

APPENDIX E: CLAIMS AND LIABILITY RULES

E.1. INTRODUCTION. The claims management methodology is such that the contractor shall directly settle a claim with the customer. The contractor shall facilitate all necessary processes to negotiate claims settlements directly with the customer whenever possible.

E.2. LIABILITY.

E.2.1. The Full Replacement Value Act (US Code Title 10 §2636a) of 2003, allows the Secretary of Defense to include a clause for full replacement value (FRV). If the customer files a claim with the contractor within nine months of delivery, and the contractor is deemed liable, the contractor shall be responsible for Full Replacement Value (FRV) for all damaged, missing and/or destroyed items.

E.2.2. The contractor shall be liable to the customer, to the customer's agent, or to the military service who contracted for the shipment, for loss or damage that occurs to the customer's personal property. Liability on all shipments will be determined in accordance with the Carmack Amendment to the Interstate Commerce Act, (Title 49, United States Code, Section 14706) unless a specific provision herein establishes a different rule or procedure.

E.2.3. Replacement cost, whether depreciated or undepreciated, is based on the replacement cost at destination and includes shipping charges and sales tax.

E.2.4. Payments by the contractor to a customer for inconvenience claims and hardship expenses will not be deducted from the contractor's maximum liability for loss or damage; these are a separate liability.

E.3. EXCLUSIONS FROM LIABILITY.

E.3.1. The contractor shall be liable for damaged, lost, or destroyed property that occurs while being transported or held in storage (SIT), EXCEPT loss or damage caused by or resulting from the following:

E.3.1.1. From an act or omission of the customer;

E.3.1.2. From manufacture defect;

E.3.1.3. From hostile or warlike action in time of peace or war including action in hindering, combating or defending against an actual, impending or expected attack; from weapons of war employing atomic fission or radioactive force whether in peace or war; or from insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such occurrence;

E.3.1.4. From seizure or destruction under quarantine or customs regulations; confiscation by order of any government or public authority; or risks of contraband or illegal transportation or trade;

E.3.1.5. From delay caused by strikes, lockouts, labor disturbances, riots, civil commotions, or

the acts of a person or persons taking part in any such occurrence or disorder;

E.3.1.6. From Acts of God (also known as Acts of Nature);

E.3.1.7. From pre-existing infestations by mollusks, arachnids, crustaceans, parasites or other types of pests; and for fumigation or decontamination when not the fault of the contractor;

E.3.1.8. The contractor shall not be liable for intangible property, securities, nor for the sentimental value of an item, nor shall the contractor be liable for pre-existing damage.

E.3.1.9. The exclusions listed above will not apply if the contractor's negligence significantly contributed to the loss.

E.4. TRANSFER OF CUSTODY (LIABILITY) OF SHIPMENTS.

E.4.1. The contractor may receive shipments previously handled by another contractor. This situation may result in shared liability between two or more contractors. If a claim is denied by the contractor, which subsequently places liability on a previous handler, the contractor shall advise the customer to contact their MCO for further claims guidance.

E.4.2. In the event the contractor is party in a shared liability claim, the contractor shall determine the specific claim line items they are responsible for as evidenced in the documentation completed IAW PWS 1.2.5.4. The contractor can accept or deny responsibility for a line item based on proof in the documentation. The contractor will be liable for all claims when they were the delivering contractor and they fail to complete the required documentation IAW PWS 1.2.5.4 and therefore cannot prove otherwise.

E.5. INSPECTION BY THE CONTRACTOR. The contractor shall not deny a claim if the customer has repaired an item before the contractor's inspection as long as the customer provides the repair bill or some other evidence of the damage and repair cost. The contractor shall not deny a claim if the customer has disposed of a damaged item where the customer has given the contractor evidence the item was damaged beyond economical repair or was a potential health hazard to the customer or the customer's family.

E.6. TIME LIMITATIONS ON CONTRACTOR LIABILITY.

E.6.1. Upon the customer's request, the contractor shall enable the transfer of all or part of the claim to an MCO before 30 days, and shall remain liable for FRV if the following occur:

E.6.1.1. The customer has considered and responded to any offer of settlement made by the contractor, and;

E.6.1.2. The claim has not been fully satisfied or settled.

E.6.1.3. The contractor fails to comply with the catastrophic loss provisions as verified by the MCO.

E.6.1.4. The contractor fails to comply with essential items provisions below, as verified by

the MCO.

