

## 1. Standard CTAA

The below table outlines the key issues identified in the Standard CTAA. Capitalised words have the same meaning as given in the Standard CTAA.

NO. #	CTAA CLAUSE REFERENCE	ISSUE	PROPOSED SUBMISSION
1	<b>Cl 1.1 (Default Rate)</b>	<b>Default rate</b>	<p>KML considers that the Default Interest Rate under the Standard CTAA—currently set at the RBA Cash Rate plus 5%—does not align with prevailing market practice. Accordingly, KML proposes that the rate be reduced to a more commercially appropriate level.</p> <p>To support this adjustment, KML recommends incorporating explicit benchmarking against current market standards to promote transparency and ensure the rate remains reasonable over time.</p> <p>In addition, to mitigate the risk of disproportionate interest accruals—particularly in the event of protracted disputes not caused by KML—KML suggests the inclusion of an interest cap mechanism.</p>
2	<b>Cl 1.1 (Force Majeure)</b>	<b>Force Majeure</b>	<p>KML considers that the definition of Force Majeure (<b>FM</b>) unnecessarily favours Arc and proposes that the FM definition should be reciprocal to both parties. In particular, as set out below, paragraphs (g), (i) and (k) of the definition of FM include restrictions on a Customer’s right to claim FM but include no equivalent restriction on Arc:</p> <ul style="list-style-type: none"> <li>• paragraph (g) allows Arc to claim FM for any Industrial Action; however the Customer is only permitted to claim FM for industrial action if the Industrial Action applies to the logistics industry and is on a national and statewide basis, and not company specific. KML proposes that all Industrial Action should entitle the Customer to claim FM;</li> <li>• in paragraph (i), the Customer is restricted from claiming FM for a breakdown of plant, equipment or infrastructure (except for storm or war etc.), however no equivalent restriction is placed on Arc. KML proposes that Arc should also be prevented from claiming FM with respect to a breakdown of plant, equipment or infrastructure (and specifically a breakdown of the rail network) unless that breakdown has been caused by another FM event; and</li> <li>• under paragraph (k), the Customer is not permitted to claim FM for any act or omission of its personnel, however no such exclusion exists for Arc. KML proposes that Arc should also not be permitted to claim FM for any act or omission of its personnel.</li> </ul> <p>KML does not see any reason for the difference between the rights of Arc and the rights of the Customer in respect of FM. KML submits that the paragraphs identified above should be amended such that they apply equally to both parties.</p> <p>KML also considers Force Majeure should not apply to foreseeable maintenance or events Arc could have mitigated through reasonable diligence or redundancy planning (e.g. single point of failure on critical routes). This helps ensure Arc remains accountable for proper network management.</p>

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3	CI 1.1 (Insolvency Event)	Insolvency	<p>Under the Standard CTAA an ‘Insolvency Event’ will arise where, amongst other circumstances, a party has a judgement against it in excess of \$1,000,000 which is not set aside or satisfied within 20 Business Days. If an Insolvency Event occurs to a party, the other party may terminate the CTAA immediately.</p> <p>As a preliminary point, there is a real question as to whether Arc should be afforded such contractual rights given that they are potentially unenforceable in light of section 415D, 434J and 451E of the <i>Corporations Act 2001</i> (Cth), which prevent counterparties to a contract from enforcing rights that arise merely because the other party is subject to certain insolvency events.</p> <p>Even if Arc is to be afforded such rights, KML considers the Standard CTAA threshold is too low and does not reflect market standard or the nature of the industries in which customers are operating. In particular, this threshold reduces a Customer’s ability to manage its response to judgements of this nature on its own terms without being exposed to the threat of termination.</p> <p>As such, KML submits that the threshold referred to in paragraph (a) of the definition of Insolvency Event should either be removed or, if they are retained, increased to [\$10,000,000] to reflect the market standard and avoid unnecessary terminations.</p> <div data-bbox="703 820 2033 951" style="background-color: black; height: 82px; width: 100%;"></div> <p>KML proposes a further protective carve-out where even if a judgment exceeds the threshold, Arc should not be able to terminate where a judgement is under appeal or covered by insurance. This avoids premature termination for disputes that are still being contested in court or covered financially (there is no real financial risk to Arc if the amount is insured.)</p>
4	CI 1.5	Rail Access Code	<p>Arc has full control over whether and how regulatory changes are pursued whilst KML has no ability to initiate changes. If regulations increase Arc’s costs, KML may have to pay bear the cost—even if it does not benefit in any way. Even if the new access provisions substantially harm KML’s commercial interests, there’s no termination right or automatic renegotiation process—only a “good faith” negotiation.</p> <p>KML proposes a mutual adjustment mechanism, not just one that protects Arc’s cost recovery (please refer to remarks under Material Change).</p>

