

NON-PRICE RELATED DISPUTE RESOLUTION PROCESS

Melbourne International RoRo & Auto Terminal Pty Ltd (MIRRAT) operates the Melbourne International RoRo & Automotive Terminal at Webb Dock West, Melbourne (Terminal).

This Non-Price Related Dispute Resolution Process is intended to resolve disputes between MIRRAT and Terminal Users relating to matters other than the prices charged by MIRRAT for the supply of Terminal Services. Price related disputes between MIRRAT and Terminal Users are not governed by these processes.

MIRRAT has committed to PoM and the ACCC to comply with the Open Access Conditions in the performance of its obligations under this Non-Price Related Dispute Resolution Process

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1 OBJECTIVE

- (a) MIRRAT is committed to resolving all Terminal User Disputes proactively and constructively.
- (b) The Section 87B Undertaking and any Confidentiality Deed Poll which MIRRAT has executed in favour of Terminal Users outline how MIRRAT will deal with Confidential Information provided by Terminal Users.

2 RAISING A TERMINAL USER DISPUTE

- (a) A Terminal User who wishes to raise a Terminal User Dispute with MIRRAT must do so within 6 months after the circumstance giving rise to that Terminal User Dispute by providing written notice to MIRRAT (Terminal User Dispute Notice) for the purpose of endeavoring to resolve the Terminal User Dispute.
- (b) The Terminal User Dispute Notice must include details of:
 - (i) the nature of the Terminal User Dispute;
 - (ii) the outcome sought by the Terminal User in relation to the Terminal User Dispute; and
 - (iii) the action on the part of MIRRAT which the Terminal User believes will resolve the Terminal User Dispute.
- (c) The Terminal User Dispute Notice can be sent to contactus@mirrat.com.au
- (d) By lodging a Terminal User Dispute Notice, the Terminal User agrees to comply with this Non-Price Related Dispute Resolution Process

3. NEGOTIATION

- (a) Within 7 days of the Terminal User providing MIRRAT a Terminal User Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with

a view to resolving the Terminal User Dispute expeditiously by joint discussion.

- (b) If the Terminal User Dispute is not resolved in accordance with clause 3(a) within 21 days of the Terminal User providing a Terminal User Dispute Notice to MIRRAT then:
 - (i) if both parties agree, they will attempt to resolve the Terminal User Dispute by mediation pursuant to clause 4; or
 - (ii) if one or both of the parties do not wish to resolve the Terminal User Dispute by mediation, either

party may within 7 days refer the Terminal User Dispute to Expert Determination or Arbitration in accordance with clause 4.4.

4 FORMAL MEDIATION

4.1 APPOINTMENT OF MEDIATOR

- (a) A Terminal User Dispute referred to formal mediation in accordance with clause 3(b)(i) will be mediated by a single mediator appointed by agreement between MIRRAT and the Terminal User.
- (b) The mediator appointed by MIRRAT and the Terminal User must have the qualifications and experience necessary to carry out the functions of the mediator independently of MIRRAT and must not be:
 - (i) an employee or officer of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
 - (ii) a professional adviser of MIRRAT or Its Related Bodies Corporate, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with MIRRAT or its Related Bodies Corporate (other than the terms of appointment of the mediator);
 - (iv) a Terminal User, supplier or material customer of MIRRAT or its Related Bodies Corporate; or

- (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.
- (c) If MIRRAT and the Terminal User fail to agree on the appointment of a mediator within 14 days of referral under clause 3(b)(i), the President of the Chapter of the Institute of Arbitrators and Mediators of Australia (IAMA) in the state of Victoria will select the mediator.
- (d) MIRRAT and the Terminal User will use all reasonable endeavors to ensure that:
 - (i) the mediation occurs within 28 days after a mediator has been appointed; and
 - (ii) the mediator is provided with all relevant information available to MIRRAT and the Terminal User and all reasonable assistance to enable the mediator to conduct the mediation.

