

Additional Terms and Conditions

- 1. Agreement:** This Agreement and Foley Credit Application, incorporated herein by this reference, state the rights and obligations of Foley, Inc. ("Seller") and Purchaser with respect to the Goods and supersedes all prior agreements with respect thereto. Seller hereby rejects the terms of any purchase order or other document submitted by Purchaser. No variation or modification of this Agreement shall be valid unless in writing and signed by the Parties. All notices hereunder shall be in writing, addressed to each party at the address set forth on page one of this Agreement or at such other address as may hereafter be furnished in writing.
- 2. Payment Terms (continued):** Purchaser shall pay to Seller a late payment charge equal to the lesser of (a) the highest charge allowed by law or (b) 5% of the amount of any payment (including any accelerated payment) not made when due under this Agreement (or such later date as may be required by applicable law). In addition to the late payment charge, Purchaser shall pay interest on any late payment at the rate of 1.5% monthly. Except as otherwise expressly provided herein, the obligations of Purchaser hereunder shall not be affected by any defect in, damage to, loss of or interference with possession or use of any Unit, by the attachment of any lien or claim to any Unit, or for any other cause.
- 3. Title to Goods:** Seller retains title to all goods until Purchaser performs all of its obligations under the Agreement. In order to secure payment and performance of the obligations, Purchaser hereby grants to Seller a security interest in the purchased goods and all proceeds thereof described in this Agreement to secure the performance of all of Purchaser's obligations under this Agreement. Purchaser, at its expense, shall keep equipment listed as Additional Security insured against all risks for their full insurable value and shall name Seller or its designee as loss payee and be payable to Seller as its interest may appear.
- 4. Disclaimer of Warranties:** Purchaser acknowledges and agrees that Seller is not the manufacturer of the Unit(s) and that Purchaser has selected each Unit based on Purchaser's own judgment without any reliance whatsoever on any statements or representations made by Seller. **As between Seller and Purchaser, the Unit(s) are provided "As-Is" without any warranties of any kind. Purchaser hereby expressly disclaims (a) all warranties of merchantability, (b) all warranties of fitness for a particular purpose, and (c) all warranties against infringement or the like, whether express or implied. Seller assigns to Purchaser its interest in any of the manufacturer's warranties on the Unit(s). Purchaser understands that warranties for equipment and parts are limited in time and scope and can vary according to the source from which they were obtained.**
- 5. Taxes:** Purchaser shall promptly pay all taxes, assessments, fees and other charges when levied or assessed against any Unit or the ownership or use thereof, or this Agreement or any payments made or to be made to Seller.
- 6. MUTUAL INDEMNIFICATION: SUBJECT TO THE TERMS OF SECTION 7 BELOW, EACH PARTY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS, PENALTIES, REASONABLE ATTORNEYS' FEES OR EXPENSES OF ANY KIND WHATSOEVER (COLLECTIVELY, "LOSSES"), INCLUDING THOSE LOSSES FROM THIRD PARTIES, THAT ARE INCURRED BY INDEMNIFIED PARTY AS A RESULT OF ANY (A) BREACH OF THE TERMS OF THE AGREEMENT, (B) BREACH OF ANY REPRESENTATION OR WARRANTY (C) NEGLIGENT OR MORE CULPABLE ACT OR OMISSION (INCLUDING ANY RECKLESSNESS OR WILLFUL MISCONDUCT) OR (D) FAILURE BY INDEMNIFYING PARTY TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL LAWS, REGULATIONS OR CODES IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THE AGREEMENT.**
- 7. LIMITATION OF LIABILITY: UNDER NO CONDITION OR CAUSE OF ACTION SHALL SELLER BE LIABLE FOR ANY LOSS OF ACTUAL OR ANTICIPATED BUSINESS OR PROFITS OR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING BUT NOT LIMITED TO LIQUIDATED DAMAGES, AND IN NO EVENT SHALL SELLER'S LIABILITY UNDER THIS AGREEMENT EXCEED THE LESSER OF (A) THE PURCHASER'S ACTUAL AND DIRECT PECUNIARY LOSS, AND (B) THE TOTAL CASH SALE PRICE.**
- 8. Remedies:** If any breach or default of the terms of this Agreement shall occur, Seller may, at its option, do any one or more of the following: (a) Declare all amounts due or to become due under this Agreement and/or any other agreement between Purchaser and Seller to be immediately due and payable; (b) terminate for cause per section 9 below; (c) recover any additional damages and expenses sustained by Seller by reason of the breach of terms this Agreement; (d) enforce the security interest granted hereunder; (e) without notice, liability or legal process, enter upon the premises where any of the Unit(s) or additional security may be and take possession thereof, and (f) require Purchaser to assemble the Unit(s) and additional security and make them available to Seller at a place designated by Seller which is reasonably convenient to both parties. Seller's remedies hereunder shall not be exclusive and are in addition to all other remedies existing at law or in equity.
- 9. Termination:** Seller may terminate this Agreement for any reason upon giving customer ten (10) days prior written notice. Seller may terminate for cause this Agreement immediately upon occurrence of a material breach of these terms and conditions, or if Purchase becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings related to bankruptcy receivership, reorganization or assignment for the benefit of creditors, or otherwise breaches this Agreement. Purchaser may not cancel an order, return equipment or change the delivery date without the Seller's written consent. Any cancellation, return or change is subject to additional charges based on Seller's actual costs.
- 10. Purchaser Assurance and Representations:** Purchaser represents and warrants to Seller that (a) Purchaser has the power to make, deliver and perform under this Contact; (b) the person executing and delivering this Agreement is authorized to do so on behalf of Purchaser; (c) this Agreement constitutes a valid obligation of Purchaser, legally binding upon it and enforceable in accordance with its terms; and (d) all credit, financial and other information submitted to Seller in connection with this Agreement is and shall be true, correct and complete.
- 11. Assignment:** Purchaser shall not assign this Agreement except upon Seller's written agreement and any such attempted assignment shall be void. This Agreement shall inure to that benefit of and be binding upon the successors and permitted assigns of the parties.
- 12. Effect of Waiver, Notices:** No delay or omission to exercise any right or remedy accruing to Seller hereunder shall impair any such right or remedy nor shall it be construed to be a waiver of any breach or default of Purchaser. Any waiver or consent by Seller under this Agreement must be in writing specifically set forth and shall not constitute a waiver of a subsequent breach or default.
- 13. Applicable Law, Venue and Jury Trial Waiver Provisions:** This Agreement shall be governed by and construed under the laws of the State of New Jersey, without giving effect to the conflict-of-laws principles thereof, and Purchaser hereby consents to the exclusive jurisdiction of any state or federal court located within the State of New Jersey. **THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OBLIGATIONS OR THE COLLATERAL.**
- 14. Severability:** If any provision of this Agreement shall be invalid under any applicable law, such provision shall be deemed omitted but the remaining provisions hereof shall be given effect.

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