

Federal Acquisition Regulation

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brand name and model basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

[48 FR 42478, Sept. 19, 1983, as amended at 59 FR 11388, Mar. 10, 1994]

52.246-22 [Reserved]

52.246-23 Limitation of Liability.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 60 FR 34762, July 3, 1995; 61 FR 67426, Dec. 20, 1996]

52.246-24 Limitation of Liability—High-Value Items.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—HIGH-VALUE ITEMS (FEB 1997)

(a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d)(1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or

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(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

- (1) Warranty of technical data;
- (2) Ground and flight risks or aircraft flight risks; or
- (3) Government property.

(End of clause)

Alternate I (APR 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a):

(This clause shall apply only to those items identified in this contract as being subject to this clause.)

[48 FR 42478, Sept. 19, 1983, as amended at 60 FR 34762, July 3, 1995; 61 FR 67426, Dec. 20, 1996]

52.246-25 Limitation of Liability—Services.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

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(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 60 FR 34762, July 3, 1995; 61 FR 67426, Dec. 20, 1997]

52.247-1 Commercial Bill of Lading Notations.

As prescribed in 47.104-4, insert the following clause:

COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

“Transportation is for the _____ [name the specific agency] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.”

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

“Transportation is for the _____ [name the specific agency] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No ____ This may be confirmed by contacting _____ [name and address of the contract administration office listed in the contract].”