

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, provide transparency on the Non-Price Dispute Resolution Process and ensure that the Approved Independent Auditor oversees the process to resolve non-price disputes brought by a Dispute Applicant.

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

Price disputes are not governed by these processes.

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) The Undertaking Parties are committed to resolving all Non-Price Disputes proactively and constructively.
- (b) The Undertaking Parties will use this Non-Price Dispute Resolution Process to resolve disputes relating to matters other than Price Disputes and disputes regarding berthing decisions and compliance with the Berthing Allocation Rules. For the avoidance of doubt, the Non-Price Dispute Resolution Process can be used to resolve disputes regarding the variation or proposed variation of the Berthing Allocation Rules.
- (c) The Undertaking outlines how the Undertaking Parties will deal with Confidential Information provided by users of the Terminal and Applicants

2 Raising a Non-Price Dispute

2.1 Non-Price Dispute Notice

- (a) A Dispute Applicant who wishes to raise a Non-Price Dispute with AAT, MIRRAT, Qube or some combination or all of AAT, MIRRAT 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 and/or MIRRAT (each recipient a **Dispute Respondent**) for the purpose of endeavoring 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 Terminal or more than one Terminal;
 - (ii) the outcome sought by the Dispute Applicant in relation to the Non-Price Dispute; and
 - (iii) the action(s) 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.

2.2 Validity of a Non-Price Dispute Notice

In circumstances where a Dispute Respondent considers that a Non-Price Dispute Notice does not concern matters that are properly the subject of a Non-Price Dispute Notice, the Dispute Respondent must notify the Approved Independent Auditor within 7 Business Days and the Approved Independent Auditor may:

- i. determine whether the matters fall within the proper scope of the subject of a Non-Price Dispute Notice under this Schedule 6; and
- ii. in making a determination under sub-clause (i), if the Approved Independent Auditor considers it necessary or desirable to do so, he or she may obtain external legal advice from an Australian Senior Counsel or King's Counsel of their choosing who has relevant expertise or experience (which will be shared with the Dispute Respondent(s)) to inform his or her decision.

Any decision of the Approved Independent Auditor will be binding on the Dispute Respondents and the Dispute Applicant, subject only to any error of law or unless waived by the ACCC.

The Approved Independent Auditor may, at its absolute discretion, refuse to accept a Non-Price Dispute Notice, or terminate a Non-Price Dispute, in circumstances where the Approved Independent Auditor determines that:

- i. the matters which are the subject of the Non-Price Dispute Notice have already been the subject of an earlier Non-Price Dispute Notice or have otherwise already been determined and require no further consideration; or
- ii. the subject matter of the Non-Price Dispute Notice is trivial, vexatious, misconceived, or not made in good faith.

A person may at any time withdraw a Non-Price Dispute Notice by notifying the Approved Independent Auditor in writing, in which case the Non-Price Dispute will cease

2.3 Obligation on the Dispute Respondent(s) to engage

The Dispute Respondent must engage with this Non-Price Dispute Resolution Process unless there is a decision by the Approved Independent Auditor that the Non-Price Dispute is not within the scope of the 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, 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.
- (b) Where the Dispute Respondent has referred a Non-Price Dispute Notice to the Approved Independent Auditor, the time for compliance with sub-clause (a) above will be suspended until the Approved Independent Auditor makes a determination. If the Approved Independent Auditor determines that the Non-Price Dispute Notice concerns a matter that is properly the subject of a Non-Price Dispute Notice, then within 7 Business Days of the Approved Independent Auditor's determination, 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) or 3(b) within 7 Business Days of the Dispute Applicant and the Dispute Respondent(s) meeting to conduct negotiations, then the dispute will be referred to the Approved Independent Auditor for determination in accordance with clause 4.

4 Determination by Approved Independent Auditor

- (a) A Non-Price Dispute referred to under clause 3(c) of this Schedule 6 for determination by the Approved Independent Auditor will be conducted in accordance with the following provisions
 - (i) the Approved Independent Auditor must act as quickly as a consideration of the Non-Price Dispute allows having regard to the need to properly enquire into and to fairly resolve the Non-Price Dispute; or
 - (ii) the Approved Independent Auditor will present its determination of the Non-Price Dispute in draft form to the Dispute Respondent(s) and the Dispute Applicant within 10 Business Days of referral of the Non-Price Dispute Notice to the Approved Independent Auditor and allow them 5 Business Days to comment before making a final determination;
 - (iii) the Approved Independent Auditor will hand down a final determination in writing which includes its reasons for making the determination and findings within 10 Business Days of the expiry of the time provided to the Dispute Respondent(s) and Dispute Applicant to comment on the draft determination; and
 - (iv) subject to any claims for confidentiality over the Approved Independent Auditor's determination (which will be determined by the Approved Independent Auditor), any determination by the Approved Independent Auditor will be made available to the Dispute Applicant (and where they are an industry body, all of their relevant members) and the Dispute Respondents.
- (b) In the event that the Approved Independent Auditor, acting reasonably, determines that an extension of time is necessary in order to make a determination in respect of the Non-Price Dispute, they must notify the Dispute Applicant, the Dispute Respondent(s), and the ACCC of
 - (i) The further period required; and
 - (ii) The reasons justifying the required extension of time.
- (c) In deciding a Non-Price Dispute, the Approved Independent Auditor will have regard to the objectives of the Undertaking set out in clause 2.4 of the Undertaking and may have regard to any other matters that he or she thinks are relevant.
- (d) In deciding a Non-Price Dispute, the Approved Independent Auditor 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) allow any other party to join or intervene in the adjudication process.
- (e) Subject to sub-clause 4(d), the Approved Independent Auditor may make any determination or direction in relation to the Non-Price Dispute that he or she considers appropriate, including as to the process by which the Non-Price Dispute is to be undertaken.

