

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

BROKER/SHIPPER AGREEMENT OLDCASTLE L&G

THIS BROKER/SHIPPER AGREEMENT ("Agreement") is entered into and made effective this _____ day of _____, 20____ by **Oldcastle Lawn & Garden, Inc.** of **900 Ashwood Parkway Ste 600, Atlanta, GA 30338**, its subsidiaries, and the affiliates listed below ("Shipper") and _____ of _____ ("Broker").

- 1. TERM.** This Agreement shall commence on the _____ day of _____, 20____ and shall remain in effect for a period of twelve (12) months. Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other party. This Agreement shall automatically renew for successive one (1) year terms upon the same terms and conditions. The annual renewals shall continue until this Agreement is terminated by either party upon thirty (30) days prior written notice to the other party.
- 2. BROKER SERVICES.** Broker shall arrange for the interstate and intrastate transportation of Shipper's property ("Merchandise") as a broker and otherwise provide the services set forth in this Agreement ("Services"). To perform the Services, Broker may utilize the services of subcontract motor carriers ("Carrier") or transport the Merchandise with its own equipment. Broker shall exercise due diligence in the performance of the Services and shall contract only with qualified Carriers. Broker and its Carriers shall, at their sole expense, procure and maintain all permits, registrations, certificates, bonds and licenses required to perform the Services.
- 3. NON-EXCLUSIVITY.** This Agreement shall not constitute an exclusive arrangement. Shipper shall remain free to engage other persons or entities to perform brokering and shipping services. Broker shall remain free to perform brokering and shipping services for any other person or entity.
- 4. SAFETY; COMPLIANCE.** Shipper has established minimum safety requirements as outlined in **Schedule 1** hereto. Broker and its Carriers shall comply with Shipper's safety rules and regulations, and with all applicable laws and regulations, including those related to: wage and hour, drug-free workplace, OSHA, MSHA, Motor Vehicle Safety, weight limits and environmental laws. **Broker and its Carriers have a duty to monitor all applicable weight regulations and no driver shall leave or enter Shipper's property or facilities with an overweight, unsecured or unsafe load.** Broker and its Carriers shall also comply with all laws prohibiting discrimination in employment.
- 5. PAYMENT.** Broker shall invoice each Shipper directly and following completion of each shipment. Payment of the amount due shall be made by Shipper **based on payment terms agreement**. Shipper shall have no obligation to pay any invoice that is not presented within **sixty (60) days** of a completed shipment. Broker shall be responsible for issuing payment to its Carriers and shall submit with any such invoice whatever affidavits, releases, waivers, or other documents relating to the services covered by such invoice that Shipper may request. Shipper is authorized to withhold the amount of any claim for payment of labor or services allegedly furnished for the benefit of Shipper by the Carriers. Further, Shipper is authorized to make payment to Broker and any such claimant by joint check. Shipper shall pay Broker for loads actually delivered, as evidenced by Broker's reference to a bill of lading or Shipper's "Ship Ticket Number" assigned to each load. Such ship tickets shall serve as a form of Memorandum Bill of Lading identifying specific loads accepted for delivery, designated delivery points and consignees. All rates are based on freight confirmations on a "per load basis."
- 6. LIENS:** All funds paid by Shipper to Broker for the Services shall be deemed in trust for the payment of all labor and materials supplied in the course of Broker's performance of the Services. The funds shall not become the property of Broker until full payment is made for all such labor and materials.
- 7. OPERATION & AUTHORITY.** Broker warrants that its Carriers are authorized to transport, as motor carriers, freight of all kinds in interstate, intrastate and foreign commerce (if applicable) from, to and between all points and places in the continental United States and to provide Shipper the Services outlined in this Agreement. Broker shall have written subcontracts with its Carriers which include the following requirements:

