

# DRYWOOD TERMITE CONTROL AGREEMENT

## Big Apple Pest Control & Termite

405 Evergreen Drive

Oldsmar, FL 34677

813-855-5528 • 813-368-2934

Bus. Lic. # JB128270 • Cert. # JF124413

Property/Address to be Serviced \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Purchaser \_\_\_\_\_ Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Description of Structure(s) Covered \_\_\_\_\_

Effective with the date of the initial treatment and for one year thereafter for the sum of \$ \_\_\_\_\_, Big Apple Pest Control & Termite will provide the necessary services to the identified property to control or protect against drywood termites. This plan will also cover \_\_\_\_\_.

Big Apple Pest Control & Termite will extend protection annually to the Purchaser for so long as he or she may own the property for \$ \_\_\_\_\_ per year for \_\_\_\_\_ years payable on or before the end of the previous annual period. After the third annual period and each annual period thereafter, Big Apple Pest Control & Termite reserves the right to revise the annual extension charge.

During the term of this Service Agreement, any further treatment found necessary by Big Apple Pest Control & Termite will be performed free of charge. Big Apple Pest Control & Termite will re-inspect the identified property at any time the Purchaser requests it or if Big Apple Pest Control & Termite believes it necessary. DUE TO THE NATURE OF CONSTRUCTION, THE EXTENT OF EXISTING TERMITE DAMAGE, THE DEGREE OF TERMITE ACTIVITY, AND/OR APPLICATION RESTRICTIONS, THE AGREEMENT DOES NOT GUARANTEE AGAINST, NOR SHALL BIG APPLE PEST CONTROL & TERMITE BE RESPONSIBLE FOR, PRESENT OR FUTURE DAMAGE TO PROPERTY OR CONTENTS, NOR PROVIDE FOR REPAIRS OR COMPENSATION THEREOF.

In the event of additions or alterations to the identified property, Purchaser must give prior notice and arrange with Big Apple Pest Control & Termite for additional service at the expense of Purchaser. Such additions or alterations may also require an adjustment to the annual extension charge.

Upon transfer of ownership of the identified property, this Service Agreement may be continued upon the terms and conditions on the reverse side.

ANY ADDITIONAL PROVISION ATTACHED HERETO, INCLUDING THE ARBITRATION AGREEMENT AND THE OTHER TERMS AND CONDITIONS ON THE REVERSE SIDE AND THE INSPECTION GRAPH DATED \_\_\_\_\_ ARE PART OF THIS SERVICE AGREEMENT.

**NOTICE: YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.**

Total Due Upon Completion \$ \_\_\_\_\_

Amount Paid \$ \_\_\_\_\_

Balance Due \$ \_\_\_\_\_

Company Representative \_\_\_\_\_ Date \_\_\_\_\_

Purchaser \_\_\_\_\_ Date \_\_\_\_\_

## TERMS AND CONDITIONS

**1. FUTURE DAMAGE, LIMITATION OF LIABILITY.** Due to the nature of construction, the extent of existing termite damage, the degree of termite activity and/or application restrictions, BIG APPLE PEST CONTROL & TERMITE DOES NOT GUARANTEE AGAINST AND BIG APPLE PEST CONTROL & TERMITE SHALL NOT BE RESPONSIBLE FOR, PRESENT OR FUTURE DAMAGE TO PROPERTY OR CONTENTS NOR FOR REPAIRS OR COMPENSATION THEREOF. In consideration of the sums charged by Big Apple Pest Control & Termite hereunder and as a liquidated damage and not as a penalty, and NOTWITHSTANDING ANY CONTRACT, TORT OR OTHER CLAIM THAT BIG APPLE PEST CONTROL & TERMITE SHALL HAVE BEEN NEGLIGENT IN THE PERFORMANCE OF ITS DUTIES TO PURCHASER, (I) THE SOLE RESPONSIBILITY OF BIG APPLE PEST CONTROL & TERMITE TO PURCHASER OR ANYONE CLAIMING THROUGH PURCHASER UNDER THIS PLAN OR OTHERWISE IS TO RE-TREAT THE PROPERTY AND (II) PURCHASER AND ANYONE CLAIMING THROUGH PURCHASER EXPRESSLY RELEASE BIG APPLE PEST CONTROL & TERMITE FROM, AND AGREE TO INDEMNIFY BIG APPLE PEST CONTROL & TERMITE WITH RESPECT TO, ANY OTHER OBLIGATION WHATSOEVER TO PURCHASER OR ANYONE CLAIMING THROUGH PURCHASER. THIS PLAN DOES NOT GUARANTEE, AND BIG APPLE PEST CONTROL & TERMITE DOES NOT REPRESENT, THAT TERMITES WILL NOT RETURN.

