

BY TENDERING YOUR LAWN MOWER, CHAINSAW, TRIMMER, BLOWER, OR OTHER EQUIPMENT TO COLONIAL LAWN & GARDEN, INC. FOR REPAIRS OR MAINTENANCE WORK, YOU, AS CUSTOMER, AGREE TO ALL THE TERMS AND CONDITIONS OF THE EQUIPMENT REPAIR SERVICE AGREEMENT.

## **COLONIAL LAWN & GARDEN, INC. EQUIPMENT REPAIR SERVICE AGREEMENT**

THIS EQUIPMENT REPAIR AND SERVICE AGREEMENT (this "Agreement") is between COLONIAL LAWN & GARDEN, INC., a Washington corporation company ("COLONIAL") and the customer requesting equipment repair services (the "CUSTOMER") and governs the repair services to be provided by COLONIAL to the lawn mower, chainsaw, trimmer, blower, or other equipment (the "Equipment") tendered by CUSTOMER.

In consideration of the premises and of the respective covenants and provisions contained in this Agreement, COLONIAL and CUSTOMER agree as follows:

**AUTHORIZATION TO EFFECT REPAIRS & RATES:** Unless CUSTOMER specifically states in advance and in writing, CUSTOMER authorizes COLONIAL to expend the necessary labor, parts and materials that, in COLONIAL's sole opinion, are necessary to adequately make the repairs to the Equipment. Unless otherwise indicated, CUSTOMER agrees to pay COLONIAL's labor rate of \$85 per hour, plus COLONIAL's customary retail rates for parts and shipping. CUSTOMER further agrees to pay all applicable pick up/delivery fees, and sales taxes. CUSTOMER represents and warrants to COLONIAL that CUSTOMER has the lawful right to authorize repairs to be made to the Equipment.

**PAYMENT UPON COMPLETION:** CUSTOMER agrees to pay for all repairs, parts, fees, taxes, services, and charges ("Repair Costs"). COLONIAL will present CUSTOMER with a final invoice at the close of repairs that identifies all Repair Costs. Payment is due upon presentation of the final invoice and must be received by COLONIAL in order for the Equipment to be released to CUSTOMER. All Repair Costs must be paid by CUSTOMER prior to release of the Equipment. Any Repair Cost not paid when due shall accrue interest at the rate of 1.0% per month until paid. CUSTOMER agrees to pay all court costs and reasonable attorneys' fees in the event legal action is necessary to collect payment for the Repair Costs or otherwise enforce this Agreement.

**DELAYS AND LIABILITY:** COLONIAL is not responsible for any delays in effecting repairs to the Equipment, for any reason. COLONIAL neither assumes nor authorizes any other person to assume for COLONIAL, any liability in connection with COLONIAL's repair work. COLONIAL is not responsible for loss or damage to the Equipment or articles left in the Equipment in case of fire, theft, accident, inclement weather conditions or any other cause beyond our control. In the event COLONIAL is found liable, CUSTOMER agrees that the maximum amount of liability for any repair item shall not exceed the fair market value of the Equipment, including CUSTOMER's legal costs.

**MECHANIC'S LIEN:** CUSTOMER acknowledges and agrees that COLONIAL has an express mechanic's lien on the Equipment to secure the amount of repairs thereto. COLONIAL shall have the right to retain possession of the Equipment until COLONIAL is paid in full for the repair work. CUSTOMER further authorizes COLONIAL to charge any of CUSTOMER's credit cards COLONIAL may have on file in order to fulfill CUSTOMER's obligations under this Agreement. CUSTOMER agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by COLONIAL in any action for possession of the Equipment.

**STORAGE FEE:** CUSTOMER agrees to pay a storage fee of \$5 per day on any equipment left in COLONIAL's possession over 15 days after Colonial gives notification of service completion.

**ABANDONED EQUIPMENT:** CUSTOMER agrees that any equipment left over 60 days is considered abandoned and may be disposed of at COLONIAL's discretion. CUSTOMER will still be responsible for repair cost, storage cost, and disposal cost.

**PERMISSION TO OPERATE EQUIPMENT:** CUSTOMER hereby grants COLONIAL, and its employees and subcontractors, permission to operate the Equipment on streets, highways or elsewhere for testing and inspection purposes.

**WARRANTIES:** Any warranties on the parts and accessories COLONIAL uses to repair the Equipment are only those made by the manufacturer. The factory warranty constitutes all of the warranties with respect to the sale of any part or accessory. COLONIAL expressly disclaims all warranties for parts, labor, diagnosis, or service work, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. COLONIAL neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of any parts, accessories, products or services. In no event shall COLONIAL be liable for incidental or consequential damages or commercial losses arising out of the sale of any parts, accessories, products or services.

**NO OTHER REPRESENTATIONS, WARRANTIES, ETC.:** CUSTOMER warrants that no oral representations, statements, warranties or inducements apart from this Agreement have been made to or relied upon by CUSTOMER.

**REMEDIES CUMULATIVE:** The rights and remedies of COLONIAL contained in this Agreement are cumulative and not alternative.

**WAIVER:** Neither any failure nor any delay by COLONIAL in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes (along with the other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.

**MODIFICATION:** This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

**ASSIGNMENT:** CUSTOMER may not assign any of CUSTOMER's rights or delegate any of CUSTOMER's obligations under this Agreement without the prior written consent of COLONIAL.

**SUCCESSORS:** This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties.

**SEVERABILITY:** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**CONSTRUCTION:** The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

**GOVERNING LAW:** This Agreement will be governed by and construed under the laws of the State of Washington without regard to conflicts of law principles that would require the application of any other law.

**JURISDICTION:** Any judicial proceeding arising out of or relating to this Agreement or any transaction contemplated in this Agreement may be brought in the courts of the State of Washington, County of Yakima, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Washington, and each of the parties irrevocably submits to the exclusive jurisdiction of each court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement or any transaction contemplated in this Agreement in any other court. The parties agree that either or any of them may file a copy of this section with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum.

**USE OF ELECTRONIC SIGNATURES, RECEIPTS:** CUSTOMER agrees that this Agreement may be electronically signed; that the electronic signatures appearing on this Agreement have the same effect as handwritten signatures would have for the purposes of the validity, enforceability and admissibility of this Agreement, and that CUSTOMER may withdraw CUSTOMER's consent to receive electronic documents, notices or disclosures at any time so long as such request is made in writing and received by COLONIAL.

**TIME OF ESSENCE:** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.