4.2 INDEMNIFICATION OF THE MEDIATOR

MIRRAT and the Terminal User 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 MIRRAT and the Terminal User:

- (a) each of MIRRAT and the Terminal User 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 MIRRAT and the Terminal User;
- (c) MIRRAT and the Terminal User 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 Terminal User 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 days after:
 - (iii) the conclusion of the 21 day negotiation period for the Terminal User 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 Terminal User Dispute in accordance with clause 4.
- (b) Within 7 days of the issue of a Final Dispute Notice, MIRRAT and the Terminal User will agree on:
 - (i) which of expert determination or arbitration will be conducted to resolve the Terminal User Dispute; and
 - (ii) the identity of the expert or arbitrator to be appointed to conduct the expert determination or arbitration.
- (c) In the event that MIRRAT and the Terminal User cannot agree on either:
 - (i) which of expert determination or arbitration will be conducted to resolve the Terminal User Dispute; or
 - (ii) the identity of the person to conduct the expert determination or arbitration as the case may be, then the President of IAMA in the state of Victoria will determine those matters.
- (d) The expert or arbitrator appointed by MIRRAT and the Terminal User must have the qualifications and experience necessary to carry out the functions of the expert or arbitrator as applicable independently of MIRRAT and must not be:
 - (i) an employee or officer of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
 - (ii) a professional adviser of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with MIRRAT or its Related Bodies Corporate (other than the terms of appointment of the mediator);
 - (iv) a Terminal User, supplier or material customer of MIRRAT or its Related Bodies Corporate; or

- (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.

5 EXPERT DETERMINATION

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

- (a) MIRRAT and the Terminal User will use all reasonable endeavors to ensure that the expert provides the expert's determination on the Terminal User Dispute within 60 days of referral under clause 4.4(a).
- (b) The expert will decide the Terminal User Dispute as an expert not an arbitrator and the expert's decision will be final and binding on both MIRRAT and the Terminal User. MIRRAT must take all steps within its power to ensure that the expert's decision is fulfilled or otherwise given effect to, including by enforcing MIRRAT's contractual rights against third parties.
- (c) The cost of the expert determination will be shared equally between MIRRAT and the Terminal User, unless agreed otherwise.
- (d) MIRRAT and the Terminal User will use all reasonable endeavors to ensure that the expert is provided with:
 - (i) all relevant information available to MIRRAT and the Terminal User; and
 - (ii) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Terminal User Dispute within 60 days of referral under clause 4.4(a).
- (e) MIRRAT and the Terminal User 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) MIRRAT must send a copy of any determination made by the expert to PoM and the Approved Independent Auditor within 7 days of the determination being made.

6 ARBITRATION

- (a) If the Terminal User Dispute is referred to an arbitrator pursuant to clause 4.4(a), MIRRAT and the Terminal User may agree on the terms on which the arbitration will be conducted.

- (b) MIRRAT 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 MIRRAT's contractual rights against third parties.
- (c) If, within 14 days of the arbitrator being appointed, MIRRAT and the Terminal User 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 provisions of this Non-Price Related Dispute Resolution Process
- (d) The arbitrator will not be required to proceed with the arbitration unless and until the Terminal User has agreed to pay the arbitrator's and other costs as determined in accordance with clause 6(p) and provide any indemnity as required in accordance with clause 6(q).
- (e) Unless MIRRAT and the Terminal User agree otherwise, the arbitration will be conducted in private.
- (f) MIRRAT and the Terminal User may appoint a person, including a legally qualified person, to represent it or assist in the arbitration.
- (g) The arbitrator will present its determination in draft form to MIRRAT and the Terminal User and allow them the opportunity to comment before making a final determination
- (h) 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
- (i) Subject to clause 6(r) and unless MIRRAT and the Terminal User agree otherwise, any determination by the arbitrator will be confidential.
- (j) The arbitrator may at any time terminate an arbitration (without making a determination save for any determination under clause 6(p)) and the subject matter if the Dispute Notice shall be regarded as resolved, if he or she thinks that:
 - (i) the notification of the Terminal User Dispute is vexatious;

