

## **COMPLETED ACQUISITION BY BREEDON AGGREGATES LIMITED OF CERTAIN SCOTTISH ASSETS OF AGGREGATE INDUSTRIES UK LIMITED**

### **Notice of acceptance of undertakings pursuant to section 82 of and Schedule 10 to the Enterprise Act 2002**

#### **Background**

1. On 24 September 2013, the Office of Fair Trading (OFT) made a reference (the reference) to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Breedon Aggregates Limited (Breedon) of certain Scottish assets of Aggregate Industries UK Limited (Aggregate Industries) (the Acquisition).
2. In its report *Breedon Aggregates Limited and Aggregate Industries UK Limited: A report on the completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregates Industries UK Limited* (the Report), the Competition and Markets Authority (CMA)<sup>1</sup> concluded that:
  - (a) the completed acquisition by Breedon of certain Scottish assets of Aggregate Industries had resulted in the creation of a relevant merger situation;
  - (b) the creation of that situation had resulted in a substantial lessening of competition (SLC) in relation to the following product markets and local areas in the UK:
    - (i) asphalt in the Aberdeen area, extending to the north of Aberdeen;
    - (ii) ready-mix concrete (RMX) in the Peterhead area; and
    - (iii) asphalt in the Inverness area.

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<sup>1</sup> On 1 April 2014 the remaining functions of the CC in relation to the reference were transferred to the CMA, under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order). The Report was published in exercise of the CMA's functions under sections 35 and 38 of the Enterprise Act 2002, read with paragraph 2 of the schedule to the Order.

- (c) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
  - (d) undertakings should be given to the CMA or where undertakings are not agreed an order made to give effect to the remedies identified by the CMA in Section 7 and Appendix K of the Report.
- 3. The CMA published a notice of proposal to accept Undertakings on 4 June 2014. No representations were received that provided cause for us to amend the Undertakings on which we consulted and the CMA has therefore decided to accept Undertakings given by Breedon to remedy the SLC in the form set out in the attached appendix. The reference has now been finally determined and the Undertakings come into force accordingly.
- 4. The undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
- 5. This Notice and a non-confidential version of the proposed undertakings will be published on the CMA website. The CMA has excluded from the non-confidential version of the undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [X].

*(signed)* SIMON POLITO  
*Group Chair*  
27 June 2014

# COMPLETED ACQUISITION BY BREEDON AGGREGATES LIMITED OF CERTAIN SCOTTISH ASSETS OF AGGREGATE INDUSTRIES UK LIMITED

## Undertakings given to the Competition and Markets Authority by Breedon Aggregates Limited

### Background

1. On 24 September 2013, the Office of Fair Trading (OFT) made a reference (the reference) to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Breedon Aggregates Limited (Breedon) of certain Scottish assets of Aggregate Industries UK Limited (Aggregate Industries) (the Acquisition).
2. On 25 September 2013, the CC adopted the undertakings accepted by the OFT on 28 May 2013 and the associated consents pursuant to section 80(3) of the Act for the purpose of ensuring that no action was taken pending the determination of the reference which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Act (the Interim Undertakings).
3. The Interim Undertakings cease to be in force on the date of acceptance by the Competition and Markets Authority (CMA) of these undertakings pursuant to section 82 of the Act.
4. On 9 April 2014, the CMA published its final report entitled *Breedon Aggregates Limited and Aggregate Industries UK Limited: A report on the completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited* (the Report).<sup>2</sup> In the Report, the CMA concluded that:
  - (a) the completed acquisition by Breedon of certain Scottish assets of Aggregate Industries had resulted in the creation of a relevant merger situation;

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<sup>2</sup> On 1 April 2014 the remaining functions of the CC in relation to the reference were transferred to the CMA, under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order). The Report was published in exercise of the CMA's functions under sections 35 and 38 of the Enterprise Act 2002, read with paragraph 2 of the schedule to the Order.

- (b) the creation of that situation had resulted in a substantial lessening of competition (SLC) in relation to the following product markets and local areas in the UK:
    - (i) asphalt in the Aberdeen area, extending to the north of Aberdeen;
    - (ii) ready-mix concrete (RMX) in the Peterhead area; and
    - (iii) asphalt in the Inverness area.
  - (c) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
  - (d) undertakings should be given to the CMA or where undertakings are not agreed an order made to give effect to the remedies identified by the CMA in Section 7 and Appendix K of the Report.
- 5. The Report further concluded that in order to address the SLC in relation to the product markets and local areas listed in paragraphs 4(b)(i) and (ii) above, Breedon should be required to divest its asphalt operations at either Craigenlow or Tom's Forest and its RMX operations at either Peterhead or Stirlinghill. To address 4(b)(iii) Breedon should be subject to a price control for the sale of asphalt from its operations at Daviot and Mid Lairgs in the Inverness area.
- 6. The implementation of the divestitures will be subject to the following safeguards:
  - (a) The CMA will wish to satisfy itself of the suitability of potential purchasers for all divestitures.
  - (b) In relation to the divestitures, Breedon will be required:
    - (i) to complete the divestiture of either the Peterhead or Stirlinghill RMX plant and associated operations in the Peterhead area;
    - (ii) to complete the divestiture of either the Craigenlow or Tom's Forest asphalt plant and associated operations in the Aberdeen area;
    - (iii) to give undertakings to put in place appropriate interim management arrangements pending any divestiture. A monitoring trustee should be appointed, at Breedon's expense, to monitor compliance with these undertakings and the steps being taken to ensure a prompt disposal.

(c) Provisions will be included in these final undertakings for a divestiture trustee to be appointed should Breedon fail to achieve an effective disposal of the remaining operations by the end of the divestiture period.

7. Breedon will be subject to a price control on sales of asphalt from its operations at Daviot and Mid Lairgs for so long as it continues to occupy and operate both plants and for a period continuing until [✂] 2018 at the latest.

Now therefore, Breedon gives to the CMA the following Undertakings, which the CMA proposes to accept pursuant to sections 41 and 82 of the Act for the purpose of remedying the SLC identified in the Report and any adverse effects which flow from it.

## **1. Interpretation**

- 1.1 The appendices form part of these Undertakings.
- 1.2 The purpose of these Undertakings is to give effect to the Report and they shall be construed accordingly.
- 1.3 Any word or expression used in these Undertakings or the recitals to these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.
- 1.4 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 1.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 1.6 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.7 References to recitals, paragraphs, subparagraphs, appendices and schedules are references to the recitals to, paragraphs and subparagraphs of, appendices and schedules to, these Undertakings unless otherwise stated.
- 1.8 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons include bodies of persons whether corporate or incorporate.