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5	CI 4.3	<b>Permitted changes to Operational Track Access Agreement</b>	<p>KML further proposes a customer opt-out or renegotiation trigger if new access provisions materially reduce service or increase cost without offsetting benefit.</p> <p>It should be clear in the agreement that only direct, unavoidable costs can be passed on—not incidental or indirect impacts.</p> <p>Arc should be required to consult KML before initiating or rejecting any regulatory change proposal that may affect shared routes.</p> <hr/> <p>This clause permits Arc to unilaterally implement changes under the Operational Track Access Agreement (OTAA), notwithstanding that KML, as Customer, is not a party to the OTAA. This arrangement creates a material risk that operational variations made under the OTAA—without KML’s knowledge or consent—may adversely impact KML’s access entitlements, scheduling certainty, or service continuity under the CTAA.</p> <p>KML considers the absence of any notice, consultation, or approval rights for the Customer to be commercially unsatisfactory, particularly given the direct operational consequences such changes may have on KML’s business and export commitments.</p> <p>To mitigate this risk and ensure a more balanced allocation of operational control, KML proposes the following amendments to the CTAA:</p> <ol style="list-style-type: none"> <li>Customer Notification and Consultation Requirement: Arc should be contractually required to provide advance written notice to the Customer of any proposed unilateral change under the OTAA that may materially affect train path availability, scheduling, service levels, or any other aspect of performance under the CTAA. Such notification should be accompanied by reasonable consultation with the Customer regarding the nature and expected impact of the change.</li> <li>Materiality Threshold: Arc’s unilateral variation rights under the OTAA should be expressly limited to changes that do not materially impair the Operator’s ability to meet its obligations to the Customer. Any change with the potential to degrade service quality, reliability, or access availability should be subject to prior agreement with the Customer or a negotiated resolution process.</li> <li>Dispute Resolution Rights:</li> </ol>

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			<p>KML should be expressly entitled to refer any unilateral change under the OTAA that materially disrupts its operations to dispute resolution under the CTAA. This mechanism is necessary to preserve the Customer’s commercial interests and ensure that Arc cannot, through changes to a separate agreement, unilaterally circumvent the operational and service obligations it owes to the Customer.</p>
6	Cl 4.5 (a) & (b)	<b>Replacement OTAA</b>	<p>The phrase 'as soon as practicable' lacks a defined timeframe, which may lead to interpretation disputes regarding the required notification period. This comment should be applied to the whole contract.</p>
7	<b>Cl 8.1</b>	<b>Change of Train Path</b>	<p>Under the Standard CTAA, Arc has expressly excluded the right of a Customer to make a Claim against Arc in respect of a temporary change to a train path. As ‘temporary’ is not defined, it is possible that a Customer will be without the use of preferred routes for an extended period of time with no recourse against Arc for the increase in costs.</p> <p>Given the potential cost exposure from the actions of Arc, KML considers that the express exclusion of liability afforded to Arc should be removed such that where a Customer is entitled to Claim against Arc for a change in train path it can do so. Alternatively, the exclusion of liability should only apply where there the temporary change causes no detriment to the Customer.</p> <p>KML recommends the inclusion of a maximum cumulative period during which train path variations may be treated as “temporary” under Clause 8.1. Beyond this threshold, any continued deviation from the originally scheduled path should entitle the Customer to compensation for demonstrable losses incurred as a result of the disruption.</p> <p>This amendment is necessary to provide commercial certainty and protect the integrity of KML’s time-sensitive export obligations. The current clause permits open-ended variation without financial consequence or recourse, which is not appropriate for long-term bulk haulage operations dependent on stable logistics windows. The absence of a defined limitation period creates material risk for supply chain reliability and contract performance.</p>
8	<b>Cl 8.2 (e)</b>	<b>Permanent variations to Train Paths</b>	<p>If the customer cannot refuse such changes under these circumstances, who shall bear the additional costs incurred by these changes? The Agreement only stipulates the resolution method for variation agreements under clause (c) but provides no further clarification regarding clause (e).</p>
9	<b>Cl 8.3(c)</b>	<b>Repairs, maintenance and upgrading of the Network and</b>	<p>The phrase 'as soon as practicable' lacks a defined timeframe (e.g., 'within 1 hour after becoming aware of the occurrence'), which may cause operational losses to KML given the potential impact of such events. This comment should be applied to the whole contract.</p>

