

Non-Price Dispute Resolution Process

Australian Amalgamated Terminals Pty Ltd ACN 098 458 229 (AAT) operates the AAT Terminals.

This Non-Price Dispute Resolution Process is intended to resolve disputes relating to matters other than the prices charged by AAT for the supply of Access Services. Price disputes are not governed by these processes.

Non-Price Disputes include disputes in relation to the granting, refusal to grant, conditions or administration of an Access Licence Agreement, other than in relation to any Charges. Non-Price Disputes may include disputes in relation to the Open Access Conditions or AATs obligations in relation to Confidential Information.

AAT and Qube have committed to the ACCC (through the Section 87B Undertaking) to comply with the Open Access Conditions in the performance of their obligations under this Non-Price Dispute Resolution Process.

1 Objective

- (a) AAT and Qube are committed to resolving all Non-Price Disputes proactively and constructively.
- (b) AAT and Qube will use this Non-Price Dispute Resolution Process to resolve disputes relating to matters other than the prices AAT charges or will charge for Access Services.
- (c) The Section 87B Undertaking outlines how AAT and Qube will deal with Confidential Information provided by Terminal Users and Applicants.

2 Raising a Non-Price Dispute

- (a) A Dispute Applicant who wishes to raise a Non-Price Dispute with AAT, Qube or both AAT and Qube must do so within 6 months after the circumstance giving rise to that Non-Price Dispute by providing written notice (**Non-Price Dispute Notice**) to AAT, Qube or both AAT and Qube (each recipient a **Dispute Respondent**) for the purpose of endeavouring to resolve the Non-Price Dispute.
- (b) The Non-Price Dispute Notice must include details of:
 - (i) the nature of the Non-Price Dispute – including whether the Non-Price Dispute is raised in respect of a single AAT Terminal or more than one AAT Terminal;
 - (ii) the outcome sought by the Dispute Applicant in relation to the Non-Price Dispute; and
 - (iii) the action on the part of the Dispute Respondent(s) which the Dispute Applicant believes will resolve the Non-Price Dispute.
- (c) By lodging a Non-Price Dispute Notice, the Dispute Applicant agrees to comply with this Non-Price Dispute Resolution Process.

3 Negotiation

- (a) Within 7 Business Days of the Dispute Applicant providing the Dispute Respondent(s) a Non-Price Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Non-Price Dispute expeditiously by joint discussion.

If the Non-Price Dispute is not resolved in accordance with clause 3(a) within 21 Business Days of the Dispute Applicant providing a Non-Price Dispute Notice to the Dispute Respondent(s) then:

- (i) if all parties agree, subject to clause 3(c), they will attempt to resolve the Non-Price Dispute by mediation pursuant to clause 4; or
 - (ii) if one or more of the parties do not wish to resolve the Non-Price Dispute by mediation, any party may within 7 days refer the Non-Price Dispute to Expert Determination or Arbitration in accordance with clause 4.4.
- (c) If the parties agree to attempt to resolve the Non-Price Dispute by mediation in accordance with clause 3(b)(i), the Non-Price Dispute will be referred to the chief executive officers of each party, or their representative, who will attempt to resolve the Non-Price Dispute, including by informal mediation.
- (d) If the Non-Price Dispute is not resolved within 15 Business Days after being referred to the chief executive officers or their representatives in accordance with clause 3(c), the Non-Price Dispute will be referred to formal mediation pursuant to clause 4.

4 Formal mediation

4.1 Appointment of a mediator

- (a) A Non-Price Dispute referred to formal mediation in accordance with clauses 3(b)(i) and 3(d) will be mediated by a single mediator appointed by agreement between the Dispute Respondent(s) and the Dispute Applicant.
- (b) The mediator appointed by the Dispute Respondent(s) and the Dispute Applicant must have the qualifications and experience necessary to carry out the functions of the mediator independently of AAT and Qube and must not be:
 - (i) an employee or officer of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (ii) a professional adviser of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with AAT or any other Qube Related Entity (other than the terms of appointment of the mediator);
 - (iv) a Terminal User, supplier or material customer of AAT or any other Qube Related Entity; or
 - (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.
- (c) If the Dispute Respondent(s) and the Dispute Applicant fail to agree on the appointment of a mediator within 14 Business Days of referral under clause 3(b)(i), then:
 - (i) if the Non Price Dispute involves a single terminal – the President of the Chapter of the Institute of Arbitrators and Mediators of Australia (**IAMA**) in the state in which the relevant terminal is located; and
 - (ii) in any other case, the President of the Chapter of **IAMA** in the state of New South Wales,

will select the mediator.