E.6.2. The contractor shall not be liable for loss or damage unless the customer either: files a claim directly against the contractor within two (2) years of the final delivery of the shipment that included the lost or damaged items, or files a timely claim against the United States and submits it to a MCO under the Military Personnel and Civilian Employees Claims Act (PCA).

E.6.3. For the purposes of either the nine (9) month time limit for filing against the contractor or the two (2) year limit for filing against the contractor or the United States, if a claim accrues during war or an armed conflict in which an armed force of the United States is involved, or has accrued within two (2) years before war or an armed conflict begins, and for cause shown, the claim must be presented within two (2) years after the cause no longer exists or after the war or armed conflict ends, whichever is earlier. An armed conflict begins and ends as stated in a concurrent resolution of Congress or a decision of the President. If the contractor anticipates denying a claim under this section, they must contact the MCO for a decision on whether the nine (9) month or two (2) year limit should be extended under this provision. Timeliness will be determined by the MCO based on the service's claims regulations and instructions.

E.6.4. The contractor must send a reminder to the customer thirty (30) days prior to the nine (9) month time limit that their claim filing window for FRV is closing.

E.6.5. If the customer files a claim with an MCO, the contractor shall not be liable to the government on a recovery claim if the government does not dispatch a written demand to the contractor within four (4) years of delivery. This four (4)-year period will be extended by any period granted as above. If the government does dispatch a written demand to the contractor within four (4) years of delivery, the government will have the normal six (6) years specified in Title 28, United States Code, Section 2415, to resolve the claim or take administrative remedies.

E.7. FULL REPLACEMENT VALUE (FRV) LIABILITY.

E.7.1. If a customer files a claim directly with the contractor within 9 months for which the contractor is deemed liable, the contractor is liable for FRV. The contractor's liability will be the greater of the following:

E.7.1.1. \$7,500 per shipment, or

E.7.1.2. \$6.00 times either the net weight of the HHG shipment or the gross weight of the UB shipment, in pounds, not to exceed \$75,000.

E.7.2. For items damaged, but not destroyed, the contractor shall, at the customer's option, either repair the items to the extent necessary to restore them to their original working condition, or pay the customer for the cost of such repairs. The contractor shall pay FRV for items damaged beyond repair and/or cannot be repaired.

E.7.3. FRV shall be based on, to the greatest extent possible, the same manufacturer and shall be the same make and model as the item lost or destroyed. For lost or destroyed items that are parts of sets, such as a silver service, furniture, crystal glasses or china, the contractor may

replace the lost item with a like item that matches the rest of the set. If the contractor is unable to match the item to the set, the contractor shall replace the entire set with a set of comparable qualities and features or pay FRV for the set. Likewise, some items, such as collectable figures (e.g., Hummel and Lladro), collectable plates, collectable dolls, baseball cards, antiques, comic books, coin and stamp collections, and objects of art, cannot be properly replaced with new items because their value is based, in part, on the fact that they are no longer made and are no longer available for purchase as new items. For this type of item, at the discretion of the customer, the contractor shall replace the lost or destroyed item with the same or comparable item or pay the replacement cost of the item.

E.7.4. When FRV applies to a shipment that includes one or more motor vehicles (automobiles, motorcycles, mopeds, or motor scooters), the contractor's maximum liability for the vehicles shall be the value stated in the current issue of the National Automobile Dealer's Association's (N.A.D.A.) Official Used Car Guide (the "Guide") or comparable resource for such vehicle(s), adjusted for mileage and other factors considered in the Guide. However, if either the customer or the contractor has obtained a pre-damage appraisal of the vehicle from a qualified appraiser, settlement will be based on the appraised value.

E.7.5. For boats, personal watercraft, ultra-light aircraft, pianos, organs, firearms, all-terrain vehicles, and snowmobiles, the contractor shall pay the fair market value replacement cost.

E.8. ACTUAL VALUE (DEPRECIATED) LIABILITY.

E.8.1. If the customer files a claim more than nine months after delivery, but within 2 years after delivery, and the contractor is deemed liable, the contractor is liable for the depreciated value of the items only up to a maximum of \$2.50 times the net weight of the shipment in pounds. Liability will be as follows:

E.8.1.1. For items damaged, but not destroyed, the contractor shall, at the customer's option, either repair or pay the customer for the cost of such repairs, up to the depreciated value of the items.

E.8.1.2. For items that are destroyed (i.e., the repair cost exceeds the depreciated value) or lost, the contractor shall pay the depreciated value for the item.

