

## 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 Price Related Dispute Resolution Process is intended to resolve disputes between MIRRAT and Terminal User relating to the prices charged by MIRRAT for the supply of Terminal Services. Non-price related disputes between MIRRAT and Terminal User 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 Price Related Dispute Resolution Process.

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### 1 OBJECTIVE

- (a) MIRRAT publishes Reference Tariffs for the Terminal on its website.
- (b) MIRRAT is committed to setting Reference Tariffs at levels which are reasonable and appropriate, taking into account the relevant considerations in clause 3.4.
- (c) 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.

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### 2 ANNUAL PRICE REVIEW

#### 2.1 REVIEW OF REFERENCE TARIFFS

MIRRAT will conduct an annual review of its Reference Tariffs and may propose a price increase which it considers reasonable and appropriate, taking into account the relevant considerations in clause 3.4.

#### 2.2 NOTICE OF PRICE INCREASE

At least 60 days before the end of each Financial Year, MIRRAT will provide notice of the proposed Reference Tariffs applicable for the next Financial Year by:

- (a) giving written notice to any person who has entered into an Access Licence Agreement;
- (b) publishing the proposed Reference Tariffs and information about this Price Related Dispute Resolution Process (including that a Price Dispute can be raised up until 45 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 Reference Tariff;
- (b) the date on which the proposed Reference Tariff will take effect;

- (c) detailed reasons for any proposed price increase;
- (d) information about this Price Related Dispute Resolution Process (including that a Price Dispute

#### 2.4 OFFER TO NEGOTIATE

MIRRAT will offer to negotiate with any Terminal User 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:

- (a) has been approved or determined by the Independent Price Expert pursuant to clause 3.3; or
- (b) has been approved by PoM and will take effect no later than 1 year after the Commencement Date of the Section 87B Undertaking.

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### 3 PRICE DISPUTE

#### 3.1 RAISING A PRICE DISPUTE

- (a) A Terminal User who objects to a proposed price increase may raise a Price Dispute by providing written notice to the Independent Price Expert and MIRRAT ([contactus@mirrat.com.au](mailto:contactus@mirrat.com.au)) no later than 45 days before the end of the Financial Year (Objection Notice).
- (b) An Objection Notice must set out the Terminal User's reasons for objecting to the proposed price increase.
- (c) By submitting an Objection Notice, the Terminal User agrees to comply with this Price Related Dispute Resolution Process.
- (d) A Terminal User may at any time withdraw an Objection Notice by written notice to MIRRAT 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

MIRRAT 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 MIRRAT's proposed price increase is reasonable and appropriate having regard to the principles listed in clause 3.4; and
  - (ii) may accept, reject or vary MIRRAT's proposed price increase
- (b) Any variation of a price increase by the Independent Price Expert under clause 3.3(a)(ii) will not result in a Reference Tariff that is:
  - (i) higher than the Reference Tariff proposed by MIRRAT under clause 2.2; or
  - (ii) less than the then current Reference Tariff.
- (c) The Independent Price Expert will make his or her determination within:
  - (i) the 60-day period referred to in clause 2.2; or
  - (ii) such further period, not being more than 20 days, as the Independent Price Expert in his or her sole discretion requires.
- (d) MIRRAT and the Terminal User 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 a proposed price increase, the Independent Price Expert will only make a single determination about those Reference Tariffs 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 Reference Tariff is reasonable and justified, the Independent Price Expert will have regard to the following principles:

- (a) that Reference Tariffs should:
  - (i) be set so as to generate expected revenue for Terminal Services that is at least sufficient to meet the efficient costs of providing the Terminal Services; and
  - (ii) include a return on investment commensurate with the commercial risks involved;
- (b) that Reference Tariffs should be set taking into account:
  - (i) Terminal lease costs and all efficient input costs;
  - (ii) an appropriate allocation of MIRRAT's relevant overhead costs;
  - (iii) expected volumes over the period MIRRAT has used to calculate the proposed price increase;
  - (iv) depreciation of, and a return on, the prudent level of capital invested by MIRRAT at the Terminal, where:
    - (A) depreciation is based on straight line methodology (or a reasonable alternative methodology) and reasonably anticipated asset lives; and
    - (B) the rate of return is based on MIRRAT's weighted average cost of capital;
  - (v) the interests of all users of the Terminal Services for which the proposed Reference Tariff relates; and
  - (vi) the reasonableness and appropriateness of, and justification for, the existing Reference Tariffs for the supply of the Terminal Services.
- (c) The structure of Reference Tariffs may allow multipart 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
  - (ii) 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) MIRRAT; 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 days of receiving the determination, MIRRAT must:
  - (i) publish the Independent Price Expert's determination on MIRRAT'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 MIRRAT and the Terminal User, unless the Independent Expert determines, or the parties agree otherwise.
- (d) MIRRAT and the Terminal User 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 MIRRAT notified under clause 2.2(a) that the proposed price increase would take effect.
- (b) 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 MIRRAT notified under clause 2.2(a) that the proposed price increase would take effect.

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## 5 AMENDING THE PRICE DISPUTE RESOLUTION PROCESS

From time to time MIRRAT may amend the 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.

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## 6 DEFINITIONS

In this 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

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

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

**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 License Agreement with MIRRAT.

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

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

**Open Access Conditions** means the conditions set out in Schedule I 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.

**Price Dispute** means a bona fide commercial dispute raised by a Terminal User about the proposed increase to a Reference Tariff which relates to that Terminal User.

**Reference Tariffs** means the fees or charges payable by a Licensee to the MIRRAT for the Access Services which must (at a minimum) be separated into discrete fees and charges payable for each category of Terminal Services (or any material part thereof).

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

**Section 87B Undertaking** means the undertaking given 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



**MIR RAT**

- (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 MIR RAT.