1.9 Further, in these Undertakings:

**‘Aberdeen Asphalt Operations’** means the asphalt operations in the Aberdeen area identified in [Appendix 1](#);

**‘Affiliate’**, a person is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;

**‘Annual Average Ex-Works Price’** has the meaning given in paragraph 14.4;

**‘Approved Agreement’** means a binding agreement or agreements between Breedon and an Approved Purchaser as approved by the CMA bringing about the Final Disposal;

**‘Approved Purchaser’** means any purchaser or purchasers approved by the CMA pursuant to the Purchaser Approval Criteria set out in [Appendix 2](#);

**‘Approved Timetable’** has the meaning given in paragraph 7.1;

**‘Associated Person’** means a person who is an associated person within the meaning of section 127 of the Act;

**‘Asset Maintenance Undertakings’** means those undertakings set out in paragraph 4;

**‘Breedon’** means Breedon Aggregates Limited, company number 98465 and which has as its registered address Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT;

**‘Breedon Group’** means each of Breedon, Breedon Scotland and their Related Persons;

**‘Breedon Scotland’** means Breedon Aggregates Scotland Limited, company number SC144788 and which has as its registered address Ethiebeaton Quarry, Kingennie, Monifieth, Angus, Scotland DD5 3RB;

**‘Commencement Date’** means the date on which these Undertakings are accepted by the CMA;

**‘Compliance Director’** means the person appointed pursuant to paragraph 18.5;

**'Customer'** means a person to whom Price Controlled Products are sold who is not a member of the Group of Interconnected Bodies Corporate to which Breedon may at any time belong;

**'Customer Site'** means the place of business of a Customer;

**'Delivery Cost'** means the cost per unit tonne of delivering each Price Controlled Product to a Customer Site;

**'Direction'** means written directions given to Breedon by the CMA as set out in paragraph 8.1;

**'Divested Operations'** means those assets making up the Divestiture Operations actually sold to an Approved Purchaser at Final Disposal;

**'Divestiture Operations'** means the operations to be sold to an Approved Purchaser as part of the Final Disposal being: (i) the sale of either of the Peterhead RMX Operations; and (ii) the sale of either of the Aberdeen Asphalt Operations, with the Divested Operations to include all the key elements set out at paragraph 7.77 of the Report;

**'Divestiture Period'** means a period of [~~30~~] beginning with the Commencement Date;

**'Divestiture Trustee'** means a person appointed in accordance with paragraph 10;

**'Final Disposal'** means completion of the sale of the Divested Operations under an Approved Agreement to an Approved Purchaser;

**'Group of Interconnected Bodies Corporate'** means a group of interconnected bodies within the meaning of section 129(2) of the Act, as constituted from time to time;

**'Haulage Schedule'** means the schedule set out in [Appendix 4](#) as varied in accordance with paragraph 16.3 of these Undertakings;

**'Heads of Terms'** means an agreement in principle to acquire any of the Divestiture Operations that sets out the transaction structure and its terms, and that is expressed by all parties to be final (1) subject to contract (2) on all the issues that in the reasonable opinion of the parties will form the basis of a subsequent binding agreement;

**'HTMA Index'** means the index set out in [Schedule 2](#) of Appendix 3 as updated from time to time, which is based upon the Highways Term Maintenance Association (HTMA) price adjustment formulae indices (Highways Maintenance 2010 series), published by the Building Cost Information Services (BCIS) Resource Cost Index R10/9 – Coated Macadam and Bituminous Products Formula;

**'Initial Terms and Conditions'** means the terms and conditions set out in [Schedule 3](#) of Appendix 3 in each case subject to any alternative or supplementary terms and conditions agreed between Breedon and a Customer and where the Initial Terms and Conditions are amended to reflect the terms of these Undertakings;

**'Interim Undertakings'** means the undertakings adopted by the CC on 25 September 2013 and accepted by the OFT on 28 May 2013, and the associated consents pursuant to section 80(3) of the Act, for the purpose of ensuring that no action was taken pending the determination of the reference which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Act;

**'List Price'** has the meaning given in paragraph 14.2;

**'Minimum Annual Volume'** has the meaning given in paragraph 14.8;

**'Monitoring Trustee'** means a person appointed in accordance with paragraph 6;

**'Monitoring Trustee Functions'** has the meaning given in paragraph 6.8;

**'Payload'** means the volume in tonnes of each Price Controlled Product that is supplied in a single delivery to a customer;

**'Peterhead RMX Operations'** means the RMX operations in the Peterhead area identified in [Appendix 1](#) of these Undertakings;

**'Price Cap'** has the meaning given in paragraph 14.3;

**'Price Controlled Product'** means each asphalt product mix sold at the Price Controlled Plants to Customers as set out in column 1 of [Schedule 1](#) of Appendix 3 (each a **'Breedon Price Controlled Product'**) and as varied in accordance with these Undertakings;



**'Price Controlled Plants'** means the asphalt plants operated by Breedon at Mid Lairs and Daviot in the Inverness area of Scotland as set out in [Appendix 3](#) (each a **'Price Controlled Plant'**) and the price control applies to the Price Controlled Products manufactured and sold to Customers from the Price Controlled Plants;

**'Price Control Undertakings'** means the undertakings given in paragraphs 14 to 16 of these Undertakings;

**'Price Negotiations'** means negotiations between Breedon and a Customer in advance of concluding a supply agreement for a Price Controlled Product;

**'Related Person'** means any Subsidiary, Affiliate or Associated Person;

**'SLC'** means a substantial lessening of competition pursuant to section 22 of the Act;

**'Subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'Surcharge'** means any energy or other charge added to the sale price of a Price Controlled Product as referred to in paragraph 14.6;

**'Trustee Obligation'** means bringing about the Final Disposal of the Divestiture Operations [~~§~~], and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of making the Final Disposal promptly and in any event within the Trustee Divestiture Period;

**'Trustee Divestiture Period'** means a period of [~~§~~] for the Divestiture Trustee to meet the Trustee Obligation commencing on a date specified by the CMA after the expiration of the Divestiture Period;

**'Undertakings'** means these Undertakings;

**'Working Day'** means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Undertakings to 'days' means calendar days.

## **2. Commencement**

- 2.1 These Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

### **3. Divestment Undertakings**

- 3.1 Breedon undertakes that it will complete the sale of the Divestiture Operations to an Approved Purchaser in accordance with the procedure set out in paragraph 5 and pursuant to an Approved Agreement within the Divestiture Period. Breedon recognises that in considering whether to approve any agreement the CMA shall consider whether the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the disposal of the Divestiture Operations (in whole or in part) would not remedy the SLC and any adverse effects likely to arise from it.
- 3.2 Breedon undertakes to carry out the Divestment Undertakings having due regard to the findings in Section 7 of the Report.
- 3.3 Breedon undertakes that it will not and will procure that any Related Person or any member of any Group of Interconnected Bodies Corporate to which it belongs will not for a period of ten years from the date of the Final Disposal re-acquire any asset or part of any of the Divested Operations without the prior written consent of the CMA.