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<b>temporary variation to Train Paths</b>			
10	<b>Cl 8.6(b)</b>	<b>Customer or Operator Cancellation of Services</b>	The current clause does not establish KML's priority rights. ARC may freely reallocate vacated paths, which may affect KML's operational interests. It is recommended to specify KML's first-priority reclaim rights for paths, and any third-party usage shall not interfere with KML's scheduled operations.
11	<b>Cl 8.7</b>	<b>Fixed Charges</b>	<p>KML has concerns regarding the requirement for the Customer to continue to pay all fixed charges in respect of a train path regardless of the reason for the cancellation, including cancellations by Arc due to no fault of the Customer or the Operator's.</p> <p>KML considers that it is unreasonable to require a Customer to continue to pay a fixed charge for a service it is not receiving, especially in circumstances where the train path has been cancelled due to an act or omission of Arc.</p> <p>Additionally, in circumstances involving natural disasters or other Force Majeure events not attributable to either party, KML proposes a cause-neutral risk allocation framework under which:</p> <ul style="list-style-type: none"> <li>• The parties share the burden of economic loss;</li> <li>• Each party assumes responsibility for its own</li> </ul> <p>mitigation measures (e.g. rescheduling, alternative routes, standby costs); and</p> <ul style="list-style-type: none"> <li>• Access pricing is adjusted accordingly to reflect</li> </ul> <p>actual service availability.</p> <p>This approach promotes equitable risk sharing and aligns with the principles of economic efficiency and good faith performance under long-term infrastructure access agreements.</p>
12	<b>Cl 9</b>	<b>Insurance</b>	<p>Under the Standard CTAA, the Customer is required to procure and maintain extensive insurance policies, including a requirement to obtain public liability insurance for \$250,000,000. While noting that this coverage mirrors the requirements of Arc and the Operator under the Standard OTAA, KML considers that such insurance requirements on a Customer are unnecessary given the nature of the Customer's obligations under the Standard CTAA.</p> <p>In particular, KML considers that as a Customer's personnel have a limited role to play in the physical operations being undertaken, it is unlikely that a Customer or its personnel will be exposed to, or expose Arc or the Operator, to significant liability which would warrant</p>

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			<p>this protection. KML therefore considers that the insurance requirements within the Standard CTAA are not required and will, if imposed, result in considerable additional costs to Customers for limited benefit to any party. Instead, Customers should only be required to obtain those insurances required by law.</p>
13	CI 10.4(a) (b)	<b>Force Majeure and obligations to pay</b>	<p>The current clause unreasonably requires continued payment obligations (including Fixed Charges) even during Force Majeure events, which disproportionately disadvantages KML.</p> <p>Given that losses from Force Majeure are typically covered by insurance or government compensation programs, KML should be exempt from such payment requirements during affected periods.</p>
14	CI 11	<b>Termination</b>	<p>Under the Standard CTAA, a customer has 10 Business Days to remedy a material breach of its obligations before Arc is entitled to terminate. However, where Arc breaches a material obligation, Arc has 2 months to remedy the breach before the Customer would be entitled to terminate.</p> <p>KML considers that this discrepancy is not reasonable and puts the Customer at a considerable disadvantage to Arc and provides insufficient time for the Customer to remedy a material breach.</p> <p>To avoid the hair trigger termination rights which arise under the current structure, KML submits that a longer remedy period should be provided to the Customer (eg 20 Business Days), or alternatively the inclusion a regime under which the Customer may receive an extension of time where it can reasonably demonstrate that progress is being made.</p>
15	CI 11	<b>Suspension or Termination</b>	<p>The agreement does not afford the Customer an express right to terminate or suspend its obligations in the event of a prolonged Force Majeure event. By contrast, Arc is conferred broad rights of suspension (clause 11.3) and termination (clause 11.1), including in circumstances that may arise from disruption to the Network or Operator performance, regardless of cause.</p> <p>Under clause 10.4, the Customer remains liable for the payment of all Charges, including Fixed Charges, even where performance of its obligations is materially hindered by Force Majeure. This position is particularly inequitable in circumstances where the Customer is unable to access or utilise the Network yet is required to continue paying for undelivered access. Clause 11 fails to provide the Customer with any corresponding suspension or termination right, leading to a one-sided risk allocation.</p> <p>This framework exposes the Customer to a commercial impasse: it must continue performing its financial obligations during periods of sustained operational interruption without any right to exit or temporarily suspend the agreement, while Arc is free to exercise termination and suspension rights on broader and more favourable terms.</p> <p>KML recommends the following amendments:</p>

