

# Price Dispute Resolution Process

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

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

AAT has committed to the ACCC (through the Section 87B Undertaking) to comply with the Open Access Conditions in the performance of its obligations under this Price Dispute Resolution Process.

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## 1 Objective

- (a) AAT publishes on its website Charges for each of the AAT Terminals.
- (b) AAT will use this Price Dispute Resolution Process to notify price increases and resolve disputes relating to the prices AAT charges or will charge for Access Services.
- (c) The Section 87B Undertaking outlines how AAT will deal with Confidential Information provided by Terminal Users at each of the Terminals.

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## 2 Annual price review

### 2.1 Review of reference tariffs

AAT will conduct an annual review of its Charges and may propose a price increase which it considers reasonable and appropriate, taking into account the relevant considerations in clause 3.4, and provided that AAT complies with its obligations under any Terminal Licence in respect of that price increase (to the extent that those obligations are not inconsistent with the terms of the Undertaking).

### 2.2 Notice of price increase

At least 60 Business Days before the end of each Financial Year, AAT will provide notice of the proposed Charges for each Terminal applicable for the next Financial Year by:

- (a) giving written notice to any person who has entered into an Access Licence Agreement at the Terminal, and to any person who has informed AAT in writing that it wishes to be notified of the proposed price increase in respect of that Terminal;
- (b) publishing the proposed Charges and information about this Price Dispute Resolution Process (including that a Price Dispute can be raised up until 45 Business Days before the end of the Financial Year) on its website; and
- (c) giving written notice to the Independent Price Expert.

### 2.3 Information about price increase

A notice provided under clause 2.2(a) must contain:

- (a) the amount of the proposed Charges;
- (b) the date on which the proposed Charges will take effect;
- (c) detailed reasons for any proposed price increase;

- (d) information about this Price Dispute Resolution Process (including that a Price Dispute can be raised up until 45 Business Days before the end of the Financial Year); and
- (e) the name and contact details of the Independent Price Expert.

#### **2.4 Offer to negotiate**

AAT may, but is not obliged to, offer to negotiate with any Dispute Applicant who provides or proposes to provide an Objection Notice in relation to a proposed price increase notified under clause 2.2.

#### **2.5 Approved price increases**

A Price Dispute cannot be raised under clause 3.1 in respect of a proposed price increase or a part of a proposed price increase of which notice has been given in accordance with clause 2.2 which notice discloses that the price increase has been approved or determined by the Independent Price Expert pursuant to clause 3.3.

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### **3 Price disputes**

#### **3.1 Raising a price dispute**

- (a) A Dispute Applicant who objects to a proposed price increase may raise a Price Dispute by providing written notice to the Independent Price Expert and AAT no later than 45 Business Days before the end of the Financial Year (**Objection Notice**).
- (b) An Objection Notice must set out the Dispute Applicant's reasons for objecting to the proposed price increase.
- (c) By submitting an Objection Notice, the Dispute Applicant agrees to comply with this Price Dispute Resolution Process.
- (d) A Dispute Applicant may at any time withdraw an Objection Notice by written notice to AAT and the Independent Price Expert, in which case the powers and authority of the Independent Price Expert to make a determination of that Objection Notice under clause 3.3 shall forthwith cease.

#### **3.2 Publication of Objection Notice**

AAT will publish a copy of the Objection Notice on its website within 5 days of receipt.

#### **3.3 Independent Price Expert Determination**

- (a) Where the Independent Price Expert has received an Objection Notice, the Independent Price Expert:
  - (i) will determine whether AAT's proposed price increase:
    - (A) is reasonable and appropriate having regard to the principles listed in clause 3.4; and
    - (B) complies with AAT's obligations under any Terminal Licence applicable to the relevant Terminal (to the extent that those obligations are not inconsistent with the terms of the Undertaking); and
  - (ii) may accept, reject or vary AAT's proposed price increase.
- (b) Any variation of a price increase by the Independent Price Expert under clause 3.3(a) will not result in a Charge that is:

- (i) higher than the Charges proposed by AAT under clause 2.2; or
- (ii) less than the then current Charges.
- (c) The Independent Price Expert will make his or her determination within:
  - (i) the 60 Business Day period referred to in clause 2.2; or
  - (ii) such further period, not being more than 20 Business Days, as the Independent Price Expert in his or her sole discretion requires.
- (d) AAT and the Dispute Applicant must provide the Independent Price Expert with any information he or she requires to make a determination under this clause 3.3, within a timeframe reasonably determined by the Independent Price Expert.
- (e) In the event that more than one Objection Notice is received in relation to a proposed price increase, the Independent Price Expert will only make a single determination about those Charges or that proposed price increase.
- (f) The Independent Price Expert's decision is final and binding.
- (g) When making a determination under this clause 3.3, the Independent Price Expert is acting as an expert and not as an arbitrator.