### **4. Asset Maintenance Undertakings**

- 4.1 Except with the prior written consent of the CMA, Breedon will at all times during the Divestiture Period and, if required, the Trustee Divestiture Period procure that it will not take any action which might:
  - 4.1.1 lead to the integration of the Breedon Scotland business with the acquired Aberdeen Asphalt Operations at Tom's Forest and the acquired Peterhead RMX Operations at Peterhead as identified in [Appendix 1](#);
  - 4.1.2 otherwise impair the ability of the Breedon Scotland business or the acquired Aberdeen Asphalt Operations at Tom's Forest and the acquired Peterhead RMX Operations at Peterhead to compete independently in any markets affected by the acquisition; or
  - 4.1.3 impede the taking of any action under the Act which may be justified by the CMA's decisions in the Report.
- 4.2 Without prejudice to the generality of paragraph 4.1, except with the prior written consent of the CMA, Breedon will at all times during the Divestiture Period and, if required, the Trustee Divestiture Period procure that:

- 4.2.1 the Aberdeen Asphalt Operations and Peterhead RMX Operations is each maintained as a going concern and adequate and sufficient resources are made available for the development of the Peterhead RMX Operations and Aberdeen Asphalt Operations on the basis of their respective pre-merger plans;
- 4.2.2 no substantive changes are made to key staff or to the organisational structure of, or the management responsibilities within the Peterhead RMX Operations and Aberdeen Asphalt Operations;
- 4.2.3 in relation to the Peterhead RMX Operations and Aberdeen Asphalt Operations, and otherwise than in the ordinary course of business:
  - (i) the assets are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets is disposed of without the consent of the CMA; and
  - (iii) no interest in the assets is created or disposed of.
- 4.2.4 the nature, description, range and standard of goods and/or services supplied in the United Kingdom by the Peterhead RMX Operations and Aberdeen Asphalt Operations at the date of these undertakings are in all material respects maintained and preserved;
- 4.2.5 all reasonable steps are taken to encourage all key staff of the Peterhead RMX Operations and Aberdeen Asphalt Operations to remain with the business in relation to which they were employed prior to the merger; and
- 4.2.6 Breedon will continue to supply Common Services, as defined in the Interim Undertakings, to the Peterhead RMX Operations and Aberdeen Asphalt Operations until the Final Disposal and for any transition period agreed with the Approved Purchaser and as approved by the CMA.
- 4.3 Breedon undertakes that until the Final Disposal it will keep the CMA informed of any material developments (and with the consent of the CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 6.9 of these Undertakings) relating to any of the Peterhead RMX Operations and Aberdeen Asphalt Operations which includes but is not limited to:

- 4.3.1 details of key staff (as defined in the Interim Undertakings) who leave or join;
- 4.3.2 material changes in the production arrangements or any material deterioration in performance, including any significant plant breakdowns;
- 4.3.3 all substantial changes in monthly sales volumes relative to the Peterhead RMX Operations and Aberdeen Asphalt Operations; and
- 4.3.4 any other substantial changes.

## **5. Procedure for consent and notification**

- 5.1 Breedon undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision.
- 5.2 Breedon recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 5.3 In the event that Breedon discovers that an application for consent or approval has been made without full disclosure to the CMA, Breedon undertakes to:
  - 5.3.1 inform the CMA in writing identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
  - 5.3.2 at the same time or no later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 5.3.1 above, provide to the CMA an application for consent that includes the missing information.
- 5.4 Breedon shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of the Undertakings.

5.5 Breedon recognises that the CMA shall not be required to use more than its reasonable endeavours to grant or refuse any consent or approval within the five-working-day period referred to in paragraph 5.4 above. This provision is without prejudice to the CMA's duties under the Act.

## **6. Monitoring Trustee**

6.1 Breedon undertakes that by no later than five Working Days after the Commencement Date it shall secure the appointment or retention of a Monitoring Trustee to perform the Monitoring Trustee Functions on behalf of the CMA.

6.2 The Monitoring Trustee must possess appropriate qualifications and experience to carry out his functions. The Monitoring Trustee must act on behalf of the CMA and be under an obligation to the CMA to carry out his functions to the best of his abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging his duties under these Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. Breedon shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out his functions.

6.3 The appointment of the Monitoring Trustee and his terms and conditions must be approved by the CMA. Breedon must inform the CMA as soon as is reasonably practicable and in any event by no later than two days after the Commencement Date of the identity of the Monitoring Trustee that Breedon proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed, Breedon must provide the CMA with a copy of the agreed terms and conditions of appointment.

6.4 If the proposed Monitoring Trustee is rejected by the CMA, Breedon shall submit the names of at least two further persons within two Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 6.2 and 6.3 above.

6.5 The provisions of paragraph 6.6 below shall apply if:

- 6.5.1 Breedon fails to nominate persons in accordance with paragraphs 6.3 or 6.4 above; or
  - 6.5.2 those further persons nominated by Breedon in accordance with paragraphs 6.3 or 6.4 above are rejected by the CMA; or
  - 6.5.3 Breedon is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 6.6 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Breedon shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 6.7 The Monitoring Trustee must take such steps as he reasonably considers necessary in order to carry out his functions effectively. The Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out his functions under the Undertakings. The Monitoring Trustee will carry out the functions set out below and will monitor the compliance of Breedon with their obligations under these Undertakings.
- 6.8 The Monitoring Trustee Functions set out in this paragraph are to monitor and review compliance with these Undertakings and progress towards satisfaction of the Final Disposal; and shall in particular include:
- 6.8.1 monitoring compliance by Breedon with the Asset Maintenance Undertakings set out in paragraph 4 above; and
  - 6.8.2 monitoring the progress made by Breedon against the timetable towards Final Disposal and the steps that have otherwise been taken to comply with the Undertakings including:
    - 6.8.2.1 the steps that have been taken towards the preparation of agreements for disposal of the Divestiture Operations, and the persons to whom such agreements have been distributed; and
    - 6.8.2.2 monitoring communications (including attending any meetings (save where those communications are subject to legal privilege) which the Monitoring Trustee reasonably deems necessary) between Breedon and its financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process.

- 6.9 The CMA reserves the right to require Breedon to commission an independent audit of Breedon's compliance with the Price Control Undertakings at any time while these Undertakings remain in force.
- 6.10 The Monitoring Trustee will promptly inform the CMA of any material developments arising from the operation of its functions and will provide to the CMA a written report every four weeks.

