



QorTek Inc.  
5933 N. Highway 220  
Linden, PA 17744

## QorTek, Inc. Commercial Terms & Conditions of Sale

All QorTek Goods are sold subject to the terms and conditions set forth below ("QorTek Terms & Conditions" or "Terms"). All Purchase Orders, Contracts and/or Attachments thereto (hereinafter "Order") for the supply of QorTek Goods shall be subject to the QorTek Terms and Conditions set forth below. The price stated in the Order is proposed is based upon acceptance of these Terms by the Buyer and any alternative or different terms included with any Request for Proposal (RFP) or any subsequent order proposed by the Buyer shall not apply. These Terms shall only be modified to the extent mutually agreed in writing by duly authorized representatives of the Buyer and QorTek. It is specifically agreed that any inconsistencies in the Terms arising during execution of the Order shall be resolved by recognizing the following order of precedence: QorTek's proposal (price basis); Commercial Terms and Conditions of Sale (this document) and the Order.

**1. Currency:** All prices are in US Dollars.

**2. Effective Date of Contract (EDC):** Is the date stipulated in the Order as the "effective date" or otherwise the latest date of execution by both Parties.

**3. Delivery Schedule:** As defined in the Proposal or as otherwise mutually agreed to and set forth in the Order Delivery Schedule. QorTek shall use its customary and reasonable efforts to deliver on the delivery dates set forth in the Order pending receipt of all Buyer furnished material as set forth in the Order. QorTek will not be responsible for delays caused by events beyond its control. QorTek may, with the agreement of the Buyer, accelerate deliveries or make partial deliveries to achieve more economic production. Such agreement by the Buyer shall not be unreasonably withheld.

**4. Delivery Terms:** Shall be as stipulated in the Proposal or as set forth below.

a) Unless otherwise stipulated in QorTek's Proposal, the Delivery Terms shall be pursuant to Incoterms 2010 - FCA to the destination point set forth in the Order or otherwise FOB Origin.

b) Title to the deliverable hardware will pass to Buyer at the point in time that Buyer takes delivery of the Goods. Passage of Title does not relieve Buyer's obligations with respect to the payment terms stipulated in the Order or as set forth in Article 8 below.

c) Risk of Loss will pass to Buyer at the point in time that Buyer takes delivery of the shipment at the identified "Defined Delivery Point."

**5. Inspection/Acceptance by Buyer:**

a) Products will be accepted in accordance with QorTek's current product specifications.

b) Unless otherwise agreed in writing by the Buyer and QorTek, all Goods shall be subject to final inspection and acceptance at QorTek's manufacturing facility.

c) QorTek shall notify the Buyer, as soon as practical, of the date that Goods are to be inspected.

d) Subject to all applicable U.S. Government regulations and proprietary restrictions, Buyer's authorized representatives shall have the right to witness QorTek's standard Factory Acceptance Test (FAT) and inspection of Goods on a non-interference basis. Expenses incurred by Buyer's inspection shall be borne by Buyer. The Buyer's acceptance pursuant thereto shall be documented by execution of QorTek Certificate of Conformance (C of C) if required in the Order.

e) If Buyer does not inspect and accept Goods as set forth above, acceptance shall be deemed to occur on the date that the Goods are delivered to the carrier.

f) Acceptance shall be conclusive. The Buyer's post acceptance remedies are set forth in Article 8, Warranty.

**6. Terms of Payment:**

a) As stipulated in the Proposal.

b) All payments due and payable under this contract shall be made in immediately available U.S. Dollar (USD) funds, free and clear of any deductions and/or withholdings, in the amounts, at the times and upon the conditions set forth herein or in the Order.

c) For all orders issued hereunder, the price shall be paid to QorTek as follows:

1. Unless otherwise contractually required, upon completion of delivery in accordance with the delivery terms specified in the Order, full payment will be made pursuant to a proper invoice NET 30 day from the date of the invoice;
2. If Buyer has any objection to the form of the invoice or the substantiating documentation, within ten (10) days of its receipt, Buyer shall notify QorTek of the nature of the objection. "Form of the invoice" means an invoice which contains or is accompanied by such substantiating documentation as set forth in the Order. Failure by Buyer to notify QorTek within ten (10) days will result in the compilation of interest from the date the payment was originally due.
3. Interest for late payments will be assessed at a rate of .005% per each day on the original past due amounts and will be collected by separate invoices due and payable NET 30 days from receipt of the invoice by the Buyer.

