

Common Terms and Conditions Guide
Section 1 – Solicitation Provisions

Clause Number: 3039
Effective: 10/15/2002
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Computer Software Acceptance

- (a) All computer software to be delivered may be subjected to verification tests by Buyer and its customer within a reasonable time after delivery. Acceptance by Buyer or Buyer's customer will not be conclusive as to latent defects, fraud, such gross mistakes as amount to fraud, or Seller's warranties.
- (b) Upon Buyer's rejection of, or revocation of acceptance of, computer software which does not conform to this contract, Buyer, with no liability to Seller, may: (i) require Seller to correct the computer software and associated documentation; (ii) require Seller to pay Buyer for all costs that may arise by virtue of Buyer's inability to effect delivery of a product, including required documentation, to its customer; (iii) require Seller to provide all the development and support tools (software development environment, to include the automated tools and equipment used by Seller to develop the computer software) as necessary, and an electronic copy and a hard copy of the listing of the code; and (iv) require Seller to pay Buyer all machine, personnel, and documentation costs associated with file maintenance and corrections and insertion of changes, deletions, and additions that Buyer may incur as a result of the deficiencies. The remedies provided in this clause are in addition to any other remedies provided to Buyer either at law or in equity and will be cumulative rather than alternative.
- (c) Notwithstanding that Buyer may, during the time between receipt and final acceptance of computer software, compile, assemble, link, store, list, run, test, or otherwise use or modify the computer software, such action will not constitute or be construed as an acceptance of such computer software and/or its associated documentation.
- (d) Buyer reserves the right, during all phases of development and testing of computer software or any subprogram by Seller, to review the design, design documentation, test cases, and test data generated and/or used by Seller; to generate test cases and test data over and above those used by Seller; and to perform such review and validations of system concepts, design documentation, and coding as are, in Buyer's judgment, necessary for assurance that the delivered computer software and associated documentation are free of errors and omissions and are satisfactory for their intended use.
- (e) Buyer's acceptance of nonconforming computer software and/or associated documentation will not affect any warranty obligation of Seller.
- (f) Regardless of any other provisions herein, Buyer may reject or revoke its acceptance of any computer software that is inefficient in its operation, in that its use requires excessive computer time, peripheral time, storage, other resources, or does not meet fully the requirements approved by Buyer. Buyer may choose to use such computer software; in which case, Seller will be liable to Buyer for all machine, resource, and personnel costs incurred by Buyer in excess of those that would have been incurred in the use of efficient and accurate software.