

Foley Power Systems - Customer Value Agreement - Terms and Conditions

BY SIGNING, I certify that I am the owner or owner's agent, and authorize Foley, Inc , its employees, subcontractors or consultants to perform the inspection, maintenance or repairs described above to include the provision and use of necessary materials required to accomplish the described work scope. I further authorize Foley, Inc to operate the equipment, or any part therein described for the purpose of testing and/or inspection. I understand that payment for all work performed is due in full upon completion.

Upon acceptance, this quote becomes a legal agreement between you (either an individual or the entity you are authorized to represent) and Foley, Inc. Further, signing certifies the information provided is true and correct, and that the signer is authorized to charge this purchase as noted. Foley, Inc reserves the right to reject a partial or modified quote. You may cancel an accepted quote until the work is started. Once started, work may be stopped at anytime. Partially completed work will be billed based on Time and Materials at Foley, Inc's prevailing rate. Additional handling and storage fees may apply to work partially completed or work temporarily put on hold.

EQUIPMENT HAVING INSTALLED FIRE SUPPRESSANT SYSTEMS: During 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 equipment operations. Foley, Inc accepts no responsibility for the reactivation, testing or operation of the fire suppressant system.

STANDARD WARRANTY: Parts are warranted as indicated by the manufacturer from the date of invoice. In addition, Foley, Inc CAT's standard labor warranty of one (1) Year will apply. Full warranty statements, including limitations and exclusions, are available from any Foley, Inc facility. Ask your service representative about additional or enhanced warranty availability.

THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE. REMEDIES FOR THESE WARRANTIES ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES AS SPECIFIED HEREIN. IN NO EVENT WILL EITHER CATERPILLAR OR FOLEY INC BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

CORE CHARGES: Core charges will be returned to customer upon acceptance of the core by Caterpillar.

OVERTIME: Overtime can be added at customers request charged at Foley, Inc's prevailing overtime rate.

PARTS POLICY: This quote does not include any un-salvageable parts. Parts will be set aside for customer approval before replacement.

TURNAROUND TIME: Foley, Inc will not be responsible for circumstances outside of its control. If delays are experienced, the customer will be contacted. In no event will Foley, Inc or subsidiaries be liable for any direct or indirect damages (including, without limitation, lost profits, lost savings or other incidental or consequential damages) arising out of the use or inability to use the equipment, even if Foley, Inc or subsidiaries has been advised of the possibility of such loss.

STANDARD EXCLUSIONS:

- Freight, Taxes and Misc / Enviro charges
- Non-reclaimable core charges
- Labor and expenses associated with overtime
- Transportation to & from Foley repair centers
- Non-salvageable reusable hardware replacement
- Non-cat paint
- Replacement of competitive parts

FOLEY INC. RESPONSIBILITIES:

- All inspections / Preventive Maintenance Services to be performed during the day on weekdays (Monday thru Friday) between the hours of 7:00 am and 3:30 pm, unless noted in the special comments section. Inspection dates to be mutually convenient for both parties and scheduled in advance of each visit.
- Provide a contact person to coordinate the scheduling of all P.M. work.

- Provide all travel, labor, equipment filters and oil (to manufacturer's specifications) to perform all monthly, quarterly, biannual or annual preventative maintenance services as outlined in our CSA agreement and attached PM description.
- Perform Scheduled Oil Sampling (SOS) sampling as outlined in attached PM description and provide the customer with a copy of the analysis.
- Maintain service records on all repairs, PM's and oil or coolant sampling performed by Foley Incorporated with customer copies available when required.
- Properly dispose of used oil and filters generated by Foley, Incorporated P.M. services in an EPA approved manner, leaving our portion of your job site environmentally clean.
- Perform a walk around visual inspection with each service. These inspections are intended to identify and report readily observable equipment conditions or deficiencies, which could affect equipment component life or proper performance.
- Some minor adjustments and repairs (i.e. replace a missing bolt, tighten a loose hose, etc.) that can be performed during the service will be made at no additional cost. You will receive a Foley Incorporated CSA checklist on all other problems or concerns that our technician detects. Scheduled Oil Sampling results will be mailed directly to you. If a critical problem is detected during the service or while the oil sample is being analyzed, Foley, Incorporated will contact you immediately. We notify you when the next inspection is due in order to schedule the service date.

CUSTOMER RESPONSIBILITIES:

- Foley does not guarantee the detection nor the replacement of worn out or defective parts nor the proper operation of the equipment during a power failure. The Buyer hereby releases and agrees to indemnify Foley, its officers, agents, and representatives from all claims and causes of action which may arise, directly or indirectly, out of the failure of the equipment or any part thereof, serviced by Foley hereunder, except for damages resulting from the negligence or willful wrong doing of Foley with respect to this agreement.
- The generating equipment must be made available for service at the time of the scheduled service date. Every effort will be made to minimize downtime. Either partner can terminate this contract at any time with a 30 day prior written notice. If less than the agreed services are performed, the flat rate will be compared to the time and material costs of the Customer Service Agreement and any additional charges will be applied to the customers account based on the full published field service labor rate and mileage charge.
- Maintain a working hour meter.
- Customer is to arrange for parking and freight elevator use on the day of scheduled services. Additional costs resulting from a delay in access to the equipment created by the customers will be the responsibility of the customer.
- Perform daily and weekly preventative maintenance items as outlined in the respective Caterpillar Maintenance Guide.
- Provide and add daily make-up fluids (fuel-oil-coolant), grease, using fuel and lubricants that meet Caterpillar specifications.

*****PLEASE NOTE THAT UNIT WILL BE SHUT DOWN DURING PM SERVICE*****

THIS TRANSACTION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REGARDS TO ANY CONFLICT OF LAW PROVISIONS AND SHALL BE BINDING UPON PARTIES AND THEIR RESPECTIVE LEGAL REPRESENTATIVES. THE PARTIES SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW JERSEY AND AGREE THAT ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT MUST BE BROUGHT IN THESE COURTS. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

BY EXECUTING THIS DOCUMENT, CUSTOMER ACKNOWLEDGES HAVING READ AND AGREES TO AND INTENDS TO BE BOUND BY FOLEY'S TERMS AND CONDITIONS.

Signature Acknowledgement _____

Print Name: _____ **Date:** _____

Title: _____ **Company:** _____