- a. Carriers shall not ship any of Shipper's Merchandise to any party other than the consignee named on the shipment bill of lading, without the express written consent of Shipper.
 - b. A Carrier's possession of lading under this Agreement shall begin when Carrier has executed the freight documentation form for such lading and shall terminate upon the lading being tendered for delivery to Shipper's consignee.
 - c. Carrier shall, at its sole cost and expense, operate its vehicles and equipment in lawful manner and maintain the same in full compliance with the requirements of the Federal Motor Carrier Safety Regulations ("FMCSR"). Carrier shall also bear the cost of all fuel, tires and other supplies necessary for the safe operation of its vehicles and equipment.
 - d. Each driver utilized by Carrier to provide services under this Agreement ("Driver") shall hold a valid Commercial Drivers' License ("CDL") and shall otherwise meet all of the physical, training and other qualifications for commercial motor vehicle drivers set forth in the FMCSR. Carrier shall ensure that each Driver is subject to drug and alcohol testing as specified in the FMCSR.
 - e. Broker and its Carriers shall comply with all regulations applicable to the Services and require all personnel to maintain the highest standards of professionalism in the performance of the Services.
 - f. Broker and its Carriers shall verify that any workers performing Services are authorized and eligible to perform services as employees in the United States.
 - g. Shipper shall load but not secure its freight on trailers provided by Carrier or Shipper. Carrier shall supply all necessary load securement devices, secure the load, and provide any other accessories necessary to transport Shipper's freight lawfully and safely. When any part of a load has been secured by any party other than Carrier, Carrier shall inspect, and as necessary, correct, the load securement to ensure compliance with all applicable laws and regulations.
 - h. Carriers shall pickup, transport, and deliver freight tendered by Shipper in strict compliance with Shipper's schedules for pickup, transportation and delivery. Shipper shall advise Broker of delivery schedules consistent with its customers' needs and the availability of product. Shipper shall coordinate all freight loading with Broker. Broker shall be responsible for dispatching Carriers and equipment to meet Shipper's transportation requirements. Unless otherwise agreed to in writing, Broker and its Carriers shall obtain all required permits, pilot cars and other accessorial services.
8. **RATES & CHARGES.** Unless otherwise agreed in writing, Shipper shall be invoiced for the services in accordance with **freight confirmation on a per load basis** hereto, as amended by the parties in writing from time to time.
- a. **Permits.** Costs of all permits for over-dimensional or overweight loads, and any required escort vehicles secured by Carriers, shall be billed to Shipper at actual cost. If such over-dimensional or overweight loads require the payment of tolls in excess of normal truckload tolls, Shipper shall reimburse the difference in charges.
 - b. **Exclusive Loads.** Unless expressly agreed to in writing, Broker and its Carriers shall not combine Shipper's loads with the load of any other shipper.
 - c. **Notice.** In the event of refusal of a shipment by a consignee or in the event that Carrier, for any reason, is unable to deliver a shipment, Broker shall provide prompt notice of the delivery issue to Shipper.
 - d. **Return of Rejected or Damaged Shipment.** Broker shall promptly notify Shipper of any rejected or damaged shipment. Shipper shall instruct as to the manner of disposal of the Shipment and the parties shall agree on any compensation for the returned shipment in writing.