- (ii) the subject matter of the Terminal User Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the Terminal User has not engaged in negotiations in good faith.
- (k) In deciding a Terminal User Dispute, the arbitrator will have regard to the objectives of the Section 87B Undertaking and may have regard to any other matters that he or she thinks are relevant.
- (l) In deciding a Terminal User Dispute, the arbitrator must not:
- (i) without the consent of MIRRAT and the Terminal User, make a determination which relates to matters which were not specified in the Terminal User Dispute Notice ; or
 - (ii) without the consent of MIRRAT and the Terminal User, allow any other party to join or intervene in the arbitration.
- (m) 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.
- (n) Other than in circumstances where the determination or direction is the subject of review by a court of law, if a Terminal User does not comply with a determination or direction of the arbitrator, MIRRAT will not be obliged to continue to seek to resolve the matters subject of the Terminal User Dispute Notice.
- (o) Other than where the determination or direction is the subject of review by a court of law MIRRAT will comply with the lawful determination or direction of the arbitrator.
- (p) The arbitrator's costs and the costs of the parties to the arbitration will be borne by MIRRAT and the Terminal User in such proportions as the arbitrator determines. MIRRAT and the Terminal User may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.
- (q) Where the arbitrator requires it, MIRRAT and the Terminal User 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 willful or otherwise), dishonest or unlawful conduct.

- (r) 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.
- (s) MIRRAT must send a copy of any determination made by the arbitrator to PoM and the Approved Independent Auditor within 7 days of the determination being made.

7 GENERAL

Save the for the obligations of disclosure to PoM and the Approved Independent Auditor provided for in this Non-Price Related Dispute Resolution Process, the Terminal User Dispute and any terms of resolution are to be kept strictly confidential by MIRRAT and the Terminal User.

8 AMENDING THE NON-PRICE DISPUTE RESOLUTION PROCESS

From time to time MIRRAT may amend the Non-Price Dispute Resolution Process, including to the extent necessary to comply with a written direction from the Port Manager, provided that MIRRAT has obtained the prior written consent of the ACCC.

9 DEFINITIONS

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

Access Licence Agreement means an agreement between MIRRAT and a Licensee under which the Licensee is supplied the Access Services by MIRRAT.

Access Services means the right to use the Terminal to provide all or part of the Terminal Services, and any associated rights, benefits and privileges necessary or desirable to permit a Licensee to provide all or part of the Terminal Services.

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

Business Day means a day on which trading banks are open for the transition of general banking business in Melbourne,

other than a Saturday, Sunday or public holiday generally observed in Melbourne.

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

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

Licensee means any stevedore, mooring services provider, PDI Operator or any other user granted the right to provide part of the Terminal Services from time to time under an Access Licence Agreement with MIRRAT.

Mooring Services means the mooring and unmooring of vessels.

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

PDI Facility means a pre-delivery vehicle inspection services facility located within the integrated on-port pre-delivery inspection hub at Alpha Road, Webb Dock, Port of Melbourne, Victoria.

PDI Operator Services means the movement of units between the Terminal and a PDI Facility.

PoM means the Port of Melbourne Corporation.

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

Section 87B Undertaking means the undertaking by MIRRAT 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 MIRRAT's operation of the Terminal.

Stevedoring Services means the loading and unloading of vessels at the Terminal.

Terminal Services means:

- (a) Mooring Services, PDI Operator Services and Stevedoring Services; and
- (b) any other services of a kind offered by MIRRAT to its Related Bodies Corporate or third parties, including shipping lines, importers and exporters.

Terminal User means:

- (a) any 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 under an Access Licence Agreement with MIRRAT.

Terminal User Dispute means a bona fide commercial dispute raised by a Terminal User associated with the provision of Terminal Services by MIRRAT as they relate to

Terminal Users, including the terms and conditions of use of Terminal Services or the quality of Terminal Services but excludes any dispute in relation to the price of any Terminal.