- (d) The Dispute Respondent(s) and the Dispute Applicant will use all reasonable endeavours to ensure that;
 - (i) the mediation occurs within 28 Business Days after a mediator has been appointed; and
 - (ii) the mediator is provided with all relevant information available to the Dispute Respondent(s) and the Dispute Applicant and all reasonable assistance to enable the mediator to conduct the mediation.

4.2 Indemnification of the mediator

The Dispute Respondent(s) and the Dispute Applicant will execute a deed to indemnify the mediator against any loss or damage incurred by the mediator in the course of carrying out his or her functions in accordance with his or her terms of appointment.

4.3 Conduct of mediation

Unless otherwise agreed between the Dispute Respondent(s) and the Dispute Applicant:

- (a) each of the Dispute Respondent(s) and the Dispute Applicant may be represented at the mediation by another party, including by a legally qualified person;
- (b) the cost of the mediation will be shared equally between the Dispute Respondent(s) and the Dispute Applicant;
- (c) The Dispute Respondent(s) and the Dispute Applicant will bear their own costs relating to the preparation for and attendance at the mediation; and
- (d) the mediation will otherwise be conducted under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner).

4.4 Referral to expert determination or arbitration

- (a) A party may, by notice to the other (Final Dispute Notice) refer a Non-Price Dispute which remains unresolved to;
 - (i) an expert for determination in accordance with clause 5; or
 - (ii) an arbitrator for arbitration in accordance with clause 6, within 7 Business Days after:
 - (iii) the conclusion of the 21 Business Day negotiation period for the Non-Price Dispute under clause 3(b), where the parties have not agreed to attempt to resolve the dispute through mediation; or
 - (iv) the conclusion of formal mediation of the Non-Price Dispute in accordance with clause 4.
- (b) Within 7 Business Days of the issue of a Final Dispute Notice, the Dispute Respondent(s) and the Dispute Applicant will agree on:
 - (i) which of expert determination or arbitration will be conducted to resolve the Non-Price Dispute; and
 - (ii) the identity of the expert or arbitrator to be appointed to conduct the expert determination or arbitration.

In the event that the Dispute Respondent(s) and the Dispute Applicant cannot agree on either:

- (i) which of expert determination or arbitration will be conducted to resolve the Non-Price Dispute; or
- (ii) the identity of the person to conduct the expert determination or arbitration as the case may be,

then

- (iii) if the Non Price Dispute involves a single terminal – the President of the Chapter of IAMA in the state in which the relevant terminal is located; and
- (iv) in any other case, the President of the Chapter of IAMA in the state of New South Wales,

will determine these issues.

- (d) The expert or arbitrator appointed by the Dispute Respondent(s) and the Dispute Applicant must have the qualifications and experience necessary to carry out the functions of the expert or arbitrator as applicable independently of AAT and Qube and must not be:
 - (i) an employee or officer of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (ii) a professional adviser of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with AAT or any other Qube Related Entity (other than the terms of appointment of the expert or arbitrator);
 - (iv) a Terminal User, supplier or material customer of AAT or any other Qube Related Entity; or
 - (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.

5 Expert determination

If the Non-Price Dispute is referred to an expert for expert determination pursuant to clause 4.4(a), the following provisions will apply:

- (a) The Dispute Respondent(s) and the Dispute Applicant will use all reasonable endeavours to ensure that the expert provides the expert's determination on the Non-Price Dispute within 60 Business Days of referral under clause 4.4(a).
- (b) The expert will decide the Non-Price Dispute as an expert not an arbitrator and the expert's decision will be final and binding on both the Dispute Respondent(s) and the Dispute Applicant. The Dispute Respondent(s) must take all steps within its power to ensure that the expert's decision is fulfilled or otherwise given effect to, including by enforcing the Dispute Respondent(s)' contractual rights against third parties.
- (c) The cost of the expert determination will be shared equally between the Dispute Respondent(s) and the Dispute Applicant, unless agreed otherwise.

