

Terms of Use

Last updated: February 22, 2022

These terms of use (the “Terms of Use”) are a legal agreement between you and Foley Inc. (“Foley,” “we,” “us,” or “our”). These Terms of Use specify the terms under which you may access and use our website located at <https://www.foleyinc.com/> (the “Website”) and order parts and/or equipment (collectively, the “Equipment”) through us (together with the Website, collectively, the “Services”).

By accessing or using the Services (including when you order Equipment through us), or otherwise manifesting your assent to these Terms of Use, you agree to be bound by these Terms of Use and our Privacy Policy, which is hereby incorporated by reference (collectively, the “Agreement”). If you do not agree to (or cannot comply with) all of the terms of these Terms of Use, do not access or use the Services.

THE SECTIONS BELOW TITLED “BINDING ARBITRATION” AND “CLASS ACTION WAIVER” CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.

If you accept or agree to this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to the Agreement and, in such event, “you” and “your” will refer and apply to that company or other legal entity.

Capitalized terms not defined in these Terms of Use shall have the meaning set forth in our Privacy Policy.

1. USE OF PERSONAL INFORMATION.

Your use of the Services may involve the transmission to us of certain personal information. Our policies with respect to the collection and use of such personal information are governed according to our Privacy Policy (located at <https://www.foleyinc.com/privacy-policy/>) which is hereby incorporated by reference in its entirety.

Any information you provide to Caterpillar, Inc., its subsidiaries, affiliates, and other entities controlled by Caterpillar Inc. (collectively, “Caterpillar”) through their respective websites shall be processed by Caterpillar in accordance with Caterpillar's Global Privacy Statement available at <http://www.caterpillar.com/dataprivacy>.

2. COMMUNITY GUIDELINES.

The Services are available only to individuals aged 13 years or older. If you are 13 or older, but under the age of majority in your jurisdiction, you should review these Terms of Use with your parent or guardian to make sure that you and your parent or guardian understand it. If you are under the age of 13, you may use the Services only with the consent of your parent or guardian

To provide you with the Services, we need to build a community with a few simple guidelines. By accessing the Services you agree to comply with these community guidelines (the “Community Guidelines”) and that:

- You will comply with all applicable laws in your use of the Services and will not use the Services for any unlawful purpose;
- You will not access or use the Services to collect any market research for a competing business;
- You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- You will not interfere with, or attempt to interrupt the proper operation of, the Services through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any Content (defined below), data, files, or passwords related to the Services through hacking, password or data mining, or any other means;
- You will not decompile, reverse engineer, or disassemble any software or processes accessible through the Website;
- You will not cover, obscure, block, or in any way interfere with any advertisements and/or safety features on the Website;
- You will not use any robot, spider, scraper, or other automated means to access the Website for any purpose without our express written permission;
- You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure;
- You will not resell, distribute, or sublicense the Website or use it for the benefit of anyone other than you or your business;
- You will not resell or distribute the Equipment or use the Equipment for any illegal purposes;
- You will not remove or modify any proprietary markings or restrictive legends placed on the Website or Equipment; and
- You will not introduce, post, or upload to the Services any Harmful Code. As used herein, “Harmful Code” means computer code, programs, or programming devices that are intentionally designed to disrupt, modify, access, delete, damage, deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Website, or any other associated software, firmware, hardware, computer system, or network (including, without limitation, “Trojan horses,” “viruses,” “worms,” “time bombs,” “time locks,” “devices,” “traps,” “access codes,” or “drop dead” or “trap door” devices) or any other harmful, malicious, or hidden procedures, routines or mechanisms that would cause the Website to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications, or otherwise interfere with the operations of the Website.

3. INTELLECTUAL PROPERTY.

The Services contain materials, such as software, text, graphics, images, and other material provided by or on behalf of Foley (collectively referred to as the “Content”). The Services and the Content are protected by copyright, trademark, and other laws of the United States and foreign countries. Foley and our licensors exclusively own all right, title, and interest in and to the Services and the Content,

including all associated intellectual property rights. Unauthorized use of the Services or Content may violate copyright, trademark, and other laws.

Subject to the terms and conditions of these Terms of Use, Foley grants you a limited, non-transferable, non-exclusive, license to access and use the Services and the Content solely for your personal, non-commercial purposes. You may not (i) remove, alter, or obscure any copyright, trademark, service mark, or other proprietary rights notices incorporated in or accompanying the Services or the Content, or (ii) sell, transfer, assign, license, sublicense, or modify the Services or the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Services or Content in any way for any public or commercial purpose. We reserve the right to remove Content from our Services at any time for any reason without any notice to you.