## **7. Divestment Reporting Obligations**

- 7.1 Breedon undertakes that within the period of five Working Days from the Commencement Date it will provide a written report to the CMA setting out the timetable that it proposes to adopt, subject to the CMA's approval, to ensure satisfaction of the Final Disposal (the 'Approved Timetable'). The report will outline the progress that Breedon has made towards satisfaction of the Final Disposal and the steps that have otherwise been taken to comply with the Undertakings and shall in particular report:
- 7.1.1 on the status of any discussions that have been held with potential purchasers of the Divestiture Operations;
  - 7.1.2 on the status of any information memorandum, the identities of the persons to whom it has been circulated and the responses to the information memorandum;
  - 7.1.3 on the progress that has been made towards agreeing Heads of Terms (if applicable);
  - 7.1.4 on the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement had been distributed; and
  - 7.1.5 on such other matters as may be directed by the CMA from time to time.
- 7.2 Breedon will provide similar reports to the CMA every four weeks until Final Disposal. The reports will include an update on the progress that has been made against the Approved Timetable, and with the consent of the CMA such reports may be provided through the Monitoring Trustee in accordance with paragraph 6.9 of these Undertakings.
- 7.3 Breedon undertakes that in the report to the CMA it shall, inter alia, provide to the CMA:

- 7.3.1 the name, address, email address, contact point and telephone number of each person who has expressed an interest in the acquisition of the Divestiture Operations or any part thereof since the publication of the CMA's provisional findings; and
- 7.3.2 details of the efforts taken by each of Breedon and its financial advisers to solicit purchasers for the Divestiture Operations or any part thereof.
- 7.4 In the event that Breedon does not meet a step as set out in the Approved Timetable, or is otherwise delayed in implementing the remedy, Breedon undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days of becoming aware that a step in the Approved Timetable has not been met.

## **8. Directions**

- 8.1 Breedon will comply with such written Directions as the CMA may from time to time issue and will take such steps as may be specified or described in the Directions for complying with these Undertakings.
- 8.2 Any delay by the CMA in making a written Direction shall not affect the obligations of Breedon at such time as the CMA makes any written Direction under paragraph 8.1.

## **9. Conditions for the appointment of a Divestiture Trustee**

- 9.1 Without prejudice to the CMA's order-making power under section 83 of the Act, Breedon undertakes that it shall at the written Direction of the CMA appoint a Divestiture Trustee to give effect to the Trustee Obligation on the expiry of the Divestiture Period or at any point thereafter.
- 9.2 The Divestiture Trustee shall fulfil the Trustee Obligation and shall undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CMA may specify in the written Direction referred to in paragraph 9.1 above.

## **10. Divestiture Trustee – appointment procedure**

- 10.1 Breedon undertakes that on the Direction of the CMA at any time after the expiry of the Divestiture Period, and in accordance with such Directions as are given by the CMA as to the timing for taking these steps, Breedon shall submit to the CMA



for approval a list of two or more persons who it proposes to appoint as Divestiture Trustee. The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 10.2 below and shall include inter alia:

10.1.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and

10.1.2 a schedule of the steps to be taken to give effect to the mandate.

10.2 Each person on the list referred to in paragraph 10.1 shall be independent of and unconnected to the Breedon Group, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.

10.3 The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, Breedon shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Breedon shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Breedon undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.

10.4 If all the proposed Divestiture Trustees are rejected by the CMA, Breedon shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 10.1 and 10.2 above.

10.5 The provisions of paragraph 10.6 below shall only apply if:

10.5.1 Breedon fails to nominate persons in accordance with paragraph 10.1 above; or

10.5.2 those further persons nominated by Breedon in accordance with paragraph 10.1 above are rejected by the CMA; or

- 10.5.3 Breedon is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 10.6 The CMA shall nominate one or more persons to act as Divestiture Trustee, and Breedon shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.
- 11. Divestiture Trustee – functions**
- 11.1 Breedon undertakes to enable the Divestiture Trustee to carry out the Trustee Obligation.
- 11.2 Breedon recognises and acknowledges that:
- 11.2.1 the CMA may, on its own initiative or at the request of the Divestiture Trustee or Breedon, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Trustee Obligation (including Directions as to the disposal of such property, assets, rights, consents, licences, privileges or interests of the Divestiture Operations as the CMA considers necessary to bring about satisfaction of the Final Disposal);
- 11.2.2 the CMA may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as it considers appropriate; and
- 11.2.3 the Divestiture Trustee shall protect the legitimate financial interests of Breedon subject to the Divestiture Trustee’s overriding obligations to give effect to the Trustee Obligation.
- 11.3 Breedon recognises and acknowledges that the Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Trustee Obligation and to that end the Divestiture Trustee may give written directions to Breedon, as applicable. Breedon undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.
- 11.4 Breedon recognises and acknowledges that in the performance of the Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Breedon and Breedon undertakes

that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

## **12. Divestiture Trustee – duties and obligations of Breedon**

- 12.1 Breedon undertakes to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request relevant to the satisfaction of the Final Disposal but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Trustee Obligation.
- 12.2 Breedon recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege) and Breedon undertakes to provide the Divestiture Trustee upon request with copies of any such document. Breedon undertakes to make available to the Divestiture Trustee one or more offices on its premises, and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Trustee Obligation.
- 12.3 Breedon undertakes to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation including by the appointment of advisers to assist with the disposal process. Breedon undertakes that upon the reasonable request of the Divestiture Trustee Breedon shall execute the documents required to give effect to the Trustee Obligation.
- 12.4 Breedon undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation and Breedon recognises and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Breedon or any of its subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 12.5 Breedon undertakes that at its expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture

Trustee considers the appointment of such advisers reasonably necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Should Breedon refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Breedon, approve and direct the appointment of such advisers.

- 12.6 Breedon undertakes to make no objection to the disposal of the Divestiture Operations or any part thereof save on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial interests of Breedon, subject always to the Trustee Obligation; and where Breedon wishes to make an objection on the grounds of bad faith it shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

### **13. Divestiture Trustee – replacement, discharge and reappointment**

- 13.1 Breedon acknowledges that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Breedon to replace the Divestiture Trustee.
- 13.2 If the Divestiture Trustee is removed under paragraph 13.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraphs 10 above.
- 13.3 Breedon recognises and acknowledges that, other than in accordance with paragraph 13.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

### **14. Price Control Undertakings**

- 14.1 Breedon undertakes to supply Customers with each Price Controlled Product produced at the Price Controlled Plants in accordance with the Price Control Undertakings.

