

## 46.706 Warranty terms and conditions.

(a) To facilitate the *pricing* and enforcement of *warranties*, the *contracting officer* shall ensure that *warranties* clearly state the-

(1) Exact nature of the item and its *components* and characteristics that the contractor warrants;

(2) Extent of the contractor's *warranty* including all of the contractor's obligations to the Government for breach of *warranty*;

(3) Specific remedies available to the Government; and

(4) Scope and duration of the *warranty*.

(b) The *contracting officer* shall consider the following guidelines when preparing *warranty* terms and conditions:

(1) Extent of contractor obligations.

(i) Generally, the contractor's obligations under *warranties* extend to all defects discovered during the *warranty* period, but do not include damage caused by the Government. When a *warranty* for the entire item is not advisable, a *warranty* may be required for a particular aspect of the item that may require special protection (*e.g.*, installation, *components*, accessories, subassemblies, preservation, packaging, and packing, etc.).

(ii) If the Government specifies the design of the end item and its measurements, tolerances, materials, tests, or *inspection* requirements, the contractor's obligations for correction of defects shall usually be limited to defects in material and workmanship or failure to conform to specifications. If the Government does not specify the design, the *warranty* extends also to the usefulness of the design.

(iii) If express *warranties* are included in a contract (except contracts for *commercial products* and *commercial services*), all implied *warranties* of merchantability and fitness for a particular purpose shall be negated by the use of specific language in the clause (see clauses [52.246-17](#), *Warranty of Supplies* of a Noncomplex Nature; [52.246-18](#), *Warranty of Supplies* of a Complex Nature; and [52.246-19](#), *Warranty of Systems and Equipment* under Performance Specifications or Design Criteria).

(2) Remedies.

(i) Normally, a *warranty* shall provide as a minimum that the Government may-

(A) Obtain an equitable adjustment of the contract, or

(B) Direct the contractor to repair or replace the defective items at the contractor's expense.

(ii) If it is not practical to direct the contractor to make the repair or replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the Government, the *warranty* should provide *alternate* remedies, such as authorizing the Government to-

(A) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or

(B) Arrange for the repair or replacement of the defective item, by the Government or by another source, at the contractor's expense.

(iii) If it can be foreseen that it will not be practical to return an item to the contractor for repair, to remove it to an *alternate* source for repair, or to replace the defective item, the *warranty should* provide that the Government *may* repair, or require the contractor to repair, the item in place at the contractor's expense. The contract *shall* provide that in the circumstance where the Government is to accomplish the repair, the contractor will furnish at the place of delivery the material or parts, and the installation instructions required to successfully accomplish the repair.

(iv) Unless provided otherwise in the *warranty*, the contractor's obligation to repair or replace the defective item, or to agree to an equitable adjustment of the contract, *shall* include responsibility for the costs of furnishing all labor and material to-

(A) Reinspect items that the Government reasonably expected to be defective,

(B) Accomplish the required repair or replacement of defective items, and

(C) Test, inspect, package, pack, and mark repaired or replaced items.

(v) If repair or replacement of defective items is required, the contractor *shall* generally be required by the *warranty* to bear the expense of transportation for returning the defective item 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 subsequent return. When defective items are returned to the contractor from other than the place of delivery specified in the contract, or when the Government exercises *alternate* remedies, the contractor's liability for transportation charges incurred *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 the contract and the contractor's plant and subsequent return.

(3) *Duration of the warranty.* The time period or duration of the *warranty must* be clearly specified and *shall* be established after consideration of such factors as (i) the estimated useful life of the item, (ii) the nature of the item including storage or shelf-life, and (iii) trade practice. The period specified *shall* not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.

(4) *Notice.* The *warranty shall* specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. This notice period, which *shall* apply to all defects discovered during the *warranty* period, *shall* be long enough to assure that the Government has adequate time to give notice to the contractor. The *contracting officer shall* consider the following factors when establishing the notice period:

(i) The time necessary for the Government to discover the defects.

(ii) The time reasonably required for the Government to take necessary administrative steps and make a timely report of discovery of the defects to the contractor.

(iii) The time required to discover and report defective replacements.

(5) *Markings.*

(i) The packaging and preservation requirements of the contract *shall* require the contractor to stamp or mark the *supplies* delivered or otherwise furnish notice with the *supplies* of the existence of the *warranty*. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the *supplies* that the *supplies* are under *warranty*. Markings *may* be brief but *should* include—

(A) A brief statement that a *warranty* exists;

(B) The substance of the *warranty*;

(C) Its duration; and

(D) Who to notify if the *supplies* are found to be defective.

(ii) For *commercial products* (see [46.709](#)), the contractor's trade practice in *warranty* marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted *supplies*.

(6) *Consistency*. *Contracting officers shall* ensure that the *warranty* clause and any other *warranty* conditions in the contract (*e.g.*, in the specifications or an *inspection* clause) are consistent. To the extent practicable, all of the *warranties* to be contained in the contract *should* be expressed in the *warranty* clause.

**Parent topic:** [Subpart 46.7 - Warranties](#)