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			<p>1. Customer Termination Right for Prolonged Force Majeure:</p> <p>Introduce a right for the Customer to terminate the agreement without penalty where a Force Majeure affecting Arc or the Network persists for more than 90 consecutive days. This provides a necessary commercial exit mechanism in the face of sustained non-performance through no fault of the Customer.</p> <p>2. Suspension of Payment Obligations:</p> <p>Amend clause 10 to allow for the suspension of Fixed Charges and other recurring fees where Force Majeure materially prevent the Customer or its Operator from accessing and using the train paths. Payment obligations should be restored only upon resumption of services.</p>
16	Cl 12.1 and Cl 13.6	Indemnity	<p>Under the Standard CTAA, the Customer is required to indemnify Arc for all claims in respect of death, injury or destruction of property which are caused by:</p> <ul style="list-style-type: none"> <li>• a breach of the Standard CTAA, or the negligence or Wilful Misconduct of KML (or its personnel); and</li> <li>• a breach of the Standard OTAA, or the negligence or Wilful Misconduct of the Operator (or its personnel).</li> </ul> <p>Additionally, in clause 13.6, the Customer is also required to indemnify Arc in respect of claims under, or in connection with, the Standard OTAA in excess of the liability that Arc would have to the Customer if the Customer were the Operator.</p> <p>As a result, the Customer is liable to indemnify Arc for the actions of the Operator which has the potential to expose the Customer to significant liability given the potential for damage under the OTAA.</p> <p>Whilst there is the potential for the Customer to manage this exposure under the RHA with the Operator, KML does not consider that requiring the Customer to indemnify Arc for the actions of the Operator is appropriate or necessary in circumstances where Arc will have a direct contractual relationship with the Operator pursuant to the Standard OTAA. KML notes that under the Standard OTAA, the Operator indemnifies Arc for equivalent liabilities and therefore Arc is already protected for these losses. Arc should instead rely on these provisions under the Standard OTAA rather than seeking to claim losses caused by the Operator from the customer under the CTAA.</p> <p>Arc's direct contractual relationship with the Operator under the Standard OTAA includes an express and comprehensive indemnity from the Operator in respect of death, personal injury, property damage, and breach of agreement. This arrangement should be sufficient to address Arc's legitimate risk exposure. Requiring the Customer to mirror the indemnity in the CTAA, results in duplicative liability protection for Arc and creates a disproportionate risk allocation to the Customer.</p>

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17	CI 13.5 (d)	<b>Claims in respect of non-provision of access and delays</b>	During Force Majeure Events, KML cannot claim against Arc for any losses incurred, yet remains obligated to pay fixed charges. This creates an imbalance in contractual obligations between the parties.
18	CI 15	<b>Security</b>	<p>Arc has discretion to request Security (in the form of a bank guarantee) from the Customer at any time throughout the term of the agreement for any reason (including prior to the commencement of the Standard CTAA). When requested during the term, the Customer is required to provide this Security within 5 Business Days.</p> <p>Given the additional costs of having to obtain a bank guarantee on short notice, KML submits that Arc's rights to request security should be limited to certain circumstances, for example where the Customer has multiple missed payments.</p> <p>Additionally, KML considers that 5 Business Days is insufficient time to obtain the required bank guarantee, and this should instead be extended to 10 Business Days to better reflect the market practice.</p> <p>The clause should establish a reasonable cap on the Security amount to prevent Arc from demanding excessive or unreasonable Security.</p> <p>KML recommends limiting the circumstances in which Arc may call for security to objectively determinable events such as payment default and repeated late payments. A minimum of 10 business days should be allowed for compliance to ensure fairness.</p> <p>There should also be a limit to the Security amount, disallowing discretionary increases.</p>
19	<b>Item 2 of Schedule 3</b>	<b>Change in Law</b>	<p>If there has been a Material Change, the parties must meet and negotiate in good faith to amend the Standard CTAA to alleviate in full any negative financial impact on Arc. Under this regime, the Customer is required to bear the costs of a Material Change.</p> <p>In broad terms, a Material Change includes:</p> <ul style="list-style-type: none"> <li>• changes to laws (see paragraphs (a) to (c) of the definition of Change in Law);</li> <li>• changes to Arc's permits and authorisations (see paragraphs (d) to (g) of the definition of Change in Law); and</li> <li>• changes to taxes that apply to Arc other than income tax, fringe benefits tax and capital gains tax (see the definition of Change in Relevant Tax).</li> </ul> <p>It is not unusual for customers to bear the cost of any changes to laws that may impact a rail network operator's financial position with respect to its obligations under the Standard CTAA. However, it is unusual and unreasonable for such a regime to extent to changes in Arc's permits and authorisations and changes in Arc's tax position, the risks associated with which should be managed by Arc. KML submits</p>



