

Goods and Services Terms and Conditions

Last Updated September 8, 2023

1. AGREEMENT

- a. These terms and conditions govern the purchase of Goods (including parts, attachments, components, and technology) and Services from Foley, Incorporated ("Foley"). By Purchasing Goods and/or Services from Foley (including but not limited to placing an order with a Foley representative, issuing a PO, and/or acceptance of Goods/Services), the Customer agrees to and intends to be bound by these terms and conditions.

For online orders, by placing an order online you are accepting and agreeing that these terms and conditions govern the transaction and agree and intend these to be bound by these terms and conditions. Foley hereby rejects the terms of any purchase order, document, or other communication provided by Customer. No variation or modification of this Agreement shall be valid unless in writing and signed by a Foley authorized representative.

2. ORDER ACCEPTANCE

- a. All orders are subject to approval and acceptance by Foley at its sole discretion. Order acceptance shall be the later of an email confirmation or shipment of Goods. Foley reserves the right to rescind acceptance subject to Customer's credit status or product availability.

3. DELIVERY

- a. Delivery dates are estimates only. Foley shall take commercially reasonable efforts to meet requested delivery dates, but Foley shall in no way be liable for late deliveries.

4. RETURNS

- a. Customer may not cancel an order or return Goods without Foley's prior written consent. See Foley's Parts Return Policy for permissible parts returns and procedures.

5. CANCELLATION RIGHTS

- a. Foley may cancel this order immediately upon occurrence of a breach by Customer of these terms and conditions, or if Customer 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.

6. PRICING AND PAYMENT

- a. For online orders, the price of Goods is the price posted online at the time of order. Additional charges may apply, including but not limited to emergency service fees, drop box charges and applicable taxes. All prices are subject to change. If Customer fails to make any payment required when due, Customer shall pay to Foley a late charge of 1.5% monthly on balance from due date until paid in full.

7. TITLE AND RISK OF LOSS

- a. Title to Goods shall pass upon payment in full for Goods. Risk of loss shall pass to Customer upon delivery to Customer or carrier, whichever occurs first.

8. WARRANTY

- a. New: Customer acknowledges and agrees that Foley is not the manufacturer of Goods and that Customer has selected Goods based on Customer's own judgment without any reliance whatsoever on any statements or representations made by Foley. As between Foley and Customer, the Goods are provided "As-Is" without any warranties of any kind. **If Goods include a manufacturer's warranty, Foley will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty. Customer understands that warranties can vary according to the source from which they were obtained.**
- b. Used: If Customer purchases any used Goods from Foley, Customer agrees and acknowledges that such used Goods are provided "As-Is" without any warranties of any kind.
- c. Services: Foley hereby warrants that its labor shall be free from defects in workmanship for one (1) year from the date labor is performed.
- d. **Warranty Disclaimer: Foley makes no warranty, express or implied, other than the foregoing warranties, including but not limited to any implied warranties of merchantability or fitness for purpose. Foley makes no representation or warranty, express or implied, related to fire**

suppression systems. None of the warranties set forth herein shall apply to fire suppression systems.

9. FIRE SUPPRESSION SYSTEMS

- a. EQUIPMENT HAVING INSTALLED FIRE SUPPRESSANT SYSTEMS: During the course of repair work it may become necessary to deactivate or disturb mechanical and/or electrical components of the fire suppression system. Reactivation of the fire suppressant system is the responsibility of the customer and should be undertaken before machine operations. Foley accepts no liability or responsibility for the reactivation, testing or proper operation of the fire suppressant system.

10. TAXES

- a. Customer shall promptly pay all taxes, assessments, fees, and other charges when levied or assessed against the Goods and/or Services, the use or ownership thereof.

11. GOVERNING LAW, VENUE, JURY TRIAL WAIVER

- a. 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 shall be binding upon Customer and their legal representatives. Customer 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 TRANSACTION.**

12. LIMITATION OF LIABILITY

- a. In no event shall either party be liable for any special, incidental, indirect, consequential, or punitive damages including but not limited to loss of actual or anticipated business or profits or any liquidated damages. In no event shall Foley's liability exceed the price paid by the Customer for the Goods/Services related to the liability.