E.8.2. Claims settled for the depreciated replacement cost of an item, shall be adjudicated by the contractor using the attached Allowance List Depreciation Guide.

E.9. FILING NOTICE OF LOSS/DAMAGE. The contractor shall create a loss/damage report, at the time of delivery for loss or damage discovered. Prior to contractor leaving, both the customer and contractor must sign the report. The report must contain contact information for the customer to contact the contractor for any later discovered loss or damage. The contractor shall counsel the customers that (1) multiple claims may be filed for the same shipment and (2) claims may be filed for loss/damage to items not discovered at time of delivery. Loss or damage discovered after delivery shall be presumed to have been cause by the contractor if notice of loss or damage has been provided within 180 days from date of delivery and a claim is submitted within two (2) years from delivery.

E.10. CLAIMS FILING.

- E.10.1. The contractor shall advise the customer in writing of the claims process requirements.
- E.10.2. The contractor shall provide an avenue to file claims manually and/or electronically.
- E.10.3. The customer may file a claim without a repair estimate.
- E.10.4. The contractor shall provide a mechanism for the customer to monitor the status of their Claim.

E.11. CLAIMS PROCESSING.

- E.11.1. The contractor shall ensure a claim has sufficient information upon which they can reasonably adjudicate the claim and work with the customer until all necessary information is received. A claim is sufficient if it identifies the customer, contains facts sufficient to identify the shipment or shipments involved, asserts a demand for a specific or determinable amount, and specifies the items lost or damaged, and
- E.11.2. The contractor shall provide an acknowledgement of receipt of a claim to the customer within 15 calendar days of receipt of a claim. Upon receipt of a claim, the contractor can either deny the claim in its entirety or agree with the customer demand in its entirety. Otherwise, the contractor must respond with proposed dollar amount settlements on an item-by-item basis. The amounts shall reflect costs to repair or replace items as appropriate.
- E.11.3. For each item claimed, the contractor may make an offer or deny any settlement. If an offer is made on an item, the customer will either accept or dispute the amount offered. The customer may provide a counter offer for each item's settlement amount they dispute; which the contractor can, in turn, accept, refuse or counter offer. If the customer is unable to reach a mutual agreement on an amount to be reimbursed on one or more items, the customer may transfer the disputed item(s) to their MCO for settlement.
- E.11.4. If the contractor has evidence that some of the loss or damage occurred while the goods were in the custody of a prior contractor, the contractor shall notify the customer in writing they are settling for the items for which they are legally liable and denying the other items because a prior contractor is liable. The contractor shall advise the customer to contact their MCO for further claims guidance.
- E.11.5. The contractor shall issue payment to the customer or initiate repair of items within 30 calendar days of receipt of notice that the customer has accepted a full or partial settlement.
- E.11.6. The customer may reject a payment, repair, or item offered by the contractor to settle a claim. If a customer files a claim, but the contractor fails to settle the claim to their satisfaction, the customer may transfer the claim to the MCO.

E.11.7. The contractor shall stop negotiations on items transferred to the MCO. Denial of a claim by the contractor does not extinguish contractor liability.

E.11.8. The government will pursue recovery for OCIE loss or damage from the contractor. The contractor shall remit payment for OCIE no later than 60 days from receipt of a demand for recovery concerning OCIE. Failure to remit payment no later than 60 days from receipt of a demand for recovery concerning OCIE will result in offset actions by the against the contractor. The failure of the contractor to document the OCIE on the inventory IAW PWS 1.2.6.2 shall not be used by the contractor as grounds for asserting a lack of tender of items in rebutting a recovery action for OCIE claims.

E.12. QUICK CLAIM SETTLEMENT. Contractor shall establish a quick claim settlement procedure to quickly resolve and pay claims for minor loss or damage discovered at the time of delivery. However, a quick claim settlement agreement shall contain only a limited release of liability and shall specifically list the items and the damage for which payment is being made. The contractor shall advise customers that they may still file claims for loss or damage discovered after delivery.

E.13. PARTIAL SETTLEMENTS.

E.13.1. The customer or the contractor may also propose a settlement in which a lump sum is paid to settle the entire claim, without a separate amount offered for each separate item. The contractor shall ensure that the proposal states in BOLD FACE type that entering into the agreement will preclude the customer from transferring the claim to the MCO. If the customer does not accept the proposal, the contractor shall make an initial offer or denial to the customer for each separate item claimed. The contractor shall not condition its offer for any item on the customer's acceptance of its offer or denial on any other item or items.