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			<p>that a Material Change should not include changes to Arc’s permits and authorisations and should not include changes to taxes that may apply to Arc.</p> <p>If the concept of a ‘Change in Relevant Tax’ is intended to capture specific taxes or duties (such as changes to Australia’s carbon tax regime), then the regime should be drafted so as to apply specifically to those circumstances rather than to ‘<i>any tax, charge, levy, duty, impost, rate, royalty, or imposition</i>’ other than income tax, fringe benefit tax and capital gains tax.</p> <p>Further, KML also submits that amendment is required in Item 2 of Schedule 3 to clarify that the parties are only required to remove the Net Financial Effect of a Material Change <i>to the extent that the Net Financial Effect arises as a direct result of that Material Change</i>. In other words, Arc is not permitted to pass on incidental or peripheral costs that are associated with the Material Change.</p> <p>Arc cannot recover costs unless there is a direct and unavoidable financial impact arising solely from changes in external law. Cost-sharing should only apply where both parties benefit.</p> <p>Cost pass-through must be mutual: if changes reduce Arc’s costs, pricing should be adjusted downwards too.</p> <p>Arc should provide a detailed breakdown of impact and rationale before any price renegotiation.</p> <p>Disputes with respect to Material Change must be resolved through the formal dispute resolution procedure.</p>

## 2. Standard OTAA

The below table outlines the key issues identified in the Standard OTAA. Capitalised words have the same meaning as given in the Standard OTAA.

NO.	OTAA CLAUSE REFERENCE	ISSUE	PROPOSED SUBMISSION
1	<b>CI 1.1 (Force Majeure)</b>	<b>Force Majeure</b>	The FM definition is the same as under the Standard CTAA. As such, the same issues arise in respect of FM as identified above.
2	<b>CI 1.1 (Insolvency Event)</b>	<b>Insolvency Event</b>	The Insolvency Event definition is the same as under the Standard CTAA. As such, the same issues arise in respect of an Insolvency Event as identified above.
3	<b>CI 1.1 (Default Rate)</b>	<b>Default Rate</b>	KML's remarks are as provided under Item 2 of the CTAA table above
4	<b>CI 1.4</b>	<b>Rail Access Code</b>	KML's remarks are as provided under Item 11 of the CTAA table above
5	<b>CI 3.11</b>	<b>Parking</b>	<p>KML considers that the requirement to pay the Parking Charge after 15 minutes does not reflect the standard conditions usually placed on parking, which allow an Operator to park for a considerably longer period before being required to pay the Parking Charge.</p> <p>KML submits that the requirement to pay the Parking Charge should only arise after parking for [12 hours]. Alternatively, KML considers that if the 15-minute period is retained, the Parking Charge should be set relatively low to reflect the change from standard conditions.</p>
6	<b>CI 9</b>	<b>Variations or cancellations of Train Paths</b>	KML's remarks are as provided under the CTAA table above.
7	<b>CI 9.7</b>	<b>Fixed Charges</b>	The requirement to pay the Fixed Charges is the same as identified under the Standard CTAA. As such, see comments in respect of Fixed Charges above.

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8	CI 10	Audit	<p>KML notes that where the Operator instigates an audit under the Standard CTAA, the Operator is expressly liable for all losses incurred as a result of delayed or cancelled trains arising from an audit, unless the Operator’s audit showed that Arc was in material breach of its obligations. However, where an audit is undertaken by Arc without reasonable grounds, Arc is not expressly liable for any damage which arises as a result of the audit.</p> <p>As a result, there is no disincentive to Arc commencing an audit against the Operator but a potentially high cost of the Operator instigating an audit against Arc.</p> <p>KML considers that there is no reason for the audit regimes to not be reciprocal, and therefore submits that the Operator is able to claim against Arc where an audit has been undertaken without reasonable grounds.</p>
9	CI 17	Termination	<p>The issues arising with termination rights are the same as identified under the Standard CTAA. As such, see comments in respect of Termination above.</p>
10	CI 17	Suspension or Termination	<p>KML’s remarks are as provided under Item 15 of the CTAA table above</p>
11	Item 2 of Schedule 3	Material Change	<p>The issues arising in respect of a Material Change are the same as identified under the Standard CTAA. As such, see comments in respect of Material Change above.</p>