

FOLEY LYNX TERMS AND CONDITIONS

These terms and conditions apply to services provided by or through Foley Equipment Company or any other Foley Industries, Inc. entity or Foley business trade name ("Foley"). These terms and conditions and the signature page of the Foley Lynx Agreement form the contract (the "Agreement") with customer ("Customer") for virtual consulting services ("Consulting Services").

1. **Services.** For a subscription fee, Foley will provide Customer technical assistance via telephone support. The Consulting Services will be provided over the telephone and may include real-time video chat with on-screen annotation and augmented reality capabilities. These Consulting Services are being provided to Customer for the sole purpose of helping Customer troubleshoot or repair Customer's equipment.
2. **Additional Services.** Foley at the request of the Customer, may provide additional support such as parts ordering and scheduling of Foley technicians to repair equipment. Any Additional Services will be provided at Foley's then current rates for parts, labor, travel and materials and will be subject to Foley's specific terms and conditions for such Additional Services.
3. **Subscription Fee.** Customer will pay an annual subscription fee for the Consulting Services. Payment must be received prior to the start of the subscription. Unless you terminate the Agreement, it will automatically renew for another 12 month period. If the subscription is charged on Customer's existing account, any account not timely paid will be assessed a finance charge at the rate of 1.5% per month or the maximum allowed by law, whichever is less. Payment by Credit Card may be subject to surcharges as allowed by law.
4. **Taxes.** Foley prices for the annual subscription do not include applicable taxes, duties or other assessments and the same shall be added upon invoice by Foley.
5. **Intellectual Property.** Title and ownership rights to the Consulting Services, any software, programs, documentation or materials shall remain in Foley, Caterpillar and/or its vendors and Foley, Caterpillar and its vendors reserve all rights not expressly granted hereunder. The subscription granted hereunder does not convey any ownership rights to Customer and does not include the right to sublicense.
6. **Safety and Indemnity.** Foley may terminate any Consulting Services if Foley believes Customer is acting in an unsafe manner. Customer shall follow all manufacturer maintenance and service procedures, recommendations and instructions. Customer agrees Customer is solely responsible for the safety of Customer, its employees and agents and is responsible for any personal property of Customer or its employees. Customer agrees it will insure its property with such amounts and types of insurance as Customer deems prudent to protect it from any such losses Customer may incur. Customer shall indemnify, defend, save and hold harmless Foley, its subsidiaries, affiliates, directors, officers, employees, representatives, agents and successors and assigns, from and against any and all claims, demands, losses, suits and judgments and all costs and expenses in connection therewith, including attorneys' fees, arising out of or in any way related to the Consulting Services or this Agreement, and including without limitation any of the foregoing involving allegations of negligence on the part of Foley.
7. **Termination.** The Consulting Services and/or this Agreement may be terminated by Foley at any time for any reason. Customer may terminate the Consulting Services upon thirty days prior written notice to Foley. If Customer terminates the services for Foley's breach of this Agreement after written notice and an opportunity to cure the breach, or if Foley terminates the Agreement for its convenience then Customer will be entitled to a credit on Customer's account for the pro-rated portion of the subscription that remains. In all other situations there will be no subscription fee refund.
8. **Use.** The Consulting Services shall be used only by Customer and its employees who are registered as users and may only use the Consulting Services as expressly permitted herein. Distribution or disclosure of the Consulting Services or documentation provided is expressly prohibited.
9. **DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.** While we will make a reasonable effort to provide guidance to assist you, we make no guarantee that the advice and information provided to you will correct the issue with your equipment. **FOLEY MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SERVICES OR CUSTOMER'S USE THEREOF, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FOLEY DOES NOT WARRANT THAT THE SERVICES PROVIDED ARE IN COMPLIANCE WITH ANY APPLICABLE GOVERNMENTAL REGULATIONS, SPECIFICATIONS OR REQUIREMENTS. FOLEY SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER, WHETHER AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, OR BENEFITS OF USE OR LOSS OF BUSINESS, EVEN IF FOLEY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE MAXIMUM EXTENT OF FOLEY'S LIABILITY TO CUSTOMER SHALL BE THE TOTAL AMOUNT OF ANY PAYMENTS MADE BY CUSTOMER TO FOLEY UNDER THE TRANSACTION THAT IS THE SOURCE OF SUCH CLAIM.**
10. **Consumer Laws.** The laws of certain jurisdictions prohibit the limitation of certain warranties and the remedies and damages for the breach of such warranties. If any provision of this Agreement is in conflict with any statute or rule of law of any state or district in which jurisdiction may lie for enforcement, then such provision shall be deemed null and void to the extent, but only to the extent, that it may conflict therewith; and the remaining provisions hereof shall not be invalidated, but may be reformed by the court to the extent necessary to protect the rights of the parties.