E.13.2. The contractor shall not assert a final settlement agreement has been reached unless the customer and the contractor have settled every separate item in the claim, or the customer and the contractor have entered into a lump sum settlement. This will not preclude a claim under the PCA nor will the government be bound to this agreement.

E.14. MILITARY CLAIMS OFFICE (MCO).

E.14.1. If the contractor anticipates denying a claim due to timeliness of the customer's submission, the contractor shall contact the MCO for a decision on whether the nine (9) month or two (2) year limit should be extended under this provision. Timeliness will be determined by the MCO based on the service's claims regulations and instructions. Discrepancies between the MCO's determination and the contractor's assertions will be adjudicated by the Contracting Officer.

E.14.2. The contractor shall transmit any requested documents to the requesting MCO within two (2) government business days.

E.14.3. If the contractor has not already obtained estimates for transferred claims, the MCO may give the contractor an opportunity to obtain an estimate.

E.14.4. When the contractor receives a claim which includes Army OCIE, the contractor shall deny that portion of the claim relating to the OCIE. If the contractor receives notice that OCIE has been lost or damaged, either through submission of notice by the customer, inspection, or any other means, the contractor shall notify the MCO of such loss and damage within 30 days of receiving notice. The contractor shall furnish the MCO a list of the OCIE missing or damaged along with shipment information and customer name.

E.15. HIGH VALUE ITEMS AND HIGH RISK INVENTORIES.

E.15.1. High value/high risk items include, but are not limited to: currency, coins, jewelry, silverware and silver service sets, crystal, figurines, furs, objects of art, computer software programs, manuscripts, comic books, baseball cards, stamps, and other collectable items or rare documents that have a value in excess of \$100 per pound. For the purposes of determining the contractor's liability, all such items shall be deemed to weigh at least one pound. A collection of compact disks (CDs) and digital video disks (DVDs to include computer or video games) will not be considered high value/high risk items. However, individual CDs or DVDs with a value in excess of \$50 will be considered a high value item.

E.15.2. A high risk/high value inventory, even if it is signed by the customer upon delivery and fails to note shortages at delivery, will be treated as other inventories for purposes of determining whether there was loss or damage in transit. Filing within nine (9) months in order to receive FRV, or two (2) years to receive depreciated valuation, would overcome the presumption of correct delivery, even of high value items listed on a special inventory unless all of the following conditions are met:

E.15.3. If the high risk/high value inventory form has a block to denote delivery, the customer must initial each block for each item. A check mark or an "X" is not sufficient.

E.15.4. The high risk/high value inventory form must contain a warning, in bold font larger than other fonts on the form, that if the customer notes on this inventory that an item was delivered, he or she may never claim the item was missing with either the contractor or the MCO.

E.15.5. The delivering contractor must attest in writing that, immediately prior to departure from the residence, the contractor and the customer opened all containers in which the high risk/high value items were packed; the contractor and the customer removed the items from the containers; the contractor and the customer physically inspected each item; and the contractor advised the customer of the consequences of signing the high risk/high value inventory form.

E.16. ESSENTIAL ITEMS.

E.16.1. Essential items are only those items necessary for everyday living, which would reasonably need to be replaced promptly. Items used solely for entertainment purposes are not considered essential. Fungible items that are regularly used up or worn out and must be routinely replaced are not considered essential. Essential items include, but are not limited to:

E.16.1.1. Refrigerators or other appliances necessary for the safe storage and preparation of

food

E.16.1.2. Necessary medical equipment; and

E.16.1.3. Mattresses

E.16.2. The contractor shall either pay for essential items, provide temporary or permanent replacements for them, or repair them within seven (7) days of notification. If it is later determined that the contractor was not liable for the loss, the contractor shall contact the MCO. Customers are responsible for notifying the contractor of such a loss within seven (7) days of the date their goods were delivered. Any item not identified in this way by the customer will not be considered “essential.”

E.17. REPAIR ESTIMATES.

E.17.1. The contractor shall obtain and pay for repair estimates required to process claims filed with the contractor by the customer. Contractor shall provide the customer copies of any estimate used to support an offer of settlement at the time the offer is made. The contractor shall pay all estimates and associated fees presented by a MCO as a result of claims transferred to the MCO by the customer unless:

E.17.1.1. The contractor previously provided a reasonable estimate; or

E.17.1.2. The contractor previously offered to pay the customer a value that matches or exceeds the repair or replacement cost for all items on the estimate.

