

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 Laboratory by which the Laboratory 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 _____ [*Laboratory Procurement Official 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 Laboratory-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 Laboratory. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Laboratory Procurement Official, in writing, of the nonavailability.

(4) The Contractor shall also prepare and furnish to the Laboratory 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 Laboratory.

- (1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) of this clause, the Laboratory 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 Laboratory Procurement Official 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 Laboratory shall be entitled to an equitable reduction in the contract price.
- (3) The Laboratory Procurement Official shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within _____. [*Laboratory Procurement Official shall insert specific period of time in which notice shall be given to the Contractor; e.g., "45 days after delivery of the nonconforming supplies."; "45 days of the last delivery under this contract."; or "45 days after discovery of the defect."*] The Contractor shall submit to the Laboratory Procurement Official a written recommendation within _____ [*Laboratory Procurement Official shall insert period of time*] as to the corrective action required to remedy the breach. After the notice of breach, but not later than _____ [*Laboratory Procurement Official shall insert period within which the warranty remedies should be exercised*] after receipt of the Contractor's recommendation for corrective action, the Laboratory Procurement Official 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 _____ [*Laboratory Procurement Official 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 Laboratory of the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Laboratory or other activity, for _____ [*Laboratory Procurement Official 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 Laboratory provided in this clause are in addition to and do not limit any rights afforded to the Laboratory by any other clause of the contract.
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