- 14.2 Subject to paragraph 14.6 below, the price at which any sale is made of a Price Controlled Product from a Price Controlled Plant during the period of the operation of the Price Control Undertakings shall not exceed the List Price set out in column 3 of [Schedule 1](#) of Appendix 3, as amended by the latest published HTMA index.
- 14.3 The maximum List Price of each Price Controlled Product as calculated in accordance with paragraph 14.2 above shall be known as the Price Cap.
- 14.4 The Annual Average Ex-Works Price of each Price Controlled Product sold from the Price Controlled Plants shall not exceed the amount set out in column 4 of [Schedule 1](#) of Appendix 3, as amended by the latest published HTMA index.
- 14.5 Breedon undertakes to calculate compliance with the terms of paragraph 14.4 on a quarterly basis for each calendar year during the term of these Undertakings and where the prices charged to Customers for Price Controlled Products during any quarter exceeds the pro rata Annual Average Ex-Works Price Breedon shall ensure the average is brought into line by the end of the next quarter.
- 14.6 Subject to paragraphs 14.910 and 16.1 to 16.5 below, Breedon shall not at any time apply any Surcharge to sales of a Price Controlled Product.
- 14.7 For each calendar year the Price Control Undertakings remain effective Breedon undertakes to supply Price Controlled Products to Customers in volumes exceeding the lower of:
- 14.7.1 [~~8~~] % of the total annual volume of the Price Controlled Product sold by Breedon (including sales to Related Persons) from the Price Controlled Plants in that calendar year; and
- 14.7.2 the actual tonnage sold from the Price Controlled Plants to Customers in the preceding calendar year.
- 14.8 For each calendar year the Price Control Undertakings remain effective the minimum volume of Price Controlled Product to be sold from the Price Controlled Plants as calculated in accordance with paragraph 14.7 shall be known as the Minimum Annual Volume.
- 14.9 In the event that Breedon cannot make sales of Price Controlled Products in excess of the Minimum Annual Volume, Breedon may submit to the CMA a written explanation and request for a derogation from these Undertakings. Any such request should be made as soon as Breedon anticipates it will or may not

be able make sales in excess of the Minimum Annual Volume and in any event no later than three months prior to the end of any calendar year during which the Price Control Undertakings remain in force. The CMA will provide a decision as to whether or not it will provide such a derogation within five Working Days of Breedon's request.

- 14.10 Breedon undertakes that at least [X] % of products sold to Customers from the Price Controlled Plants by volume will fall within the Price Cap subject to the provisions of paragraph 14.11.
- 14.11 Where a Customer requests a product mix which is not one of the Price Controlled Products and this would result in Breedon breaching its obligation under paragraph 14.10, Breedon may submit to the CMA in writing a request for a derogation from these Undertakings to establish a List Price which passes on without mark-up any increased costs it incurs in creating the new product mix. Breedon shall provide invoices evidencing such increased costs to the CMA and the purchasing Customer on request, subject to redaction of any information relating to Breedon's arrangements with its other Customers. Breedon shall make its request as soon as it becomes aware that the order may place it in breach of paragraph 14.10, and such consent may be sought retrospectively. The CMA is to provide a decision as to whether or not it consents to a derogation from paragraph 14.10 of the Undertakings within five Working Days from the date of the request. Where a decision not to consent to a derogation is provided after the transaction has occurred, Breedon will liaise with the CMA to establish an appropriate List Price and, where necessary, reimburse the Customer accordingly.
- 14.12 Unless otherwise agreed with the Customer, Breedon shall supply each Price Controlled Product on the Initial Terms and Conditions set out in [Schedule 3](#) of Appendix 3. In the event of any conflict between the Initial Terms and Conditions and these Undertakings, then these Undertakings shall prevail.
- 14.13 Before any Price Negotiations with a Customer take place, Breedon shall notify that Customer of the Price Cap that will apply in the following calendar year, calculated according to paragraph 14.3.

## **15. Mid Lairgs lease**

- 15.1 Following the termination of the lease and/or its right to occupy and operate the Mid Lairgs Price Controlled Plant Breedon undertakes not to renew the lease or

to occupy and operate the Mid Lairgs Price Controlled Plant for a period of [✂] years.

## **16. Calculation of delivery costs**

- 16.1 Where a Customer informs Breedon of its intention to purchase a Price Controlled Product on a delivered basis Breedon shall calculate the Delivery Cost on a separate stand-alone basis from the ex-works sales price and provide to the Customer a separate Delivery Cost quote for the Price Controlled Product.
- 16.2 The Delivery Cost shall be calculated by reference to the Haulage Schedule at [Appendix 4](#) of these Undertakings.
- 16.3 Breedon shall not charge more than the amounts set out in the Haulage Schedule without obtaining the consent of the CMA. The CMA will provide a decision as to whether or not it consents to a variation to the Haulage Schedule within five Working Days of Breedon's request for variation.
- 16.4 Nothing in paragraphs 16.1 to 16.3 shall require Breedon to maintain a Delivery Cost where there is a change to the Customer Site or Payload.
- 16.5 Nothing in paragraphs 16.1 to 16.3 shall prevent Breedon from invoicing a Customer for any increase in Delivery Costs resulting from the Customer's own conduct, including but not limited to increased Delivery Costs arising from:
- 16.5.1 waiting time at a Customer Site beyond the period agreed for unloading;
  - 16.5.2 a Customer request for a change in its normal delivery arrangements, such as short notice deliveries or a change in the type of delivery vehicle; and
  - 16.5.3 a Customer request for night, bank holiday or weekend delivery.
- 16.6 Nothing in paragraphs 16.1 to 16.3 shall prevent a Customer from purchasing and collecting a Price Controlled Product from Breedon at any time at or below the List Price, provided that the Customer and its third party hauliers comply with the requirements generally applied by Breedon to third party hauliers operating at its facilities.

## **17. Variations to these Undertakings**

- 17.1 The terms of these Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 17.2 Where a request for consent is sought pursuant to paragraph 17.1 the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.
- 17.3 The consent of the CMA shall not be unreasonably withheld.