**2. EXISTING DAMAGE.** Big Apple Pest Control & Termite is not responsible for the repair of either visible damage or hidden damage existing as of the date of this Agreement. Because damage may be present in areas which are inaccessible to visual inspection, Big Apple Pest Control & Termite does not represent that the damage disclosed on the Inspection Graph represents all of the existing damage as of the date of this Agreement. If visible evidence of active or previous infestation is reported on the graph, it should be assumed that some degree of damage is present and it is advisable that a qualified building expert inspect the property for damage and structural integrity.

**3. WATER LEAKAGE.** Water leakage in treated areas, in interior areas or through the roof or exterior walls of the identified property, may destroy the effectiveness of treatment by Big Apple Pest Control & Termite and is conducive to new infestation. Purchaser is responsible for making timely repairs as necessary to stop the leakage. Upon completion of repairs by Purchaser, Big Apple Pest Control & Termite will provide additional treatment to control infestation at Purchaser's expense. Purchaser's failure to make timely repairs or purchase the additional necessary treatment will terminate this Agreement automatically without further notice. Big Apple Pest Control & Termite shall have no responsibility for repairs.

**4. ADDITIONS, ALTERATIONS.** This Agreement covers the property identified on the Inspection Graph as of the date of the initial treatment. In the event the premises are structurally modified, altered or otherwise changed or if soil is removed or added around the foundation, Purchaser will notify Big Apple Pest Control & Termite prior to such addition or alteration and will purchase the additional treatment required by the changes incurred. Failure to do so will terminate this Agreement automatically without further notice. In the event of any such change, Big Apple Pest Control & Termite reserves the right to adjust the annual extension charge. The failure of Big Apple Pest Control & Termite to notice any such changes does not release Purchaser from the obligations set forth in this paragraph.

**5. NOTICE OF CLAIMS, ACCESS TO PROPERTY.** Any claim arising out of or relating to this Agreement must be made to Big Apple Pest Control & Termite during the term of this Agreement. The only obligation of Big Apple Pest Control & Termite to Purchaser arising out of or relating to this Agreement is to re-treat the identified property and then only if a valid claim is made during the term of this Agreement. In the event of any claim by Purchaser for anything other than for Big Apple Pest Control & Termite to re-treat the identified property, Purchaser shall pay all of the costs and expenses of Big Apple Pest Control & Termite including but not limited to, attorneys' fees, relating to or arising out of such claim. Purchaser must allow Big Apple Pest Control & Termite access to the identified property for any purpose contemplated by this Agreement, including but not limited to reinspections, whether the inspections were requested by the Purchaser or considered necessary by Big Apple Pest Control & Termite, and failure to allow Big Apple Pest Control & Termite such access will terminate this Plan without further notice.

### **6. DISCLAIMER.**

A. The liability of Big Apple Pest Control & Termite under this Agreement will be terminated if Big Apple Pest Control & Termite is prevented from fulfilling its responsibilities under the terms of this Agreement by reason of delays in transportation, shortages of fuel and/or materials, strikes, embargoes, fires, floods, quarantine restrictions, earthquakes, hurricanes, or any other act of God or circumstances or cause beyond the control of Big Apple Pest Control & Termite.

B. This Agreement provides for treatment and re-treatment (as stated herein) for drywood termites unless specific coverage is added on other side of Contract for other types of termites. This Agreement does not provide any treatment for formosan termites (*Coptotermes spp.*), carpenter ants, beetles, fungi or any other wood destroying organisms.

C. This Agreement does not cover and Big Apple Pest Control & Termite will not be responsible for damage resulting from or services required for:

- (1) any and all damage resulting from termites and/or any other wood destroying organisms.
- (2) moisture conditions, including but not limited to fungus damage and/or water leakage caused by faulty plumbing, roofs, gutters, downspouts and/or poor drainage.
- (3) masonry failure or grade alterations.
- (4) inherent structural problems, including but not limited to, wood to ground contacts.
- (5) termites entering any rigid foam, wooden or cellulose containing component in contact with the earth and the identified property regardless of whether the component is a part of the identified property.
- (6) the failure of Purchaser upon notice from Big Apple Pest Control & Termite to promptly cure at Purchaser's expense any condition which prevents proper treatment or inspection or is conducive to termite infestation.

