

## Terms and Conditions of Power System Sales

- a) All quotations are valid for 30 days from date of quotation unless otherwise noted.
- b) All quotations are FOB first destination and delivery will be made using a Flatbed or Step Deck Trailer with offloading by others. Customer must provide clear and unobstructed access to the site so equipment can be off-loaded.
- c) Payment terms are net 30 days. If startup occurs within 30 days of invoice date, payment is due immediately. All projects greater than \$1MM will be subject to progress billing. The progress billing structure is listed below:
  - I. Receipt of Purchase Order: 10%
  - II. Approved Submittals and release of equipment: 25%
  - III. Delivery of equipment to site: 55%
  - IV. Successful testing of equipment: 10%
- d) Our payment terms will include interest on the 31st day on all outstanding invoices; the interest will be based on the current market value.
- e) All quotations are subject to owners or specifying engineer's approval of our project submittals.
- f) Federal, State and local sales tax is not included in our price quotation.
- g) Standard factory lead times will apply after receipt of approved submittal and notification to proceed with equipment fabrication.
- h) Federal, State and local code compliance is strictly the responsibility of the owner and his engineers and/or representatives.
- i) All materials listed in this quotation are covered by the manufacturer warranty only unless specifically stated otherwise.
- j) Foley Power Systems requests (14) fourteen-day notification to schedule unit start up services.
- k) Fuel oil and or other consumables required for unit start up and site testing is not included in this quotation and shall be provided "By Others".
- l) Title and risk of loss will pass to Buyer upon delivery of the equipment to project job site.
- m) If the Buyer cannot accept delivery of the equipment or requests that the delivery be delayed, Foley Power Systems will invoice Buyer for the purchase price of the equipment and make arrangements for equipment storage. Storage charges will accrue at a monthly rate of (2) two percent of the invoiced purchase price for every month or portion thereof, during which the equipment is being stored by Foley Power Systems. Buyer is responsible for any additional freight, off-loading, rigging, or special equipment charges as a result of the delay in taking delivery.
- n) Buyer may not cancel a purchase order, return equipment, or change the delivery date without Foley Power Systems written consent. Any cancellation, return, or change of delivery dates is subject to additional charges based on Foley Power Systems actual costs.
- o) Foley Power Systems is not responsible for serving and paying fees for permits, licenses, or registrations required by any agency that may be required for the installation and operation of the above quoted equipment.
- p) Any and all installation of this equipment shall be "By Others".
- q) This proposal is confined to the Bill of Materials as listed above.
- r) Any claim of any kind whatsoever asserted by buyer or Foley Power Systems against the other, arising out of or in any way relating to this agreement shall be resolved exclusively by submitting such claim to arbitration in accordance with the rules of the American Arbitration Association. The place of arbitration shall be in New Jersey. Judgment upon any such arbitration award may be entered in (1) the appropriate State or Federal court with Jurisdiction over Middlesex County, New Jersey.
- s) Foley Power Systems does not accept "paid when paid" conditions as part of the Terms and Conditions of the contract
- t) The power connection to the Generator is sized for copper wire only. If an alternate material is used for the power connection; the proposal price is subject to change.
- u) Buyer shall indemnify, hold harmless, and defend seller from all liability for loss, damage or injury to person or property to the extent caused by the negligent act or omission of buyer. Buyer shall defend seller in accordance with and to the extent of the above indemnification, provided the buyer is (i) promptly notified by seller, in writing, of any claims, demands or suits for such damages or injuries; and (ii) has the right to select and direct counsel and settle such claims.
- v) Foley shall not be responsible for any failure to perform, or delay in performance of its obligations resulting from or associated with the COVID-19 pandemic or any future pandemic, and the Buyer shall not be entitled to any damages including but not limited to liquidated, special, consequential, or punitive, resulting thereof. Furthermore, the seller's product times are based upon the information provided to seller from its suppliers at the time of quotation. The buyer accepts that lead times for products can change and do so without notice and due to reasons, that are beyond any control of the seller. As such, the seller shall not be responsible for any failure to perform, or delay in performance of, its obligations resulting from lead times that extend past those originally quoted, and Buyer shall not be entitled to any damages resulting thereof.
- w) In the event of significant delay or price increase of material, equipment or labor occurring during the performance of the contract through no fault of Foley Inc., the Contract Sum, time of completion or contract requirements shall be equitably adjusted by Change Order in accordance with the procedures of the Contract Documents. A change in price of an item of material, equipment, or labor will be considered significant when the price of an item increases 2% or more between the date of this Contract and the date of installation/delivery/time of order.