## **18. Price control compliance**

- 18.1 Breedon shall procure that each member of the Breedon Group shall comply with these Undertakings in so far as relevant as if each such subsidiary had given them.
- 18.2 Breedon Scotland shall deliver an annual report to the CMA by 28 February during each year in which these Undertakings remain in force, with the first annual report to be delivered by 28 February 2015. Each such report shall have been approved by the Breedon Scotland's board of directors and shall include a detailed and accurate account of:
  - 18.2.1 the prices charged and volumes supplied by Breedon of each Price Controlled Product in the preceding calendar year;
  - 18.2.2 steps taken during the preceding calendar year to ensure compliance with the Price Control Undertakings;
  - 18.2.3 instances in the preceding calendar year where a breach or potential breach of the Price Control Undertakings has been identified including information relating to any calendar quarter where the aggregate average price has not been met and the steps taken to rectify this; and
  - 18.2.4 how the report was compiled.
- 18.3 Breedon shall promptly provide to the CMA such information as it may reasonably require for the purpose of monitoring or enforcing compliance with the Price Control Undertakings.
- 18.4 Breedon shall comply promptly with such written Directions as the CMA may from time to time give:



- 18.4.1 to take such steps as may be specified or described in the Directions for the purpose of carrying out or securing compliance with the Price Control Undertakings; or
  - 18.4.2 to do or refrain from doing anything so specified or described which they might be required by these Undertakings to do or refrain from doing.
- 18.5 Breedon shall appoint a Compliance Director who will have primary responsibility for:
- 18.5.1 monitoring compliance with the Price Control Undertakings and preparing reports pursuant to paragraph 18.2;
  - 18.5.2 facilitating and responding to any requests for information from the CMA;
  - 18.5.3 monitoring the implementation of measures to respond to any non-compliance with these Undertakings and any decisions, Directions and guidance issued pursuant to these Undertakings; and
  - 18.5.4 maintaining staff awareness within Breedon of the requirements of the Price Control Undertakings, including developing and overseeing an ongoing internal education programme directed towards ensuring compliance with these Undertakings.
- 18.6 Breedon undertakes that should it at any time become aware of any breach of any provision of the Price Control Undertakings it shall inform the CMA of the breach and the circumstances in which it arose in writing within seven (7) Working Days following the date on which it became aware of the breach.
- 18.7 Breedon undertakes that should it at any time become aware that it has received any payment from a Customer in respect of a Price Controlled Product in excess of the amount it is entitled to charge under these Undertakings it shall refund the excess to the Customer within seven (7) Working Days and provide the Customer with a written explanation of the reason for the refund.
- 18.8 Any communication from Breedon to the CMA under these Undertakings shall be addressed to: Director of Mergers, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other address as the CMA may direct in writing.
- 18.9 Without prejudice to any additional form of communication and/or address agreed between them, any communication from Breedon to a Customer under

these Undertakings shall be deemed to have been validly served on that Customer if it is served on that Customer at its registered office.

## **19. General obligation to provide information to the CMA**

- 19.1 Breedon undertakes that it shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Undertakings or under sections 82, 83, 93(6), 94(6) and 94(7) of the Act.
- 19.2 Breedon undertakes that should it at any time be in breach of any provision of the Undertakings, it will notify the CMA within two Working Days starting with the date it becomes aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.
- 19.3 Where any person, including the Monitoring Trustee, Divestiture Trustee or Customer, must provide information in relation to Breedon to the CMA under or in connection with these Undertakings, whether in the form of any notice, application, report or otherwise, Breedon undertakes that it will procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Breedon to any person other than to the CMA, without the prior written consent of both the CMA and Breedon.

## **20. Acceptance of service**

- 20.1 Breedon hereby authorises Breedon Scotland to accept on behalf of Breedon service at Breedon Scotland's registered office of all documents, orders, requests, notifications or other communications connected with the Undertakings (including any such document which falls to be served on or sent to Breedon in connection with any proceedings in courts in the United Kingdom).
- 20.2 Any document, order, request, notification or other communication connected with the Undertakings shall be deemed to have been validly served on Breedon if it is served on Breedon Scotland at its registered office (Reference: CMA Final Undertakings, attention:[ ]), and service or receipt shall be deemed to be acknowledged by such Breedon company if it is acknowledged by Breedon Scotland.
- 20.3 Paragraph 20.2 has effect irrespective of whether, as between Breedon Scotland and Breedon, Breedon Scotland has or continues to have any authority to accept and acknowledge service on behalf of Breedon, and no failure or mistake by

Breedon (including a failure to notify Breedon of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of the Undertakings, including any proceeding or judgment pursuant to the Undertakings.

## **21. Effect of invalidity**

21.1 Breedon undertakes that should any provision of the Undertakings be contrary to law or invalid for any reason, Breedon (as the case may be) shall continue to observe the remaining provisions.

## **22. Extension of time**

22.1 Breedon recognises and acknowledges that the CMA may, where it considers appropriate, in response to a written request from Breedon showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Undertakings within which Breedon, the Monitoring Trustee and/or the Divestiture Trustee must take action.

## **23. Governing law**

23.1 These Undertakings shall be governed by and construed in all respects in accordance with English Law.

23.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

## **24. Termination and release**

24.1 These Undertakings shall remain in force until the later of the dates on which Breedon's obligations under paragraphs 3.3 and 15.1 expire.

24.2 With the exception of paragraph 15.1, Breedon shall be released from its obligations under the Price Control Undertakings on [X] 2018. With the consent of the CMA Breedon may be released from its obligations under the Price Control Undertakings, with the exception of paragraph 15.1, provided Breedon is able to demonstrate to the satisfaction of the CMA that it is unable to operate one of the Price Controlled Plants. Breedon shall make any request for release from obligations under the Price Control Undertakings in writing to the CMA and the Price Control Undertakings shall remain in force until such release is granted, as the case may be.

- 24.3 Breedon may write to the CMA seeking a release from the Price Control Undertakings if it considers there has been a material change in circumstances since the Commencement Date.
- 24.4 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

**FOR AND ON BEHALF OF BREEDON**

Simon Vivian  
Group Chief Executive

**Aberdeen Asphalt Operations and Peterhead RMX Operations to be divested by Breedon**

1. Breedon's asphalt operations at either Craigenlow or Tom's Forest in the Aberdeen area as identified in paragraph 7.85 and Figure 13 of the Report.
2. Breedon's RMX operations at either Peterhead or Stirlinghill in the Peterhead area as identified in paragraph 7.96 and Figure 12 of the Report.

## **Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed as consistent with and giving effect to paragraph 7.126 of the Report.

### **1. Independence**

The proposed purchaser is independent of and unconnected to the Breedon Group and any Associated Person or Affiliate of Breedon or such Group of Interconnected Bodies Corporate.

### **2. Capability**

The proposed purchaser must have access to appropriate financial resources and expertise to operate the divested business and to be an effective competitor.

### **3. Commitment to the relevant market**

The proposed purchaser has the intention demonstrated by inter alia a suitable business plan (including managerial capability, operational capability and technical capability) to maintain and operate the divested business as a viable and active business in competition with Breedon and other competitors in the relevant market so as to remedy the SLC and any adverse effect.

