

## INTRODUCTION.

This job aid was written to provide guidance on the ins and outs of removing the liability provisions from the clause, DFARS 252.228-7001, Ground and Flight Risk (GFRC). This process should not be taken lightly. It should only be accomplished after consultation with your ACO, regional DAO, assigned Office of Counsel, DCMA-AO, PCO and the program manager.

## GFRC AND GOVERNMENT LIABILITY.

Paragraph (c) of the GFRC states, “Subject to the conditions in paragraph (d) of this clause [paragraph (b) binds the contractors to DCMA INST 8210.1], the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft “in the open,” during “operation,” and in “flight,” except as may be specifically provided in the Schedule [Sections A-H of the contract] as an exception to this clause. The contractor shall not be liable to the Government for such damage, loss, or destruction beyond the contractor's share of loss amount under the Government's self-insurance.”

The conditions for Government self-insurance are found in paragraph (d) of the clause. There are only two conditions listed. The first being that coverage shall continue unless the contracting officer finds that the Contractor has failed to comply with paragraph (b) [again referring to 8210.1] of the clause. Note that when the term contracting officer is used in FAR and DFARS, it usually refers to PCOs. However, in this case, it is generally believed that ACOs are responsible for the execution of the GFRC and are authorized to act for the PCO per their delegation. Note also that not all contractor employees can be said to have “failed to comply with paragraph (b).” The Clause here is referring to later text found in paragraph (e)(1) “...failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel...” So towing an aircraft into a hangar door by failing to follow the towing procedures is not necessarily grounds for removal of the Government’s assumption of risk, or for determining not to cover the contractor for damage costs above the deductible amounts described in the clause. However, if the contractor’s senior managerial personnel were directly supervising the tug operation and not following the approved towing procedure, you may have a case. That is, a foreman on the floor is not senior management personnel. A plant manager may be.

The second condition from paragraph (d) is that coverage shall continue unless the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action. It is this part of the GFRC that goes to the heart of the liability removal process.

Before continuing it should be noted that exceptions to the Government self-insurance are found in paragraph (e). This is an important paragraph in the GFRC but not really relevant to removal liability because the exclusions listed in paragraph (e) describe conditions where liability coverage does not exist regardless of ACO actions.

## REMOVING LIABILITY WITHIN THE GFRC.

In addition to listing the two conditions for Government liability, paragraph (d) describes what happens when the Contracting Officer determines those conditions are not being met. It states the Contracting Officer shall notify the contractor in writing and shall require the contractor to make corrections within a reasonable time. A reasonable time refers to 12:01 a.m. on the fifteenth day following the day the written notice is received by the contractor, see paragraph (d)(3). After which time the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions.

LIABILITY REMOVAL PROCESS.

1. In the past, conditions identified through APT surveillance are brought to the attention of the ACO. Conditions we've seen include: Procedures not submitted, firefighting/fire suppression shortfalls with no approved waiver or plan to fix, and systemic Procedures compliance failures.
2. APTs should attempt to resolve issues with the contractor through corrective action requests, open discussions, goal setting and other conflict resolution tools. Thoroughly document all steps taken (including timelines) to resolve the cited issues.
3. Once it is determined that ACO intervention is needed, GFRC paragraph (d) describes the process requirements. It does not require internal CMO/program office discussions, but this is not something that should be accomplished in a vacuum. Recommend the following:
  - a. Refresh yourself on the process by reviewing the GFRC with emphasis on paragraph (d) and its subparagraphs.
  - b. Gather pertinent documentation concerning the cited issues, including timeline for attempted resolution.
  - c. Discuss plan to have 15 day letter issued with ACO, PCO, CMO commander, Legal Counsel office and your Regional DAO. DCMA-AO may also be consulted.
  - d. Prior to issuing the letter the CMO commander should consider sending a SITREP to the DCMA Director. Removing the Government's assumption of risk is equivalent in effect as issuing a Level IV CAR. The CMO/CC should thusly inform leadership, again, prior to the letter being issued.
  - e. Either the ACO or PCO may issue the letter, but consider having your Legal Counsel office either create a first draft or, review prior to sending to contractor. For the purposes of further discussion and examples this job aid will assume the ACO will issue the letter.
  - f. When drafting the 15 day letter, consider tying it to a Level III CAR as a way of preparing exit criteria (for eventually revoking the letter). This way, the letter can be rescinded after the containment portion of the CAR is completed, but the Level III CAR can still carry corrective action on long after the liability abeyance letter goes away. This would be a recommended approach if completing all corrective actions are not feasible within 15 days. The contractor will be looking for you to tell them what to do in order to "tear up the letter," so be ready to address their queries.
  - g. Per the GFRC paragraph (d)(3) the termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the contractor. Recommend hand carrying the notice or requesting a delivery receipt so that a termination date can be included in the text of the notice.
4. After receiving the notice from the contracting officer, the contractor is expected to promptly correct the cited conditions regardless of whether they agree with those conditions.