- (f) If a Dispute Applicant does not comply with a determination or direction of the Approved Independent Auditor, the Dispute Respondent(s) will not be obliged to continue to seek to resolve the matters subject of the Non-Price Dispute Notice.
- (g) The Dispute Respondent(s) will comply with the lawful determination or direction of the Approved Independent Auditor.
- (h) The Approved Independent Auditor's costs and the costs of the parties to the Non-Price Dispute will be borne by the Dispute Respondent(s) and the Dispute Applicant in such proportions as the Approved Independent Auditor determines. The Dispute Respondent(s) and the Dispute Applicant may make submissions to the Approved Independent Auditor on the issue of costs at any time prior to the Approved Independent Auditor's costs determination.
- (i) The Dispute Respondent(s) and the Dispute Applicant will indemnify the Approved Independent Auditor from any claims made against the Approved Independent Auditor arising in connection with the performance by the Approved Independent Auditor of their duties under this clause 4, such indemnity excluding circumstances where the conduct of the Approved Independent Auditor constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (j) The Approved Independent Auditor must include a copy of their determination with the next Audit Report.
- (k) The Approved Independent Auditor must notify the ACCC of the outcome of the Non-Price Dispute.

5 Ad hoc Investigation

- a) In addition to the Non-Price Dispute Resolution Process, any person who has any concern regarding the terminal Operators and/or Qube's compliance with the Undertaking may at any time, request in writing (via email or post using the contact details for the Approved Independent Auditor published in accordance with clause 9.4(c)) to the Approved Independent Auditor or post) that he or she investigate the relevant concern (an **Ad Hoc Investigation**).
- b) A person requesting an Ad Hoc Investigation may request that their request be kept confidential from Qube or the Terminal Operators, in which case the Approved Independent Auditor will maintain the confidentiality of their identity in any correspondence with Qube and the Terminal Operators, and in the publication of any findings.
- c) The Approved Independent Auditor may commence an Ad Hoc Investigation at any time, on their own initiative, if they have reason to believe that either the Terminal Operator(s) or Qube have engaged in conduct that does not comply with this Undertaking
- d) The Approved Independent Auditor, at its absolute discretion, may determine whether to commence an Ad Hoc Investigation and the manner in which it is undertaken. For clarity, and without limiting the Approved Independent absolute discretion, the Approved Independent Auditor may determine not to undertake an investigation in circumstances where the Approved Independent Auditor determines that:

- i. the matters which are the subject of the request have already been investigated or otherwise considered by the Approved Independent Auditor (including in any earlier Audit Report) and require no further consideration; or
 - ii. the subject matter of the request is trivial, vexatious, misconceived, or not made in good faith
- e) For the avoidance of doubt, any person who has any concern regarding the Undertaking Parties compliance with the Berthing Allocation Rules as set out in clauses 7.1(c) and 7.1(d), may request an Ad Hoc Investigation.
- f) A person may at any time withdraw a request for an Ad Hoc Investigation by notifying the Approved Independent Auditor in writing, in which case the requirement for the Approved Independent Auditor to investigate ceases.
- g) At the conclusion of an Ad Hoc Investigation, the Approved Independent Auditor may disclose their findings to the ACCC, the person who lodged the concern and the Undertaking Parties. This may take the form of publication of any findings:
 - i. as part of a regular annual Audit Report;
 - ii. in a separate audit report (**Ad Hoc Audit Report**); or
 - iii. a separate report provided only to the person who lodged the concern as well as to the Undertaking Parties (subject to any protection of the identity of the complainant and any confidential information).
- h) The Undertaking Parties will be responsible for the Approved Independent Auditor costs of:
 - i. undertaking any Ad Hoc Investigation regardless of the outcome of the Ad Hoc Investigation; and
 - ii. work undertaken to determine whether to conduct an Ad Hoc Investigation in accordance with clause 11.2(d) above,

including any costs incurred by the Approved Independent Auditor in engaging any external expertise, assistance or advice required to consider the request or to undertake the investigation and to prepare and publish his or her findings.

- i) The Approved Independent Auditor must disclose the outcome of any Ad Hoc Investigation to the ACCC within 10 Business Days of the conclusion of their Ad Hoc Investigation. However, unless requested by the ACCC, the Approved Independent Auditor will not be required to comply with this sub-clause if they make a determination not to conduct an Ad Hoc Investigation in accordance with clause 11.2(d) above

6 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.

7 Definitions

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

AAT has the meaning given in the Undertaking.

ACCC has the meaning given in the Undertaking.

Applicant has the meaning given in the Undertaking.

Approved Independent Auditor has the meaning given in the Undertaking. **Audit Report** has the meaning given in the Undertaking.

Berthing Allocation Rules has the meaning given in the Undertaking. **Business Day** has the meaning given in the Undertaking.

Confidential Information has the meaning given in the Undertaking.

Dispute Applicant has the meaning given in the Undertaking.

Dispute Respondent has the meaning given in clause 2.1(a) of this Schedule 6. **MIRRAT** has the meaning given in the Undertaking.

Non-Price Dispute has the meaning given in the Undertaking.

Non-Price Dispute Notice has the meaning given in clause 2.1(a) of this Schedule 6.

Non-Price Dispute Resolution Process has the meaning given in the Undertaking.

Price Dispute has the meaning given in the Undertaking.

Qube has the meaning given in the Undertaking.

Terminal(s) has the meaning given in the Undertaking.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Parties has the meaning given in the Undertaking.