**7. Sales Tax:** Pursuant to the laws of the Pennsylvania, all sales are subject to the collection of a 6.0% sales tax. We must charge sales tax if the buyer lives in Pennsylvania or picks up in Pennsylvania. If eligible, the Buyer may complete the necessary Pennsylvania certificate for Sales Tax Exemption (available from QorTek). Lots shipped out of state are not subject to PA state sales tax. Buyer acknowledges that Seller does not collect sales or use taxes for states other than in Pennsylvania and agrees that Buyer will handle the reporting and payment of such out-of-state taxes and that Buyer shall be liable for any PA state sales tax due, if any, for such transactions.

**8. Warranty:**

- a) QorTek warrants the products to be free from defects caused by faulty material or poor workmanship for a period of twelve (12) months from the date of delivery of the shipment at the identified "Defined Delivery Point."
- b) Design responsibility and suitability to end use is the responsibility of Buyer.
- c) QorTek's liability under this warranty is limited to the obligation to repair, or, at QorTek's sole option, to credit Buyer's account with the purchase price of, or to replace without charge, any part of such spare products or repaired products found to be defective under normal use and service within the warranty period, provided:
  1. QorTek is promptly notified in writing within thirty (30) calendar days upon the discovery of any defects provided that said notice is provided prior to the expiration of twelve (12) months from date of delivery of the shipment.
  2. QorTek has approved all product returns prior to shipment.
  3. It is established that the defect is caused by faulty material or poor workmanship exists and was not caused after delivery.
  4. Buyer has not permitted or conducted any unauthorized repairs or alterations.
- d) In the event QorTek is required to replace or repair any component of any item as a result of a breach of the foregoing warranty, the running of the warranty period for the items of which the defective component is a part shall be suspended from the date Buyer receives notice of the breach of warranty until thirty (30) days from the date the component is shipped to the Buyer after replacement or correction, and this warranty shall apply to such replacement or corrected items furnished for the unexpired portion of the warranty period or for a period of ninety (90) days, whichever period of time is longer.

*THERE IS NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL QORTEK BE RESPONSIBLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.*

**9. Export Compliance:**

The Order is subject to all applicable laws and regulations of the United States of America with respect to export of supplies. It may be required that an End-User/End-Use Statement be incorporated into the Order.

**10. Force Majeure:**

- a) While QorTek will exercise reasonable care to meet the shipment date or dates of the contract, QorTek shall not be liable for loss or damage due to delays resulting from any cause beyond its control, including but not limited to, acts of Government in its contractual or sovereign capacity, wars (declared or undeclared), insurrection, terrorism, fires, floods, earthquakes, epidemics, quarantines, strikes, embargoes, severe weather, natural disaster, capture and detention, sabotage, inability to obtain insurance, acts of public enemy, port congestion, civil disobedience, nuclear incidents, labor disputes, inability of Buyer to make payments in accordance with Article 22 hereof or inability of QorTek subcontractors to perform or inability to secure U.S. State Department export approval (export license) or any other cause, whether similar or dissimilar to those enumerated, that is beyond the reasonable control of QorTek.
- b) The Party affected by a Force Majeure event shall inform the other Party of the existence of a Force Majeure event in writing within sixty (60) days of becoming aware of the commencement of a Force Majeure event.

c) If any such delay or the effect of such delay lasts for more than ninety (90) days, the parties shall immediately consult with one another for agreeing upon equitable adjustments to the contract terms, price and time to complete performance. If the parties cannot reach agreement within one hundred and twenty (120) days, either party may, by written notice, cancel that portion of the Order which is delayed and the price of the contract will be adjusted accordingly, subject to the Arbitration provisions contained herein. QorTek's obligation to continue performance of that portion not canceled shall be subject to an adjustment in the price and time to perform for such continued performance.