11. Independent Contractor. Foley is a vendor/independent contractor. Foley and Customer recognize that nothing herein shall create a partnership, agency, joint venture or employment relationship between the parties or as granting a franchise under federal or state law.
12. Assignment. This agreement shall not be assignable by Customer without the prior written consent of Foley. Any attempt to do so without Foley's written consent shall be void and of no effect.
13. Amendment. This Agreement may be amended only by written agreement executed by both parties. These terms may not be modified orally. Foley may change the terms and conditions of this Agreement for any future subscription or renewal. Your continued access to or use of the Consulting Services after any change to this Agreement or your subscription terms goes into effect will constitute your acceptance of such change.
14. Entire Agreement. This Agreement shall be binding upon and inure to the benefit of Foley and Customer and their heirs, executors, administrators, successors, legal representatives and permitted assigns. This Agreement constitutes the entire agreement between Foley and Customer pertaining to the Consulting Services and supersedes all prior agreements and understandings pertaining thereto.
15. Documentation. Foley and Customer agree to execute and deliver all documents, provide all information, and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.
16. Waiver. No failure by either party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.
17. Legal Effect. No provision of this Agreement shall be interpreted for or against a party on the basis that such party was the draftsman of such provision; and no presumption or burden of proof shall arise disfavoring or favoring a party by virtue of the authorship of any of the provisions of this Agreement. If any provision of this Agreement is or becomes invalid, illegal, or unenforceable in any respect, and if the rights and obligations of the Foley or Customer will not be materially and adversely affected thereby, (a) such provision will be fully severable; (b) the provisions will be construed and enforced as if such illegal, invalid, or unenforceable provision had never existed; (c) the remaining provisions will remain in full force and effect and not be affected by the illegal, invalid, or unenforceable provision or by its severance here from; and (d) in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as is possible.
18. Applicable Law, Venue, Attorney Fees. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Kansas, without regard to the principles of conflicts of law. Any and all actions in law, equity, or otherwise arising between the parties, or in any manner from the transactions contemplated herein, shall be brought either in the U.S. District Court for the District of KS, sitting in Wichita, KS, or the 18th Judicial District, District Court, Sedgwick County, KS, and in no other court or jurisdiction. Each party hereto hereby consents to the jurisdiction of said courts. Customer agrees to reimburse Foley for the costs Foley incurs (including reasonable attorneys' fees) in any action or proceeding brought to enforce any provision of this Agreement, or where any provision is validly asserted by Foley as a defense including, but not limited to, any and all collection expenses and attorney's fees incurred by Foley in collecting past due balances.
19. Force Majeure. Foley shall not be liable for delays in performance from causes beyond the reasonable control of Foley. Examples of these causes include, but are not limited to (a) acts of God or of the public enemy, (b) acts of the Government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes, (i) unusually severe weather, (j) earthquakes, and (k) inability, after commercially reasonable diligence, to obtain raw materials.
20. Binding Effect of Statements. **FOLEY DOES NOT AUTHORIZE ANY PERSON TO CREATE FOR IT ANY OBLIGATION OR LIABILITY IN CONNECTION WITH THE SERVICES OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN. FOLEY FURTHERMORE DISCLAIMS, AND CUSTOMER EXPRESSLY DISCLAIMS, ANY RELIANCE ON STATEMENTS MADE BY FOLEY OR ITS AGENTS.**