5. If the reason for the notice is due to having no approved Procedures, the GFR is prohibited from approving crewmembers or flights. Any previously approved flights (via approval of monthly/weekly flight schedules) must be rescinded.
6. Continue working with the contractor to resolve the issues that led to the 15-day notice.
7. The contractor must promptly notify the ACO once the issues have been resolved. Per paragraph (d)(5)(i) if the issues are resolved after the 15 days have elapsed and the Government elects to again assume the risk of loss and relieve the Contractor of its liability for damage, loss, or destruction of the aircraft, the Contracting Officer will notify the contractor of the Contracting Officer's decision to resume the Government's risk of loss.
8. The notification resuming the Government's assumption of risk must be done through a letter. One such resumption letter contained the following text as a way of ensuring the contractor understands that the Government's position on resuming liability coverage is trust but verify:

*"While your containment efforts to mitigate the immediate risk to the aircraft are sufficient grounds to allow the Government to resume Assumption of Risk of Loss under GFRC, this letter establishes the requirement for bi-weekly updates of your progress on corrective actions to eradicate the root causes of your failure to comply with the requirements of GFRC. If your continued progress is found to be insufficient at any of these bi-weekly reviews, the Government reserves the right to withdraw assumption of risk of loss at midnight on the 15th day after formal notification to the contractor of insufficient progress."*

#### ADDITIONAL INFORMATION

Per paragraph (d)(6) The Government's termination of its assumption of risk of loss does not relieve the Contractor of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled "Contractor's Flight and Ground Operations."

Per paragraph (h), any costs the contractor incurs for insurance are expressly unallowable costs. This includes insurance to cover the contractor's share of loss under the clause or when Government liability has been terminated via the provisions of paragraph (d). Make sure your ACO is aware of these restrictions.

Per paragraph (d)(4)(iii) the liability provisions of the Government Property clause do not apply to GFRC aircraft even when Government liability has been removed. Make sure your ACO and Property Administrator (PA) are aware of this restriction.

Per 8210.1C, Change 1, paragraph 3. Contractors shall not begin flight or ground operations until the Procedures have been approved in writing by the GFR. If the Procedures are not approved during the 15-day notice time it doesn't require the contractor to stop performing any or all contract work. It also has no effect on the Government's liability or contractor's share of loss per GFRC paragraph (f). Further, GFRs cannot issue stop work orders. ACOs, however, can issue such orders. Without a stop work order in place, should the contractor continue to operate without approved procedures or while the cited unreasonable conditions exist, it would constitute

a contract deficiency and possible breach, because it violates 8210.1 paragraph 3. Consider issuing an appropriate level corrective action request (CAR) to address the deficiency.

It may be possible to cite willful misconduct as a reason for not providing liability coverage should the aircraft be damaged while under the unreasonable conditions cited by the ACO. This is something that should be discussed between the Contracting Officers and assigned Counsel.

We recommend not removing liability coverage for just one operation. That is, removing the Government's assumption of risk for when they tow an aircraft but continue liability coverage for all other operations while the towing deficiency that led to the 15-day letter is being resolved. This all or nothing approach is in line with the requirement to have a full set of Procedures prior to approving crewmembers and flights.

EXAMPLE 15 DAY LETTER.

[Letterhead]

Mr. Joe Contractor  
Acme North America  
1234 Eye of Newt St. NW  
Spotsylvania, VA 22551

[date]

SUBJECT: Ground and Flight Risk Liability Termination Notice

Reference: (a) DFARS 252.228-7001  
(b) DCMA Instruction 8210.1C, Change 1  
(c) Government Flight Representative (GFR) Surveillance Summary Report  
(d) Contract FA1234-20-C-0001-0002

Dear Mr. Contractor:

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[Systemic issues discovered during surveillance example.]

Upon reviewing the safety issues described in reference (c), I have determined that the aircraft under the reference (a) contract are in the open under unreasonable conditions. Acme is directed to take prompt corrective actions to correct the conditions described in the report, regardless of whether the company agrees that the conditions are unreasonable.

Later, should it be determined that Acme failed to act promptly to correct the conditions described in reference (c), or failed to correct the conditions within a reasonable time, the Government shall terminate its assumption of risk provided by reference a. for any and all aircraft in the open and under the cited conditions. The termination will be effective at 12:01 a.m. on [date] [The fifteenth day following the day the written notice is received by the Contractor. Consider hand carrying the letter to the contractor to set a specific date.]

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[Deficiencies in Procedures example]

Reference b. pertains to the responsibility of the contractor to develop and maintain specific Procedures for all flight and ground operations at all operating facilities and/or locations. Based on the information described in reference (c), the Government has not received all required Procedures for the Spotsylvania, VA operating facility and the Government is on notice that Acme has not and does not intend to provide these required Procedures for the test flights to be accomplished in Aruba under order 0002 of the reference (d) contract.

Termination of Government GFRC Liability Job Aid

In accordance with reference (b), unless the required Procedures are submitted by Acme and approved by the GFR, effective 12:01 22 on [date] [The fifteenth day following the day the written notice is received by the Contractor. Consider hand carrying the letter to the contractor to set a specific date.], I will terminate the Government's risk acceptance of all Ground and Flight Operations of U.S. Government aircraft in conjunction with the reference (d) contract.

Per references (a) and (b), no crewmembers or flights may be approved by the GFR prior to GFR approval of the required Procedures. The Government assumes no liability for any flights performed under contract without GFR approval.

Upon termination of the Government's assumption of risk, Acme shall thereafter assume the entire risk for damage, loss, or destruction of, the affected aircraft.

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Direct questions and concerns to [ACO] at [mary.b.aco.civ@mail.mil](mailto:mary.b.aco.civ@mail.mil), or 804-123-4567, or to [GFR] Major Joe Pilot, [joseph.b.pilot.mil@mail.mil](mailto:joseph.b.pilot.mil@mail.mil), or 804-765-4321.

Sincerely,

MARY B. ACO  
Administrative Contracting Officer

Attachment:  
GFR Surveillance Summary Report

cc:  
Program Manager  
PCO  
Region Commander  
CMO Commander  
GFR  
Region DAO  
DCMA AO