If you violate any part of these Terms of Use, your permission to access the Content and the Services automatically terminates and you must immediately destroy any copies you have made of the Content.

The trademarks, service marks, and logos of Foley (the “Foley Trademarks”) used and displayed on the Services and Content are registered and unregistered trademarks or service marks of Foley. Other company and service names located on the Services may be trademarks or service marks owned by third parties (the “Third-Party Trademarks,” and, collectively with Foley Trademarks, the “Trademarks”). Nothing on the Services should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of Foley Trademarks inures to our benefit.

Elements of the Services are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated in whole or in part, by any means, including, but not limited to, the use of framing or mirrors. None of the Content may be retransmitted without our express, written consent for each and every instance.

4. PURCHASE TERMS.

a. Orders; Order Acceptance. You may place orders for our Equipment through us. The receipt of an order number or an email order confirmation does not constitute Foley’s acceptance of an order or a confirmation of an offer to sell. Foley reserves the right to refuse service to anyone or cancel an order for any reason. Verification of information may be required prior to the acceptance of an order. Prices and availability of Equipment are subject to change without notice. If you wish to place an order for Equipment, please contact us at: 732-885-5555. Please note that you will be required to enter into additional agreement(s) with us to order Equipment.

b. Payment. Where applicable, you shall pay all purchase prices, taxes, shipping and handling, and other fees in connection with Equipment ordered in the manner specified on or selected through the Services. Payment is due immediately upon placing an order. We use a third party payment processor to process your payments and by placing an order, you agree to pay, through our third party payment processor, all charges that may be incurred by you or on your behalf at the prices then in effect for the Equipment.

c. Shipping. We use reliable third-party carriers to deliver the Equipment to you. You are responsible for the cost of all shipping. Foley is not liable for any damages (including, without limitation, any incidental or consequential damages) arising from our third-party carrier's failure to deliver or delay in delivering the Equipment ordered through us. Further, we are not responsible in the event that the Equipment is unable to be delivered to you due to an incorrect shipping address, your failure or refusal to accept delivery, or for any other reason.

d. Errors. All descriptions, images, references, features, content, specifications, and prices of Equipment described or depicted through our Services are subject to change at any time without notice. Certain descriptions are approximate and are provided for convenience purposes only. From time to time, there may be information made available through the Services that contains typographical errors, inaccuracies, or omissions that may relate to Equipment descriptions, Equipment prices, promotions, offers, and availability. Foley reserves the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders, if any information made available through the Services is inaccurate at any time without prior notice, even after you have received an order confirmation or shipping notification. The inclusion of any Equipment on the Website or materials we provide through the Services does not imply or warrant that the Equipment will be available. We reserve the right to revise our Equipment offerings and/or discontinue offering any Equipment at any time without notice. Foley also reserves the right to limit quantities purchased, and to revise, suspend, or terminate an event or promotion at any time without notice (including after an order has been submitted or acknowledged).

5. COMMUNICATIONS WITH US

Although we encourage you to e-mail us, we do not want you to, and you should not, e-mail us any content that contains confidential information. With respect to all e-mails and communications you send to us (whether oral or written), including, but not limited to, feedback, questions, comments, suggestions, testimonials, and the like, we shall be free to use any ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the marketing of Equipment and our services that incorporate such information without compensation or attribution to you.

6. DISCLAIMER; LIMITATION OF LIABILITY.

THE SERVICES AND ALL CONTENT AND OTHER INFORMATION ON OR ACCESSIBLE FROM OR THROUGH THE SERVICES ARE PROVIDED BY FOLEY ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED.

EXCEPT AS OTHERWISE AGREED TO BY THE PARTIES IN A SEPARATE AGREEMENT, FOLEY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, THE CONTENT, AND ALL EQUIPMENT OFFERED THROUGH THE SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SECURITY OR ACCURACY, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE

GENERALITY OF THE FOREGOING, FOLEY DOES NOT WARRANT THAT: (1) THE INFORMATION ON THE SERVICES IS CORRECT, ACCURATE OR RELIABLE; (2) THE FUNCTIONS CONTAINED ON THIS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; OR (3) DEFECTS WILL BE CORRECTED, OR THAT THE SERVICES OR THE SERVER THAT MAKE THEM AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS: (I) WE SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OR INABILITY TO ACCESS AND USE THE SERVICES, THE EQUIPMENT, OR THE CONTENT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES, NOT ATTRIBUTABLE TO PERSONAL INJURIES, THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE SERVICES OR THE CONTENT SHALL BE LIMITED TO FIFTY UNITED STATES DOLLARS (US \$50).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR LIMITATION OF CERTAIN LIABILITIES. THEREFORE, SOME OF THE ABOVE LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.