13. INDEMNIFICATION

- a. 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 THIRD PARTY CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS, PENALTIES, REASONABLE ATTORNEYS' FEES OR EXPENSES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY OR PROPERTY DAMAGE, TO THE EXTENT CAUSE BY THE INDEMNIFYING PARTY'S NEGLIGENCE OR MORE CULPABLE ACT OR OMISSION (INCLUDING ANY RECKLESSNESS OR WILLFUL MISCONDUCT), BREACH OF THESE TERMS AND CONDITIONS, OR FAILURE TO ABIDE BY APPLICABLE LAWS AND REGULATIONS. CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD FOLEY, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS, PENALTIES, REASONABLE ATTORNEYS' FEES OR EXPENSES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY OR PROPERTY DAMAGE, THAT ARE CAUSED BY OR IN ANY WAY RELATED TO FIRE SUPPRESSION SYSTEMS.

14. ASSIGNMENT

- a. Customer shall not assign its rights or obligations under this transaction except upon Foley's written agreement and any such attempted assignment shall be void. This transaction shall inure to that benefit of and be binding upon the successors and permitted assigns of the parties.

15. EFFECT OF WAIVER

- a. No delay or omission to exercise any right or remedy accruing to Foley hereunder shall impair any such right or remedy nor shall it be construed to be a waiver of any breach or default. Any waiver or consent by Foley under this Agreement must be in writing specifically set forth and shall not constitute a waiver of a subsequent breach or default.

16. SEVERABILITY

- a. 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.

17. COMPLIANCE WITH LAWS

- a. Customer agrees and acknowledges that parts are not to be exported outside of the United States. Customer shall abide by all applicable laws and regulations.

18. PRIVACY

- a. Your purchase of Goods and/or 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.

FOLEY INCORPORATED PARTS RETURN POLICY

Foley Incorporated continuously strives to be your “**UNBEATABLE CHOICE**” for all your product support needs in our industry. We have designed our parts return policy to be both fair to our valued customers and Foley Incorporated.

Caterpillar Parts

1. All stock parts returned, accompanied by invoice, within 30 days will be credited at full invoice price
2. All stock parts returned, accompanied by invoice, after 30 days will be credited at invoice price less **10%** restocking charge
3. All **non-stock** parts returned, accompanied by invoice, within 30 days will be credited at invoice price less **15%** restocking charge
4. All non-stock parts returned after 30 days, without invoice are subject to management approval, with the value of the part(s) attempting to be returned to be established by parts management; a minimum **20%** restocking charge will be assessed if parts are accepted
5. Parts with an “*” in the “**NR**” column of the packing list have been deemed non-returnable by Caterpillar and are not eligible for credit.
6. Parts returned due to Foley Incorporated error will receive full credit if returned within 30 days.
7. Cat reman and dealer exchange cores must be returned within 60 days for full refund consideration (see core return policy)
8. The above policies are subject to the following:
 - a. All parts must be in original packaging and resalable condition.
 - b. Damaged or installed parts are not returnable
 - c. Open gasket kits, cut lengths of material, tubes with ends removed, custom made hoses and rusted parts are not returnable

Non-Caterpillar Parts

1. All stock parts returned, accompanied by invoice, within 30 days will be credited at invoice price
2. All non-stock parts returned will be issued credit **ONLY** if return is authorized by supplier, less any freight and restocking charges

Core Return Policy

1. Cores must be returned within 60 days of purchase for full credit consideration. Cores returned after 60 days will receive 50% of credit due.
2. All core credits are subject to final inspection by Caterpillar Inc.
3. Core credit is determined by Caterpillar core inspection criteria (see your parts counter advisor)
4. Additional charges may apply for missing or damaged components
5. Cores returned after 15 months will receive no core credit

Packing slip Identifier

Stock: 61 in TR column

Non-stock: 62 in TR column

Non-returnable: * in TR column