The Dispute Respondent(s) and the Dispute Applicant will use all reasonable endeavours to ensure that the expert is provided with:

- (i) all relevant information available to the Dispute Respondent(s) and the Dispute Applicant; and
 - (ii) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Non-Price Dispute within 60 Business Days of referral under clause 4.4(a).
- (e) The Dispute Respondent(s) and the Dispute Applicant will execute a deed to indemnify the expert against any loss or damage incurred by the expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.
- (f) The Dispute Respondent(s) must within 7 days of the determination being made by the expert send a copy of the determination to:
- (i) the Approved Independent Auditor; and
 - (ii) in the case of any Non-Price Dispute, the relevant Port Manager.

6 Arbitration

- (a) If the Non-Price Dispute is referred to an arbitrator pursuant to clause 4.4(a), the Dispute Respondent(s) and the Dispute Applicant may agree on the terms on which the arbitration will be conducted.
- (b) The Dispute Respondent(s) must take all steps within its power to ensure that any determination by the arbitrator is fulfilled or otherwise given effect to, including by enforcing the Dispute Respondent(s)' contractual rights against third parties.
- (c) If, within 14 Business Days of the arbitrator being appointed, the Dispute Respondent(s) and the Dispute Applicant are unable to reach agreement on the terms on which the arbitration will be conducted, the arbitration will be conducted in accordance with the IAMA Arbitration Rules, as modified by the following provisions:
 - (i) The arbitrator will not be required to proceed with the arbitration unless and until the Dispute Applicant has agreed to pay the arbitrator's and other costs as determined in accordance with clause 6(j) and provide any indemnity as required in accordance with clause 6(k).
 - (ii) Unless the Dispute Respondent(s) and the Dispute Applicant agree otherwise, the arbitration will be conducted in private.
 - (iii) The Dispute Respondent(s) and the Dispute Applicant may appoint a person, including a legally qualified person, to represent it or assist in the arbitration.
 - (iv) The arbitrator must observe the rules of natural justice, but is not bound by technicalities, legal forms or rules of evidence.
 - (v) The arbitrator must act as speedily as a proper consideration of the Non-Price Dispute allows, having regard to the need to carefully and quickly enquire into and investigate the Non-Price Dispute and all matters affecting the merits, and fair settlement, of the Non-Price Dispute.
 - (vi) The arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the Dispute

Respondent(s) and the Dispute Applicant in the Non-Price Dispute, and may require that the cases be presented within those periods.

- (vii) The arbitrator may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.
 - (viii) The arbitrator will present its determination in draft form to the Dispute Respondent(s) and the Dispute Applicant and allow them the opportunity to comment before making a final determination.
 - (ix) The arbitrator will hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
 - (x) Subject to clause 6(1) and unless the Dispute Respondent(s) and the Dispute Applicant agree otherwise, any determination by the arbitrator will be confidential.
- (d) The arbitrator may at any time terminate an arbitration (without making a determination save for any determination under clause 60)) and the subject matter of the Dispute Notice shall be regarded as resolved, if he or she thinks that:
- (i) the notification of the Non-Price Dispute is vexatious;
 - (ii) the subject matter of the Non-Price Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the Dispute Applicant has not engaged in negotiations in good faith.
- (e) In deciding a Non-Price Dispute, the arbitrator will have regard to the objectives of the Undertaking and may have regard to any other matters that he or she thinks are relevant.
- (f) In deciding a Non-Price Dispute, the arbitrator must not, without the consent of the Dispute Respondent(s) and the Dispute Applicant:
- (i) make a determination which relates to matters which were not specified in the Non-Price Dispute Notice; or
 - (ii) without the consent of the Dispute Respondent(s) and the Dispute Applicant, allow any other party to join or intervene in the arbitration.
- (g) The arbitrator may make any determination or direction in relation to the Non-Price Dispute that it considers appropriate. A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court of law, and will have effect on and from the date specified by the arbitrator. Any or all of the provisions of a final determination may be expressed to apply from a specified day which is earlier than the day on which it takes effect.
- (h) Other than in circumstances where the determination or direction is the subject of review by a court of law, if a Dispute Applicant does not comply with a determination or direction of the arbitrator, the Dispute Respondent(s) will not be obliged to continue to seek to resolve the matters subject of the Non-Price Dispute Notice.
- (i) Other than where the determination or direction is the subject of review by a court of law, the Dispute Respondent(s) will comply with the lawful determination or direction of the arbitrator.

