*, within _____ *[Contracting Officer shall insert period of time]* a recommendation for corrective actions, together with supporting information in sufficient detail for

the *Contracting Officer* to determine what corrective action, if any, *shall* be undertaken.

(4) The Contractor *shall* promptly comply with any timely written direction from the *Contracting Officer* to correct or partially correct a *defect*, at no increase in the contract price.

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

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor *shall* submit a technical and cost proposal within _____. *[Contracting Officer shall insert period of time]* to amend the contract to permit *acceptance* of the affected *supplies* or services in accordance with the revised requirement, and an equitable reduction in the contract price *shall* promptly be negotiated by the parties and be reflected in a *supplemental agreement* to this contract.

(7) Any *supplies* or parts thereof corrected or furnished in replacement and any services reperformed *shall* also be subject to the conditions of this clause to the same extent as *supplies* or services initially accepted. The *warranty*, with respect to these *supplies*, parts, or services, *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*.

(8) The Contractor *shall* not be responsible under this clause for the correction of *defects* in Government-furnished property, except for *defects* in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor *shall* be responsible for correction of *defects* that result from the modifications or other work.

(9) If the Government returns *supplies* to the Contractor for correction or replacement under this clause, the Contractor *shall* be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of *shipment* from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of *acceptance*) to the Contractor’s plant and return to the place of delivery specified in this contract. The Contractor *shall* also bear the responsibility for the *supplies* while in transit.

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

(c) Remedies available to the Government.

(1) The rights and remedies of the Government provided in this clause-

(i) *Shall* not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of *inspection* and *acceptance*; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within _____ *[Contracting Officer shall insert period of time]* after receipt of the Contractor’s recommendations for corrective action and adequate supporting information, the *Contracting Officer*, using sole discretion, *shall* give the Contractor written notice not to correct any *defect*, or to correct or partially correct any *defect* within a reasonable time at _____ *[Contracting Officer shall insert locations where corrections may be performed]*.

(3) In no event *shall* the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct *defects*, nor *shall* there be any adjustment of the delivery schedule or period of performance as a result of the correction of *defects* unless provided by a *supplemental agreement* with adequate consideration.

(4) This clause *shall* not be construed as obligating the Government to increase the contract price.

(5)

(i) The *Contracting Officer shall* give the Contractor a written notice specifying any failure or refusal of the Contractor to-

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct *defects* as directed under paragraph (b)(4) of this clause; or

(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice *shall* specify a period of time following receipt of the notice by the Contractor in which the Contractor *must* remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the *Contracting Officer*'s written notice in paragraph (c)(5)(i) of this clause, the *Contracting Officer may* by contract or other-wise-

(i) Obtain detailed recommendations for corrective action and either-

(A) Correct the *supplies* or services; or

(B) Replace the *supplies* or services, and 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, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(End of clause)

Alternate I (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)(9) for paragraph (b)(9) of the basic clause:

Alternate II (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

(7) 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 (b)(6) 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 III (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)(7) to the basic clause. Redesignate the additional paragraph as "(c)(8)" if *Alternate* II is also being used:

(7) 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]