



Bearing 360 Limited
Terms and Conditions
November 2019

1. Application

- 1.1 These terms and conditions (**terms**) apply to services provided by Bearing360 Limited (**Bearing360**) to the customer and any other dealings between Bearing360 and the customer.
- 1.2 By accepting Bearing360's quotation, or by otherwise instructing Bearing360 to provide services, the customer agrees to be bound by these terms. These terms shall otherwise apply when Bearing360 agrees in writing to provide services to the customer.
- 1.3 The contract between Bearing360 and the customer comprises Bearing360's quotation (or if there is no quotation, any other document or correspondence in which Bearing360 sets out the basis upon which it will provide services to the customer) and these terms.
- 1.4 These terms supersede and prevail over any terms and conditions in any document issued by the customer purporting to have contractual effect.
- 1.5 These terms supersede and prevail over any representations made by any of Bearing360's agents or representatives.
- 1.6 These terms shall also benefit, and be enforceable, by any contractor, sub-contractor, or agent of Bearing360.
- 1.7 Bearing360 may, in its discretion, refuse to provide services to the customer, or, suspend services, or only accept goods for carriage or handling under special conditions.
- 1.8 Bearing360 may vary these terms from time to time without notice. The terms applicable shall be those current at the time of: (i) acceptance of Bearing360's quotation; or (ii) instruction to Bearing360 to provide services; or (iii) Bearing360's agreement to provide services.

2. Definitions

- 2.1 In these Terms:
 - (a) **Bearing360** means Bearing360 Limited, its employees, officers, agents and subsidiary or related companies.
 - (b) **Carriage** means the transportation of goods from the place of receipt to the place of delivery or any part (including by any combined means of transport, if carriage is not a port to port shipment).

- (c) **Carrier** means any person contracted by Bearing360 on behalf of the customer, or sub-contracted by Bearing360, to undertake any part of the carriage, or if clause 4.4 applies, Bearing360.
- (d) **Charges** includes freight, deadfreight, demurrage, detention, bunker adjustment costs, agency or booking or management fees levied by Bearing360, and any cost or expenses incurred by Bearing360 in the performance of the services.
- (e) **Container** means any container, trailer, transportable tank, flat rack or similar item used to consolidate goods.
- (f) **Contractor** includes a carrier or any person carrying or handling the goods for the customer under a contract arranged by, or with the authority of Bearing360, as agent for the customer.
- (g) **Customer** means the person instructing Bearing360 to provide services, and may include the shipper, consignee, receiver, or their agents or representatives.
- (h) **Dangerous goods** includes noxious goods, explosives, poisons, corrosive, inflammable or radioactive substances, compressed gases, acids, pests, any other goods, liquids, materials or substances that in the opinion of Bearing360 could cause damage to goods or property or injury to persons, unlawful or illegal goods, or goods that harbour or may harbour any pests, vermin or unwanted organisms.
- (i) **Goods** means goods or cargo accepted by, or which are the subject of instructions issued to, Bearing360 from or on behalf of the customer, and includes any container not supplied by or on behalf of Bearing360.
- (j) **Handling** includes any receipt, packing, stuffing, storing, loading, unloading or delivery and any other incidental services, relating to the goods.
- (k) **Services** means any operations and services, including any incidental services, performed by Bearing360 for the procurement or arrangement of handling and carriage of goods from the place of receipt to the place of delivery.
- (l) **Sub-contractor** includes any person contracted by Bearing360 to perform the services.

3. Customer Obligations

3.1 The customer warrants that:

- (a) It is the owner of the goods, or, is the authorised agent of the owner of the goods or of those persons entitled to or having an interest in the goods (whether now or later).
- (b) It is authorised to accept and is accepting these terms (including where applicable, as agent for and on behalf of the owner of the goods or those persons having an interest in the goods (whether now or later)).
- (c) All goods have been properly and sufficiently packed and prepared to withstand the ordinary risks of handling and carriage having regard to their nature and destination.

- (d) Any containers or other objects in or on which the goods are stored, packaged or contained conform with any requirements of the consignee, the receiver of the goods, or any relevant person or authority, or any applicable laws or regulations.
- (e) All marks, weights, numbers, brands, contents, descriptions, values and other particulars provided to Bearing360 relating to the goods are correct.
- (f) It will provide written directions to Bearing360 for the proper care of any goods with special requirements (including dangerous, refrigerated, perishable or high value goods).
- (g) It has complied with all applicable laws and regulations of any country to, from, through or over which the goods may be carried relating to the nature, packaging, labelling, handling or carriage of the goods.
- (h) It will provide adequate written delivery instructions to Bearing360 to enable effective delivery of the goods.