BIG APPLE PEST CONTROL & TERMITE DISCLAIMS AND SHALL NOT BE RESPONSIBLE FOR ANY LIABILITY FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR LOSS OF QUIET ENJOYMENT DAMAGES. THE OBLIGATIONS OF BIG APPLE PEST CONTROL & TERMITE SPECIFICALLY STATED IN THIS AGREEMENT ARE GIVEN IN LIEU OF ANY OTHER OBLIGATION OR RESPONSIBILITY, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. CHANGE IN LAW.** Big Apple Pest Control & Termite performs its services in accordance with the requirements of federal, state and local law. In the event of a change in existing law as it pertains to the services herein, Big Apple Pest Control & Termite reserves the right to revise the annual extension charge or terminate this Agreement.

**8. NON-PAYMENT, DEFAULT.** In case of default by the Purchaser, Big Apple Pest Control & Termite has the right to terminate this Agreement after thirty (30) days for non-payment.

**9. ENTIRE AGREEMENT.** This Termite Plan, these Terms and Conditions and the Inspection Graph constitute the entire Agreement between the parties and no other representations or statements will be binding upon the parties.

**10. ARBITRATION.** THE PURCHASER AND BIG APPLE PEST CONTROL & TERMITE AGREE THAT ALL MATTERS IN DISPUTE BETWEEN THEM, INCLUDING BUT NOT LIMITED TO ANY CONTROVERSY OR CLAIM BETWEEN THEM ARISING OUT OF OR RELATING TO THIS AGREEMENT, TO ANY WOOD DESTROYING INSECT REPORT WITH RESPECT TO THE IDENTIFIED PROPERTY, ANY SERVICES PROVIDED BY BIG APPLE PEST CONTROL & TERMITE, OR OTHERWISE TO THE IDENTIFIED PROPERTY IN ANY WAY, WHETHER BY VIRTUE OF CONTRACT, TORT OR OTHERWISE, SHALL BE SETTLED EXCLUSIVELY BY ARBITRATION. THE PARTIES ACKNOWLEDGE, AGREE AND UNDERSTAND THAT BY AGREEING TO MANDATORY ARBITRATION, THEY ARE FOREVER FORGOING THEIR RIGHT TO BRING THEIR CLAIM IN COURT AND TO HAVE THEIR DISPUTE DECIDED BY A JUDGE OR JURY. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules then in force of the American Arbitration Association. The arbitrator(s) shall be bound by rules of substantive law and shall not be bound by the rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall give effect to any and all waivers, releases, disclaimers, limitations, and other terms and conditions of this Agreement. Therefore, the award shall not, and the arbitrator shall not have the power or authority to hold Big Apple Pest Control & Termite responsible for (i) the repair or replacement of any termite damage to the identified property, (ii) loss of anticipated rents and/or profits or loss of quiet enjoyment, (iii) punitive, exemplary or treble damages or (iv) attorney fees. Each party shall be responsible for paying any attorney's fees, expert witness fees and other expenses it incurs on its behalf in connection with the arbitration, plus one half the arbitrator's fee and one half of any expenses incurred by the arbitrator, and the award shall assess the arbitrator's fees and expenses accordingly. Any award of damages pursuant to such arbitration shall be included in a written decision which shall state the reasons upon which the award was based, including all elements involved in the calculation of any award of damages. The decision of the arbitrator shall be a final and binding resolution of the disagreement which may be entered as a judgement by any court of competent jurisdiction. Each party consents to the personal jurisdiction and venue of the courts in which the identified property is located. Neither party shall sue the other party with respect to any matter in dispute between the parties other than for enforcement of this arbitration provision or of the arbitrator's decision and a party violating this provision shall pay the other party's costs, including but not limited to, attorney's fees, with respect to such suit and the arbitration award shall so provide. The parties acknowledge that this contract evidences a transaction involving interstate commerce. The Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to this contract.

**11. LIMITED ASSIGNABILITY.** This Agreement is assignable by Purchaser to a new owner of the property for a period of one year from the effective date of this Agreement and thereafter, transfer fee equal to annual inspection renewal required upon the written request of the Purchaser, and only in the sole discretion of Big Apple Pest Control & Termite after its inspection of the property which consent, if given, shall be in writing signed by Big Apple Pest Control & Termite and accepted in writing by Purchaser.