E.17.2. The contractor shall identify a qualified repair firm willing and able to make the repair within a reasonable time for the amount stated on all estimates provided. The contractor shall ensure the repair firm is reputable and provides timely and satisfactory performance. The contractor shall itemize all such estimates.

E.17.3. The contractor shall obtain repair estimates or replacement cost estimates required to settle the claim. The contractor shall contact the customer within 15 days of the claim receipt to schedule a time for mutually convenient inspection.

E.18. SALVAGE.

E.18.1. To the extent not prohibited by law or agreement, the contractor is entitled to salvage a damaged item on which the contractor has paid the customer either the depreciated or full replacement cost. If the customer wishes to retain an item, the contractor may request the customer waive up to 25% of the depreciated or full cost. The contractor shall not pre-emptively deduct salvage from a settlement offer without customer approval first.

E.18.2. If the contractor pays a customer the depreciated or the full replacement cost of a lost item, and the item is subsequently located, the contractor shall notify the MCO and the customer. If the customer elects to receive a found item, the contractor shall deliver the item or items to the customer’s residence at no additional expense to the government. The contractor may require the customer to refund any payment made prior to delivery.

E.18.3. If the contractor locates an item within 30 days of notice of the loss at delivery, and a claim on that item has not been paid, the customer will be obligated to accept delivery. In addition, if the contractor locates a lost item more than 30 days after receipt of notice of the loss, but the item has not been replaced, the customer will be obligated to accept delivery of the item. Notwithstanding the above, an essential item that a reasonable person would and has replaced promptly, may be declined by the customer before the 30 day period has elapsed.

E.18.4. The contractor shall take possession of salvage items at the customer's residence, or other location acceptable to the customer, not later than 30 days after settlement of the customer's claim unless an agreement to a mutually agreeable later date has been made with the customer.

E.18.5. The contractor shall not exercise its salvage rights if the depreciated replacement value of all salvageable items totals less than \$200.00.

E.18.6. If the contractor is unable to exercise its salvage rights due to the disposal of an item by the customer, the contractor may reduce its liability by 25% on that item if it has a depreciated replacement value of \$50.00 or more.

E.18.7. The right of the contractor to salvage terminates upon the transfer by the customer or customer representative of the claim for the specific item or items to the MCO.

E.19. CATASTROPHIC LOSS PAYMENTS.

E.19.1. Catastrophic loss occurs when over 60% of the inventory line items in a given shipment are lost, damaged or destroyed. Contractor shall contact the MCO, customer and responsible QAE/COR within two (2) government business days when catastrophic losses occur. The contractor shall identify and make partial, advance payments of no less than 10% of their total maximum liability to customers within two (2) government business days of contacting the customer. The customer is still required to file a claim for their loss. Any advance payment made will be deducted from the customer's eventual payment. Advance payments made do not relieve the contractor of its responsibility to process inconvenience claims.

E.19.2. The contractor shall notify the QAE/COR of catastrophic loss on shipments in storage within two (2) government business days. The contractor shall notify the customer within 10 government business days. The contractor shall provide an inventory of lost, destroyed or damaged items within a timeframe mutually agreed upon by the QAE/COR and the contractor.

E.19.3. In the event a contractor identifies, or is informed of, a catastrophic loss for which it believes it is not liable under Exclusions from Liability, the contractor shall inform the customer's MCO within 24 hours. In such cases, the MCO will handle the advance payment and claim. If it is later determined the contractor was, in fact, liable for the loss, the CO will assert a recovery claim against the contractor. The contractor shall be liable as if the customer had filed a claim with the contractor within nine (9) months of their loss.

E.20. UNEARNED TRANSPORTATION. Unearned transportation is defined as payment

for transportation of items, the value of which was not delivered. For items that are destroyed, lost, or missing at delivery, contractor shall not be responsible for unearned transportation costs if the full replacement value of all lost or missing items has been paid to the owner or customer.

E.21. DISPUTE RESOLUTION.

E.21.1. If a customer does not accept a settlement offered by the contractor, the customer may transfer a claim to the appropriate MCO. If the customer transfers a claim, the MCO will resolve the customer's claim in accordance with its Service's claims regulations and procedures.

E.21.2. The MCO will make a recovery claim recommendation to the Contracting Officer (CO). The CO will issue a Contracting Officer Final Decision (COFD) to the MCO and the contractor. The contractor shall respond to the CO IAW the guidance provided in COFD.

E.21.3. The government may collect the amount of its recovery claim by administrative offset from money owed to the contractor.