9. **AUDIT.** Shipper shall have the right to audit Broker's operations to ascertain that Broker and its Carriers are maintaining the insurance, permits, licenses, and safety ratings required by this Agreement. In addition, Shipper shall have the right to audit Broker's operations in order to verify that Broker has made all required payments to the Carriers performing Services under this Agreement.
11. **INDEPENDENT CONTRACTOR STATUS.** Broker and its Carriers agree that they are and will remain independent contractors solely responsible for compliance with all applicable tax, unemployment compensation, worker's compensation and other laws, including all recordkeeping, wage payment, payroll withholding, and all other requirements for full compliance.
12. **USE OF NAME.** Neither Party may use the other's name, trademarks, or trade names, or those of its subsidiaries or affiliates, in any manner, especially advertising, without the other's express written consent.
13. **SHIPPER SUPPLIED EQUIPMENT.** From time to time, Broker or its Carriers may transport Shipper's Merchandise on trailing equipment supplied by Shipper. Broker and its Carriers shall be liable for any loss or damage to, such equipment, normal wear and tear excluded. Shipper may also provide Broker's Carriers with specialized equipment (e.g., cargo booms or pipe unloader devices) for installation on Carrier's rolling stock. Carrier shall be responsible for inspecting and maintaining such equipment unless Shipper, in writing, retains that responsibility. Broker and its Carrier shall be liable for any repair and maintenance of Shipper's trailing and specialized equipment caused by Carrier's acts or omissions, including any failure to notify Shipper of any necessary maintenance or repair. Unless expressly agreed in writing to the contrary, Carrier shall not use Shipper's equipment to provide services to any other person or entity.
14. **INSURANCE.** Broker shall require all of its Carriers to maintain worker's compensation, automotive liability, and property damage insurance, written by insurers acceptable to Shipper. Required Limits are as follows: Workers Compensation Coverage A - Statutory Limits; Workers Compensation Coverage B - \$1,000,000 per occurrence; Auto Liability - \$1,000,000 Combined Single Limit; Cargo insurance to cover damage to or loss of cargo in the amount of: Oldcastle Lawn & Garden- \$10,000 per occurrence for each flatbed shipment and \$10,000 per occurrence for each van shipment. Umbrella coverage may be used to satisfy the required limits. Broker shall maintain \$75,000 Surety Bond, Auto Liability coverage in the amounts outlined above which provides coverage for Hired Autos or Any Auto. All policies shall name the Shipper as an additional insured with *primary* coverage and shall be non-contributory with any insurance maintained by Shipper. All policies shall provide for Shipper's defense, indemnify Shipper, and expressly waive all rights of subrogation against Shipper. Before providing the Services and upon Shipper's request, Broker shall provide Shipper with certificates evidencing the required insurance coverage. All certificates shall state that no amendment or cancellation of said policies shall be effective until after 30 day's written notice to Shipper. Shipper's payment to Broker prior to receipt of the certificates shall not diminish Broker's or its Carriers duty to maintain the required insurance or to provide the certificates and Shipper shall not have waived any rights by allowing Broker to perform Services prior to supplying the certificates.
15. **INDEMNITY.** To the fullest extent permitted by law, Broker and its Carriers shall defend, indemnify and hold Shipper, its officers, employees, agents, insurers, sureties, and parent and affiliated corporations, harmless from any and all losses, damages, expenses (including attorneys' fees), claims, suits, liabilities, fines and remedial or clean-up costs arising out of or in any way related to: (i) the performance of the Services; (ii) any breach of this Agreement; or (iii) any act or omission by or on behalf of Broker, its Carriers, employees, and agents. The indemnity obligation of the preceding sentence is in addition to, and in no way limited by, Broker's duty to provide insurance. When required by law, Broker's indemnification obligation shall be limited to \$5,000,000 and the parties agree that said amount bears a reasonable commercial relationship to the work related to this Agreement. One (1%) Percent of all payments made to Broker during the term of this Agreement shall constitute specific consideration for the defense and indemnity obligations referenced herein
16. **ASSIGNMENT & MODIFICATION.** This Agreement and any payments related to the same may not be assigned by Broker to any person or entity without Shipper's advance written consent. Any modification of this Agreement must be in writing and signed by both parties. In the event any term of this Agreement conflicts with the term of any other document, including but not limited to any bills of lading, this Agreement shall govern the relationship between the parties.

17. **CONFIDENTIALITY.** Broker shall treat Shipper's business information, including Shipper's customers, as confidential information and shall not disclose the information to any third party unless required by law.
18. **ENFORCEABILITY:** This Agreement shall be binding upon and inure only to the benefit of the parties and their successors-in-interest. If any provision of this Agreement is found unenforceable by any arbitrator or court, Shipper and Broker agree that such provision shall be modified to the minimum extent necessary to render it enforceable, and that the remainder of this Agreement shall not be affected by the modification of such provision.
19. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Georgia.
20. **COVERED AFFILIATES.** The following affiliates of Oldcastle Building Products, Inc. are parties to this Agreement: Oldcastle Precast, Inc., Oldcastle Building Envelope, Inc. and their subsidiaries.
21. **MANDATORY BINDING ARBITRATION. ANY DISPUTE ARISING UNDER THIS AGREEMENT SHALL BE SUBMITTED TO AND RESOLVED BY BINDING ARBITRATION BY A SINGLE ARBITRATOR IN THE STATE AND COUNTY OF SHIPPER'S FACILITY OF ORIGIN. THE AMERICAN ARBITRATION ASSOCIATION SHALL CONDUCT THE ARBITRATION UNLESS THE PARTIES MUTUALLY AGREE TO USE AN ALTERNATIVE ARBITRATION SERVICE. THE COSTS OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES. JUDGMENT UPON ANY AWARD MADE BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.**
22. **MISCELLANEOUS PROVISIONS.**

Shipper and Broker have executed this Agreement on the date written above.