**11. Termination:**

a) If QorTek fails to complete the delivery of the Goods in accordance with Article 4 or fails to perform or comply with any other material obligation set forth in the Order, QorTek shall have a grace period of ninety (90) days prior to such breach constituting an event of default in which to complete the delivery, perform or comply with the Order.

b) If after the grace period has lapsed and QorTek is still in breach, Buyer may terminate this Contract for default upon:

1. Written notice from Buyer to QorTek of termination (the "Termination Notice") in accordance with Article 12 via email and either a recognized commercial overnight carrier or registered mail; and

2. QorTek's failure to cure such breach within ninety (90) days (the "cure period") following the receipt of notice of Termination.

c) Except as specifically agreed in writing, termination shall not relieve any Party of any obligations which by their nature are to survive termination (e.g. warranty, confidentiality, export control), and QorTek shall deliver to Buyer all completed Goods and work in process paid for by Buyer in accordance with the Order.

d) Termination for any reason other than QorTek's Default as defined herein, will be considered a breach of contract by Buyer, and entitle QorTek to all rights and remedies available at law, including specific performance and all costs incurred, including profit.

**12. Changes:** Any requested change in the scope of work and/or delivery schedule of an Order may result in a price adjustment and must be agreed upon by QorTek prior to acceptance of any such change. In the event it is determined by QorTek that any proposed Change will affect the time required to perform or result in additional cost to perform, QorTek may at its sole discretion, submit a change proposal to the Buyer for consideration or otherwise reject the proposed change and continue to perform the Order unless or until such Order is Terminated pursuant to the terms set forth in Article 11

**13. Residual Material:** Residual or excess material purchased by QorTek in support of the manufacturing of the assemblies contained in this quotation is the responsibility of the Buyer. Material not consumed by the customer within 30 days of the completion of an Order will be purchased by the Buyer at QorTek direct cost plus material handling and fee.

**14. English Language:**

All manuals, supervision, and instructions, if applicable, will be in the QorTek format and in the English language.

**15. Intellectual Property:**

QorTek shall have and retain title to and full ownership of all intellectual property required for performance of the Order, except where such title and ownership is retained by a supplier of QorTek. QorTek shall assign and/or transfer to Buyer, license rights to all third-party software that is included in the QorTek supplied Subsystem Equipment, and Buyer agrees to assume and comply with the obligations of QorTek under such licenses. The Buyer shall have the intellectual property usage rights necessary to use the Goods delivered pursuant to the Order, but only to the extent permitted by and in accordance with the applicable U.S. State Department export license.

**16. Patent Rights:**

If the Order is for Goods that are sold or offered for sale by QorTek to the public in the commercial open market, QorTek will:

a) Assume the defense of any suit brought against Buyer for infringement of United States Letters Patent arising solely from use and/or sale of the specific goods supplied under this contract;

b) Defray the expense of such defense, and

c) Indemnify Buyer against any money damages and/or costs awarded in such suit; provided that:

1. QorTek is given sole and exclusive control of the defense of such suit and sole and exclusive control of all negotiations relative to the settlement thereof;
2. That the liability claimed shall have arisen solely because of QorTek's selection as to the design, composition or manufacture of said goods and that said goods are used by Buyer in the form, state or condition as sold by QorTek;
3. That Buyer promptly informs QorTek in writing of any claim with respect to which QorTek assumes responsibility hereunder. The foregoing constitutes the total liability of QorTek for patent infringement by said Goods or any part thereof subject to Articles 17, 18 and 19 below.

**17. Damages:**

In no event shall QorTek be liable for indirect, special, consequential, incidental, multiple or punitive damages arising out of or related to its performance under this contract, whether based upon breach of contract, warranty, negligence and whether grounded in tort, contract, civil law or other theories of liability, including strict liability. To the extent that this limitation of liability conflicts with any other provision(s) of this contract, said provision(s) shall be regarded as amended to whatever extent required to make such provision(s) consistent with this provision.

**18. Limitation of Liability:**

QorTek shall be liable to Buyer only for direct damages resulting from grossly negligent acts or willful misconduct of QorTek. In no event will QorTek be liable for damages of any kind beyond one hundred percent (100%) of the value of the Order. Notwithstanding anything else in the Order to the contrary, the stated monetary limitation is the maximum liability QorTek has to Buyer. If circumstances occur which may give rise to claims for damages (or the right to any other form of relief) arising from or relating to the Order, whether based on contract, warranty, or indemnity, the claiming Party shall take all necessary measures to mitigate the damages or loss, provided that this can be done without unreasonable cost or inconvenience.