NOTHING IN THESE TERMS OF USE SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU.

7. INDEMNIFICATION.

You agree to indemnify, defend, and hold harmless Foley, its affiliates, and its and their respective officers, managers, partners, employees, and agents from and against any and all losses, civil penalties, liabilities, damages, judgments, costs, and expenses, including reasonable attorney's fees and court costs, incurred in connection with any proceeding, claim, or action arising out of or related to (i) your breach of these Terms of Use; (ii) your misuse of the Equipment, the Content or the Services; and/or (iii) your violation of any third-party rights, including without limitation any copyright, trademark, property, publicity or privacy right.

8. COMPLIANCE WITH APPLICABLE LAWS.

The Services are based in the United States. We make no claims concerning whether the Services are accessible, or whether Content may be downloaded, viewed, or be appropriate for use, or orders may be made, outside of the United States. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

9. CONTROLLING LAW.

These Terms of Use and any action related thereto will be governed by the laws of the State of New Jersey without regard to its conflict of laws provisions.

10. BINDING ARBITRATION.

In the event of a dispute arising under or relating to these Terms of Use, the Content, or the Services (each, a “Dispute”), such dispute will be finally and exclusively resolved by binding arbitration governed by the Federal Arbitration Act (“FAA”). Any election to arbitrate, at any time, shall be final and binding on the other party. NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF WITHIN SUCH COURT’S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator selected jointly by you and Foley, whose decision will be final, except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by JAMS pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules, or, where appropriate, pursuant to JAMS’ Streamlined Arbitration Rules and Procedures. All applicable JAMS’ rules and procedures are available at the JAMS website www.jamsadr.com. Each of you and Foley will be responsible for paying any JAMS filing, administrative, and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator’s award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after commencement of the arbitration. As set forth in Section 11 below, nothing in these Terms of Use will prevent us from seeking injunctive relief in any court of competent jurisdiction as necessary to protect our proprietary interests.

11. CLASS ACTION WAIVER.

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

12. EQUITABLE RELIEF.

You acknowledge and agree that in the event of a breach or threatened violation of our intellectual property rights and confidential and proprietary information by you, we will suffer irreparable harm and will therefore be entitled to injunctive relief to enforce these Terms of Use. We may, without waiving any other remedies under these Terms of Use, seek from any court having jurisdiction any interim, equitable, provisional, or injunctive relief that is necessary to protect our rights and property

pending the outcome of the arbitration referenced above. You hereby irrevocably and unconditionally consent to the personal and subject matter jurisdiction of the federal and state courts in the State of New Jersey for purposes of any such action by us.

13. EXTERNAL WEBSITES.

The Services may contain links to third-party websites (“External Websites”). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Websites. The content of such External Websites is developed and provided by others. You should contact the site administrator or webmaster for those External Websites if you have any concerns regarding such links or any content located on such External Websites. We are not responsible for the content of any linked External Websites and do not make any representations regarding the content or accuracy of materials on such External Websites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Websites, you do so at your own risk.

14. CHANGES TO THE AGREEMENT.

These Terms of Use are effective as of the last updated date stated at the top. We may change these Terms of Use from time to time with or without notice to you. Any such changes will be posted on the Website. By accessing the Services after we make any such changes to these Terms of Use, you are deemed to have accepted such changes. Please refer back to these Terms of Use on a regular basis.

15. TERMINATION OF THE TERMS OF USE.

We reserve the right, in our sole discretion, to restrict, suspend, or terminate these Terms of Use and the Services, and your access to all or any part of the Services, at any time and for any reason without prior notice or liability. Sections 2, 5-15 shall survive the termination of these Terms of Use.

16. GENERAL.

No failure or delay by Foley in exercising any right or remedy under the Terms of Use will operate, or be deemed to operate, as a waiver of any such right or remedy. If any provision of the Terms of Use is found invalid or unenforceable by a court of competent jurisdiction, that provision will be amended and the remainder of the Terms of Use will remain in full force and effect. The Terms of Use constitute the final and complete agreement between you and Foley regarding the subject matter hereof, and supersede any prior or contemporaneous communications, representations, or agreements between us, whether oral or written, including, without limitation, any confidentiality or non-disclosure agreements. Headings are for convenience only and shall not be used to limit or interpret the meaning of any of the provisions of the Terms of Use. Terms which by their nature are intended to survive indefinitely shall survive and shall apply to you even if you have stopped using the Services, including, without limitation, the limitations of liability, indemnity, and dispute resolution provisions.

17. HOW TO CONTACT US.

If you have questions about the Terms of Use or our Services, please contact us via email at info@foleyinc.com.

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