The arbitrator's costs and the costs of the parties to the arbitration will be borne by the Dispute Respondent(s) and the Dispute Applicant in such proportions as the arbitrator determines. The Dispute Respondent(s) and the Dispute Applicant may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.

- (k) Where the arbitrator requires it, the Dispute Respondent(s) and the Dispute Applicant will indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 6, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (l) Any laws relating to arbitrations applying in the jurisdiction in which any arbitration undertaken in accordance with this clause 6 is conducted will apply to the arbitration.
- (m) The Dispute Respondent(s) must send a copy of any determination made by the arbitrator to the Port Manager and the Approved Independent Auditor within 7 days of the determination being made.

7 General

Save for the obligations of disclosure to a Port Manager and the Approved Independent Auditor provided for in this Non-Price Dispute Resolution Process, the Non-Price Dispute and any terms of resolution are to be kept strictly confidential by the Dispute Respondent(s) and the Dispute Applicant.

8 Definitions

In this Non-Price Dispute Resolution Process, the following meanings will apply (unless the context otherwise indicates):

Access Licence Agreement means an agreement between AAT and a Service Provider under which the Service Provider is supplied the Access Services by AAT.

Access Services means, for each Terminal:

- (a) the use of facilities and infrastructure owned, operated or controlled; or
- (b) services, machinery, equipment, access to data and anything else provided,

by AAT at that Terminal which in each case AAT makes available to allow a Service Provider to provide all or part of the Terminal Services and which, at a minimum, includes those services AAT makes available to stevedores and PDI operators.

Approved Independent Auditor has the meaning given in the Section 87B Undertaking.

Business Day means, for a Terminal, a day other than a Saturday or Sunday on which banks are open for business generally in the State in which the Terminal is located.

Charges means the fees or charges payable by a Service Provider to AAT for the Access Services which must (at a minimum) be separated into discrete fees and charges payable for each category of Access Services (or any material part thereof).

Confidential Information has the meaning given in the Section 87B Undertaking.

Dispute Applicant means a person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal and includes Terminal Users, importers and exporters (or their industry representative bodies).

Dispute Respondent has the meaning given in clause 2(a).

Final Dispute Notice has the meaning given in clause 4.4(a).

AAMA means Institute of Arbitrators and Mediators of Australia.

Mooring Services means the mooring and unmooring of vessels at berths.

Non-Price Dispute means a dispute raised by a Dispute Applicant including in relation to:

- the granting, refusal to grant, conditions or administration of an Access Licence Agreement by AAT;
- the Open Access Conditions; or
- AAT's obligations in relation to Confidential Information,

but not including disputes in relation to the amount of any Charges.

Non-Price Dispute Notice has the meaning given in clause 2(a).

Open Access Conditions means the conditions set out in Schedule 1 of the Section 87B Undertaking.

PDI Operator Services means the undertaking of pre-delivery inspection activities and related services.

Qube Related Entity means Prixcar Services Pty Limited and any Related Bodies Corporate of Qube Holdings Ltd including, but not limited to, AAT as from the Control Date.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Section 87B Undertaking means the undertaking by AAT to the Australian Competition and Consumer Commission as in force from time to time for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) concerning AAT's operation of the Terminals.

Service Provider means any stevedore, PDI operator, Mooring Service provider or any other user operating at a Terminal, including under an Access Licence Agreement with AAT.

Stevedoring Services means the loading and unloading of vessels at the berths and transfer of cargo to the Terminal.

Terminal means each of the automotive and/RoRo terminals at the following Australian ports:

- (c) Port Kembla in New South Wales (**Kembla Terminal**);
- (d) Fisherman Islands in Queensland (**Brisbane Terminal**);

and to the extent that AAT retains operational control over them:

- (e) Webb Dock West and Appleton Dock in Victoria (**Melbourne Terminals**); and
- (f) Port Adelaide in South Australia (**Adelaide Terminal**).

Terminal Services means PDI Operator Services, Stevedoring Services and Mooring Services.

Terminal User means:

- (a) any stevedore, PDI operator, Mooring Service provider or shipping line using the Terminal;
or
- (b) any other person who has applied for, whether successful or not, the right to provide services at the Terminal from time to time, including under an Access Licence Agreement with AAT.