**19. Applicable Law/Arbitration:**

a) This contract shall be governed by the laws of the Commonwealth of Pennsylvania, United States of America in effect at the time of execution of the contract, excluding its conflict of law's provisions. The Buyer and QorTek agree to exclude, in its entirety, the application of the United Nations Convention on Contracts for the International Sales of Goods.

b) All arbitration shall be in the English language and take place in Philadelphia, PA USA in accordance with the International Chamber of Commerce (ICC) Alternate Dispute Resolution (ADR) Rules unless otherwise agreed in writing by the Buyer and QorTek. The Buyer and QorTek agree that one Arbitrator shall be selected in accordance with the ADR rules.

**20. Packaging:**

QorTek will use its normal commercial packing for international shipments at the listed prices, unless otherwise indicated in the Order. QorTek shall have the right to supply special packing, if it deems it desirable. Special packing, and any tests or inspection other than those normally provided by QorTek will be charged to buyer's account if required to affect shipment but not otherwise provided for in the price of the Goods, and QorTek shall be considered to be acting as Buyer's agent without liability.

**21. Waiver:**

No forbearance, delay or indulgence by either party in enforcing the provisions of these Terms or the Order shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and such right, power or remedy shall be cumulative.

**22. Severability:**

In the event that any non-material condition or Article of these Terms or the Order is held to be illegal or unenforceable, the validity or enforceability of the remainder of the contract shall not be affected thereby.

**23. Assignment:**

The benefits and responsibilities of this Contract shall be binding upon the respective successors and assigns of the Buyer and QorTek, but neither Buyer nor QorTek may assign any portion of this contract to a separate legal entity without the prior written consent of the other party. Neither Buyer nor QorTek will unreasonably withhold consent. QorTek may assign any or part of this Contract to its parent company or to a wholly owned subsidiary or affiliate of the parent company without approval.

#### **24. Intellectual Property**

Unless otherwise agreed in writing, QorTek will maintain sole and exclusive ownership of all Intellectual Property related to the Products. No right or license in such Intellectual Property is granted to Buyer by implication, estoppel or otherwise, unless, and only to the extent, expressly set forth herein. As used herein, "Intellectual Property" shall mean any intellectual and industrial property rights including, but not limited to, patents, utility models, copyrights, authors' rights, trademarks, brands, domain names, trade secrets, know-how, drawings, specifications, logos, plans, product pricing and any right related thereto (whether or not patentable) that is not generally available to the public, software and any sort of data, technical notes, manufacturing processes, prototypes, methods, algorithms, any technical related documents and other designs. Unless otherwise agreed in writing, no Intellectual Property created by QorTek in connection with or pursuant to this Order shall be considered "works made for hire" as defined by the United States Copyright Act (17 U.S.C. § 101)

**25. Reverse Engineering:** The Buyer shall not reverse engineer directly, or through a third party, any devices, materials, circuits, or other items provided by QorTek under the subject Order.

**26. Reproduction Rights:**

Buyer shall not reproduce or use designs, drawings or other information belonging to or supplied by QorTek in the manufacture or design of articles or materials identical or similar to that sold to Buyer by QorTek under this contract without the written express consent of QorTek.

**27. Entire Agreement:**

The provisions contained or incorporated by reference constitute the entire Contract between the Parties and supersede all previous communication, agreements or representations, either oral or written. No change, modification, or revision to these terms shall be valid unless it is in writing and signed by authorized representatives of both Parties.

**28. Headings:**

The Paragraph headings are for convenience only and shall not limit in any way the scope of this Contract.

**29. Effective Terms of the Contract:**

It is expressly agreed by the Buyer, that performance by QorTek does not constitute QorTek's acceptance of Buyer's Purchase Order terms, notwithstanding the method of imposition of Buyer's terms (back of the PO, web site reference, or other reference or conveyance of Buyer's terms of purchase). It is also expressly agreed by Buyer and QorTek that the prices offered pursuant to these Terms are commensurate to the degree of transactional risk established by the tasks and any deviation therefrom shall result in an increase in the prices offered pursuant to the Terms. With the above understanding and express agreement, the Buyer hereby waives any right the Buyer may otherwise enjoy in commercial law (UCC) to invoke Buyer's terms in interpreting these Terms.