### **4. Absence of competitive or regulatory concern**

The acquisition by the proposed purchaser raises no competition concerns within any market or markets in the UK.

## **The Price Controlled Plants**

1. The asphalt plants occupied and operated by Breedon at Daviot and Mid Lairgs in the Inverness area in Scotland as identified in Figure 15 of the Report which are subject to the terms of the Price Control Undertakings.

## Price Controlled Products

1	2	3		4
Product mix/description	Volume sold in 2013	List price per tonne in 2014		Annual average ex-works price per tonne 2014
<b>AC 32 DENSE BASE</b>		[X]	[X]	
AC 32 Dense base 100/150 (3740)	[X]	[X]	[X]	[X]
AC 32 Dense base 40/60 des (3780)	[X]			[X]
<b>AC 32 HDM BASE</b>		[X]	[X]	
<b>AC 32 DENSE BINDER</b>		[X]	[X]	
AC 32 Dense bin 100/150 (3918)	[X]			[X]
<b>AC 20 DENSE BINDER</b>		[X]	[X]	
AC 20 Dense bin 40/60 (3982)	[X]			[X]
AC 20 Dense bin 100/150 (4006)	[X]			[X]
<b>AC 20 HDM BINDER</b>		[X]	[X]	
AC 20 Dense bin 40/60 des (4062)	[X]			[X]
<b>AC 20 OPEN BINDER</b>		[X]	[X]	
Grampian 20 Single Course 100/150 (4730)	[X]			[X]
<b>14mm Binder Course</b>		[X]	[X]	
AC 14 Dense bin 100/150 (4021)	[X]			[X]
<b>AC 14 CLOSE SURF</b>		[X]	[X]	
AC 14 Close surf 100/150 (4191)	[X]			[X]
<b>AC 14 OPEN SURF</b>		[X]	[X]	
<b>AC 10 CLOSE SURF</b>		[X]	[X]	
AC 10 Close surf 40/60 (4239)	[X]			[X]
AC 10 Close surf 100/150 (4255)	[X]			[X]
<b>AC 10 OPEN SURF</b>		[X]	[X]	
AC 10 Open surf 100/150 (4143)	[X]			[X]
<b>AC 6 DENSE SURF</b>		[X]	[X]	
AC 6 Dense surf 40/60 (4320)	[X]			[X]
AC 6 Dense surf 100/150 (4328)	[X]			[X]
<b>AC 6 MEDIUM SURF</b>		[X]	[X]	
AC 6 Medium Surf 100/150 (4376)	[X]			[X]
Playdeck 6 Open surf 100/150 (4650)	[X]			[X]
<b>HRA 60/32 BASE</b>		[X]	[X]	
<b>HRA 60/20 BASE</b>		[X]	[X]	
<b>HRA 50/20 BIN</b>		[X]	[X]	
<b>HRA 50/14 BIN</b>		[X]	[X]	
HRA 50/14 bin 40/60 (3515)	[X]			[X]
HRA 50/14 bin 70/100 (3539)	[X]			[X]
<b>HRA 50/10 BIN</b>		[X]	[X]	
HRA 50/10 bin 40/60 (3483)	[X]			[X]
HRA 50/10 bin 70/100 (3507)	[X]			[X]
HRA 50/10 surf 40/60 (4613)	[X]			[X]
<b>40% 14mm HRA Binder</b>		[X]	[X]	
<b>HRA 55/10F Surf</b>		[X]	[X]	
<b>HRA 30/14 F SURF DES</b>		[X]	[X]	
HRA 30/14F1A surf 100/150 (3104)	[X]			[X]
<b>HRA 35/14 F SURF</b>		[X]	[X]	
HRA 35/14F1A surf 40/60 (3112)	[X]			[X]
HRA 35/14F surf 40/60 des (3217)	[X]			[X]
<b>HRA 30/14 F SURF</b>		[X]	[X]	
HRA 30/14F1A surf 40/60 (3080)	[X]			[X]
HRA 30/14F1A surf 70/100 (3096)	[X]			[X]
<b>HRA 30/10 F SURF</b>		[X]	[X]	
HRA 30/10F1A surf 40/60 (3064)	[X]			[X]
HRA 30/10F1A surf 70/100 (3072)	[X]			[X]
<b>HRA 15/10 F SURF</b>		[X]	[X]	
HRA 15/10F1A surf 40/60	[X]			[X]



1	2	3		4
Product mix/description	Volume sold in 2013	List price per tonne in 2014		Annual average ex-works price per tonne 2014
HRA 15/10F1A surf 70/100	[X]	[X]	[X]	[X]
<b>HRA 0/2 F SURF</b>		[X]	[X]	
<b>Coated Grit</b>		[X]	[X]	
<b>14MM BREEDON FIBRE</b>		[X]	[X]	
SMA 14 surf Mod Binder(F) (4771)	[X]			[X]
<b>10MM BREEDON FIBRE</b>		[X]	[X]	
SMA 10 surf Mod Binder(F) (4851)	[X]			[X]
SMA 10 surf Mod Binder(F) PSV60 (4915)	[X]			[X]
<b>6MM BREEDON FIBRE</b>		[X]	[X]	
<b>14MM BELLSMIX</b>		[X]	[X]	
<b>10MM BELLSMIX</b>		[X]	[X]	
Bellsmix 6 Dense surf 70/100	[X]			[X]
Bellsmix 10 Dense surf 70/100	[X]			[X]
[X]				
[X]	[X]			[X]
[X]	[X]			[X]
[X]	[X]			[X]
[X]	[X]			[X]
[X]	[X]			[X]
[X]	[X]			[X]
[X]	[X]			[X]
[X]	[X]			[X]

## HTMA index

The HTMA index is published monthly and is available here:

[www.rics.org/uk/knowledge/bcis/](http://www.rics.org/uk/knowledge/bcis/). The below is an extract of the currently available index.



## Initial Terms & Conditions of Sale

### **BREEDON AGGREGATES SCOTLAND: Terms & Conditions of Sale**

In these terms and conditions 'the Company' shall mean Breedon Aggregates Scotland Limited, or such of its subsidiary or associated companies as may be supplying materials or goods subject to these terms and conditions and 'the Customer' shall mean the person or other legal entity being or to be supplied with such materials or goods.

#### 1. Terms of Supply

- (a) It is an essential term of the Company delivering materials or allowing collection of materials that the Company's standard terms and conditions, as set out herein, shall apply to all commercial transactions undertaken by the Company. Accordingly, the Company's standard terms and conditions, as set out herein, are incorporated into any contract arising from any quotation given by or on behalf of the Company, including quotations not given in writing. The Company shall not be bound by any term or condition, other than those contained within these standard terms and conditions, unless the Company has agreed in writing to be so bound.
- (b) The Customer shall not assign the contract without the written consent of an Officer of the Company.