BROKER

Company Name: _____

By: _____

Printed: _____

Title: _____

SHIPPER

Company Name: Oldcastle Lawn and Garden

By: _____

Printed: _____

Title: _____

SCHEDULE 1 SAFETY POLICY AND OPERATING REQUIREMENTS

All persons visiting Shipper’s facilities or handling Shipper’s products must comply with the following safety rules in addition to any safety regulations imposed by law. These rules are not intended to encompass every conceivable situation or to contradict any applicable laws, legal duties, or more stringent site-specific rules. As a result, these general safety rules should always be considered subject to such laws and the exercise of reasonable judgment.

1. **MAINTAIN AWARENESS OF THOSE AROUND YOUR VEHICLE AT ALL TIMES.**
2. Establish and maintain eye contact with anyone directing you while backing. **IF, AT ANY TIME, YOU LOSE SIGHT OF ANY PERSON AROUND YOUR VEHICLE, THEN YOU SHOULD STOP IMMEDIATELY.** Do not continue backing until you have located this person and are assured that there is no one else behind your vehicle. You can NEVER assume that a person around your vehicle has seen you or heard you, and you can NEVER assume that anyone will get out of the way. It should be second nature for you to stop in this situation and to remain stopped until it is clearly safe to proceed. **WHEN IN DOUBT, STOP.**
3. An “observer” (also known as a backer or spotter) must be guiding you whenever you are backing. In such situations, a backer should be guiding you the entire time—no matter how little or how far you are backing.
4. All vehicles with obstructed rear views must be equipped with working reverse signal alarms (also known as backup alarms). Although backup alarms are meant to warn others that you are moving in reverse, they do not guarantee that everyone will see you, hear you, or get out of your way, nor do they guarantee that all “blind spots” behind your vehicle are clear. It is extremely important, therefore, to STOP and ask for assistance if you need help while backing. Remember: **WHEN IN DOUBT, STOP.**
5. You must obey all speed limits and other traffic control at all facilities.
6. Your headlights must be on at all times, day or night.
7. Use extreme care when entering and exiting all facilities. Do not leave your vehicle unattended unless it is absolutely necessary.
8. Do not use cell phones or other communication devices at all, unless you are (1) in a building or trailer, (2) in a properly secured, safely located, and completely stopped vehicle that is not performing or waiting to perform operations (for example, you may not use cell phones while loading, unloading, or waiting to load/unload), or (3) receiving, or responding, to instructions related to the work at hand (but only if it is safe to do so).
9. Familiarize yourself with the area in which you are operating your vehicle by becoming aware of, among other things: overhead wires/power lines that could be struck by any part of your vehicle.
10. All tailgates must be clean before exiting the premises to prevent material from leaving the vehicle.
11. **Carriers must maintain 98.5% on-time delivery service record and shall plan accordingly so that no driver violates any speed or hours-of-service regulation.**
12. Drivers who fail to comply with safety and operating requirements will not be loaded or allowed to transport Shipper’s products. If Carrier fails to require its driver(s) to comply with Shipper’s safety and operating requirements, this Agreement shall be terminated upon written notice.
13. **ACCIDENT/SPILL REPORTING:** Any collision with another vehicle or crash with a stationary object, or any spill of diesel fuel or hydraulic or motor oil while laden with Shipper’s product must be reported to the Shipper’s Dispatcher immediately. Any spill of hazardous materials must also be reported to the proper authorities immediately. Failure to report an accident or spill constitutes a breach of contract.
14. **CARRIERS HAULING PRECAST - CONCRETE PIPE:** Carriers hauling concrete pipe for Shipper must be familiar with 49 CFR Part 393.124, which addresses the rules for securing concrete pipe. Procedures for arranging, blocking, tying down, and securing pipe (with diameter less than 45”) and securing large pipe (with a diameter greater than 45”) are all covered in this regulation.
15. **PERSONAL PROTECTIVE EQUIPMENT:** Carrier shall require all of its employees to comply with Shipper’s Personal Protective Equipment (“PPE”) requirements. The PPE requirements include, but are not limited to:

Job/Operation	Type of Hazard(s)	PPE Required
Driver	Head Hazard – impact	Hard Hat
Driver	Foot Hazard – impact	Steel Toe Shoes
Driver	Eye Hazard – impact & dust	Safety Glasses
Driver	Skin Hazard - abrasion	Sleeved Shirt & Long Pants