### **3.4 Relevant considerations**

In determining whether a Charge is reasonable and appropriate, the Independent Price Expert will have regard to the following principles:

- (a) that Charges should:
  - (i) be set so as to generate expected revenue for Access Services that is at least sufficient to meet the efficient costs of providing the Access Services; and
  - (ii) include a reasonable rate of return on the amount of funds invested commensurate with the commercial risks involved;
- (b) that Charges should be set taking into account:
  - (i) Terminal lease costs and all efficient input costs;
  - (ii) an appropriate allocation of AAT's relevant overhead costs;
  - (iii) expected volumes over the period AAT has used to calculate the proposed price increase, including where appropriate any split between committed / uncommitted volume and associated risks;
  - (iv) depreciation of, and a return on, the prudent level of capital invested by AAT at the Terminal, where:
    - (A) depreciation is based on a straight line methodology (or reasonable alternative methodology) and reasonably anticipated asset lives;
    - (B) the rate of return is based on AAT's weighted average cost of capital; and
    - (C) the prudent level of capital must not include any investments or proposed investments which arise or are proposed after the Commencement Date at the Terminal that disproportionately benefit a Qube Entity based on their

actual or likely use of the Terminal (for clarity, investments will not disproportionately benefit a Qube Entity where costs are allocated, and relevant charges are determined, on a basis that allocates the cost of that investment based on usage of the relevant assets);

- (v) the interests of all users for which the proposed Charges relates, including the extent to which the proposed Charges reflect actual or likely use of the Terminal by different users, including use of facilities and equipment;
  - (vi) the reasonableness and appropriateness of, and justification for, the existing Charges for the supply of the Access Services; and
  - (vii) where applicable, any additional pricing principles and conditions imposed under a Terminal Licence, to the extent that those pricing principles and conditions are not inconsistent with the terms of the Undertaking and in particular this clause 3.4.
- (c) The structure of Charges may allow multi-part pricing and price discrimination only if, and to the extent that:
- (i) the cost of providing the service is higher, or
  - (ii) it aids efficiency; and
- any multi-part pricing or price discrimination should be transparent.

### **3.5 Notice and publication of decision**

- (a) The Independent Price Expert must notify:
  - (i) AAT; and
  - (ii) any party that lodged an Objection Notice in relation to the proposed price increase, of his or her determination under clause 3.3(a)(ii) as soon as practicable after making the determination.
- (b) Within 2 Business Days of receiving the determination, AAT must:
  - (i) publish the Independent Price Expert's determination on AAT's website; and
  - (ii) provide a copy of the Independent Price Expert's determination to the Approved Independent Auditor.
- (c) The cost of the expert determination will be shared equally between AAT and the Dispute Applicant, unless the Independent Expert determines or the parties agree otherwise.
- (d) AAT and the Dispute Applicant will execute a deed to indemnify the Independent Price Expert against any loss or damage incurred by the Independent Price Expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.

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## **4 Date price increase takes effect**

- (a) In the absence of any Objection Notice submitted under clause 3.1, the new price takes effect the date that AAT notified under clause 2.2(a) that the proposed price increase would take effect.

If the Independent Price Expert makes a determination under clause 3.3(a)(ii), then the new price as determined by the Independent Expert takes effect on the date that AAT notified under clause 2.2(a) that the proposed price increase would take effect.

## 5 Definitions

In this 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 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).

**Commencement Date** has the meaning given in clause **Error! Reference source not found.** of the Section 87B Undertaking

**Confidential Information** has the meaning given in the 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).

**Financial Year** means a financial year ending 30 June.

**Independent Price Expert** has the meaning given in the Section 87B Undertaking.

**Mooring Services** means the mooring and unmooring of vessels at Berths.

**Objection Notice** has the meaning given in clause 3.1(a).

**Open Access Conditions** means the conditions set out in **Error! Reference source not found.** of the Section 87B Undertaking.

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

**Price Dispute** means a dispute raised by a Dispute Applicant about the proposed increase to a Charge which relates to that Dispute Applicant.

**Qube Entities** means Qube together with all Qube Related Entities.

**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.

**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:

- (a) Port Kembla in New South Wales (**Kembla Terminal**);
  - (b) Fisherman Islands in Queensland (**Brisbane Terminal**);
- and to the extent that AAT retains operational control over them:
- (c) Webb Dock West and Appleton Dock in Victoria (**Melbourne Terminals**); and
  - (d) Port Adelaide in South Australia (**Adelaide Terminal**).

**Terminal Licence** means any licence granted to AAT under which it retains the right to develop, operate and provide services at a 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.

**Undertaking** means the undertaking given 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 AAT Terminals.