#### 2. Price

- (a) The price(s) quoted by the Company are the Company's price(s) current at the date of quotation based upon the cost of materials, labour, equipment and operations at the time of the Company's last price review and excluding VAT. All contracts are subject to the conditions that deliveries shall be made at the Company's price(s) ruling at the date of dispatch and in the event of variation in any such costs the Company shall be entitled, at its absolute discretion, to increase prices accordingly.
- (b) Where the Company gives prices in respect of specific quantities, in the event of the amount delivered being less than the specified quantity, the Company shall be entitled to increase its price in light of the reduced quantities.

- (c) The Company's quotation is based upon the tax contribution or levies in force at the date of the Company's quotation. In the event of any increase in the Company's tax or levies burden in connection with the Company's quotation prior to delivery to the Customer the Company shall be entitled to recover the increased burden from the Customer.
- (d) The Company's quotation includes for delivery or collection during normal working hours. Any deliveries or collections made on public holidays, Sundays or Saturday afternoons or otherwise outside normal working hours shall be subject to a price increase unless the Company's quotation expressly states for delivery or collection outwith normal working hours at no extra charge. It shall be the Customer's obligation to establish the normal working hours of all the Company's facilities likely to affect delivery or collection.
- (e) The Company shall be entitled to charge waiting time where the Company's appointed delivery vehicle has been held on site for longer than one-quarter hour when delivering dry materials, longer than one half hour when delivering coated materials or three quarters of an hour in respect of ready mix concrete.
- (f) The Company's quotation is based upon the Customer making satisfactory arrangements for payment prior to the Customer ordering materials or goods from the Company. Notwithstanding any other term or condition contained herein or whether or not any materials or goods have been supplied by the Company, the Company shall have no obligation towards the Customer until satisfactory arrangements for payment are put in place by the Customer.

### 3. Acceptance

The Company's quotation shall remain open for acceptance for one calendar month from the date of the quotation, thereafter it shall be incapable of acceptance save at the Company's sole discretion which shall at all times be confirmed in writing. Any written acceptance or formal order will be acknowledged in writing by the Company affirming the terms and conditions of the contract. In the event that materials are delivered or collected prior to a written agreement being in place, the Company's terms and conditions shall apply and any other terms or conditions shall be of no effect.

### 4. Delivery

The Company's quotation is based upon safe and easy access for delivery and collection of goods using the Company's usual road vehicles. In the event that, in the Company's opinion, such access is not available or that any road or ground over which the Company's vehicles would have to travel is unsafe / unsuitable, the Company shall

have the right to effect delivery or collection at the location determined by the Company as being the closest to the Customer's requirements. Should the Company incur extra costs in making a delivery to or collection from an unsatisfactory access or over an unsuitable road or ground, the Company shall be entitled to recover the extra costs from the Customer. The Company shall have no obligation to make further deliveries or collections until the Customer has met the extra costs.

## 5. Delays

Unless expressly agreed otherwise, all delivery times given by the Company shall be considered approximate and shall be flexible and may be subject to change without notice. The Company shall not be responsible for any consequences arising out of its failure to deliver or, where the Customer will collect materials, for its delay in supplying any materials or goods. The Company's responsibility following any missed delivery or collection shall be limited to effecting delivery or collection at the earliest opportunity after the missed delivery or collection.

## 6. Quality of Materials

- (a) If any materials or goods supplied by the Company are proved to be not in accordance with the quality or specification noted in the Company's quotation, the Company shall supply materials or goods to replace the materials or goods if, by not conforming with the quality or specification, such materials are proved to be defective and unsuitable for the purpose to which they are being put. The Company shall only be liable to supply replacement materials or goods if the Customer has notified the Company in writing of a complaint upon receipt or no later than 48 hours after having received the materials or goods.
- (b) It is the Customer's responsibility to ensure that the materials and goods meet the Customer's requirements. In giving a quotation for materials or goods, the Company accepts no responsibility whatsoever that the materials referred to within the Company's quotation shall be suitable for the purpose the Customer intends.
- (c) The Company shall have no liability to the Customer or other third parties in respect of any direct, consequential or indirect loss or damage howsoever arising and howsoever caused in respect of the Company's materials or goods.
- (d) The Company's liability to the Customer or others in respect of the Company's materials or goods shall, in any circumstance, be limited to supplying replacement materials or goods. The Customer shall have no other right in contract, delict or otherwise and all and any conditions, terms and

representations (whether express, implied, statutory or otherwise) are by agreement excluded.

## 7. Payment

Unless otherwise expressly stated in the Company's quotation, the Company shall be entitled to payment in accordance with the Company's standard terms and conditions as set out herein. The Company shall be entitled to stage or part payments. The Company shall render invoices to the Customer at such intervals as the Company shall consider appropriate. The Company shall be entitled to receive payment of the full invoice amount not later than the 28th day from the end of the month shown on the relevant invoice. The terms of the Late Payment of Commercial Debts (Interest) Act 1998 are deemed incorporated into the Company's standard terms and conditions. Although compensation and interest shall not be payable unless payment is received from the Customer beyond the 28 day net monthly period of credit, for the purpose of calculating the amount of interest due to the Company on any payment made late or not at all, the payment shall be considered due (or overdue) as of the date shown on the invoice and the period of credit shall not be considered in calculating the amount of interest due from the Customer.

The Company's right to interest in respect of late or non-payment shall be in addition to the Company's right to suspend further performance of its obligations under the contract without notice, upon any invoice being unpaid upon the expiration of the agreed credit period of 28 days following the month of invoice. The Company shall be under no obligation to resume performance of its obligations until all invoices rendered to the Customer have been paid in full and the Company has received satisfactory assurances that future invoices will be paid on time.

Ownership of the Company's materials or goods shall not pass to the Customer until the Company has received payment in full for all materials supplied to the Customer by the Company. The Customer shall assume the risk and responsibility for damage to the Company's materials or goods upon delivery.

## 8. Conditions of Carriage by Rail

If delivery of the Company's materials or goods are to be affected by rail and delivery is to be made F.O.R., the Company shall not be liable to comply with or be responsible for any consequences of non-compliance with any conditions of carriage imposed by the railway authority or railway operating company.

## 9. Law

The Contract shall be governed by and interpreted in accordance with Scottish Law.

## Haulage Schedule

*Haulage charge rates as at 1/1/14*

*Mid Lairgs & Daviot Asphalt*

<i>Miles</i>	<i>Price £</i>
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]

All based on road miles

Waiting time –  
charged after 30 mins [X]