3.2 The customer:

- (a) Authorises Bearing360, as its agent, to enter into contracts for the handling and / or carriage of goods with any contractor, and agrees to ratify such contracts. Subject to clause 4.4, the customer agrees that any such contracts will bind the customer as principal.
- (b) Authorises Bearing360 to take any actions that Bearing360 in its absolute discretion considers are necessary, or in the customer's interests, for the performance of the services, including to enter into or vary contracts on behalf of the customer, and agrees to ratify such contracts or variations.

3.3 Without prejudice to any other rights Bearing360 may have under contract or in law, the customer shall, on demand, indemnify and hold harmless Bearing360 and its contractors or sub-contractors against all claims, losses, costs and expenses, penalties and fines, or any other liability whatsoever, arising in consequence of a breach of any warranty, representation, or obligations set out in clauses 3.1, 3.2 or 4.9.

3.4 The customer shall indemnify Bearing360 for any fees, costs, expenses, fines or penalties incurred by Bearing360 and its sub-contractors arising out of or in respect of the performance of the services, including any contracts entered into on the customer's behalf.

3.5 The customer shall indemnify Bearing360 against any claims (whether resulting from the negligence of Bearing360 or otherwise) brought by any person in connection with Bearing360's performance of the services, including Bearing360's costs of defending such claims, and any liability incurred by Bearing360 in respect of such claims,.

4. **Services**

4.1 Except where clause 4.4 applies, or as otherwise stated, Bearing360 or its sub-contractors provide the services as an agent only and do not make any contract for the handling or carriage of goods with the customer.

- 4.2 Where Bearing360 arranges a contract with a contractor it does so as an agent only, for and on behalf of the customer. Any such contract shall be a contract between the customer and the contractor, unless otherwise stated.
- 4.3 Bearing360 shall be entitled to sub-contract on any terms part or all of the services, or any incidental services.
- 4.4 Bearing360 may, in its discretion, issue a bill of lading, or other transport document, in which it is described as the carrier. In that case, in the event of any inconsistency with these terms, the terms and conditions of that document (including all rights, limitations and exclusions of liability) shall prevail.
- 4.5 If the place of receipt and / or the place of delivery of the goods is inland, and not the port of loading or the port of discharge, at the customer's request Bearing360 will procure and arrange transportation of the goods to or from the port.
- 4.6 Bearing360 and its contractors and sub-contractors may, in performance of the services, and handling and carriage, at any time and without notice to the customer:
- (a) Use any means of transport or storage in any reasonable manner and by any reasonable means, methods and routes, including but not limited to: inland carriage by truck, rail and/or air, carriage on any vessel and trans-shipment;
 - (b) Unpack and remove goods which have been stuffed in or on a container and forward them in any manner whatsoever;
 - (c) Proceed at any speed and by any route in their discretion (whether or not the nearest, direct, customary, advertised, or published route);
 - (d) Load or unload the goods at any place (whether or not the place is the intended place of receipt, port of loading, port of discharge or place of delivery); and
 - (e) Comply with any orders or recommendations given by any government, authority, or any person or body acting or purporting to act as or on behalf of such government or authority.
- 4.7 Without prior notification and written agreement, Bearing360 will not accept or deal with goods with special requirements, including:
- (a) Dangerous goods;
 - (b) Goods which can only be carried or handled with a permit or licence;
 - (c) Any perishable goods or goods which require special handling or packaging; or
 - (d) Valuables of any kind.
- 4.8 If without prior notification and written agreement the customer delivers any goods referred to in paragraph 4.7 to Bearing360, or causes Bearing360 to handle or carry such goods, or to arrange for the goods to be handled or carried by any contractor or subcontractor:
- (a) Neither Bearing360 nor any such contractor or subcontractor shall be liable for any loss or damage whatsoever arising out of its dealings with the goods;
 - (b) The customer shall be liable for all loss or damage whatsoever caused by, to or in connection with the goods, however arising;

- (c) The customer shall indemnify and hold harmless Bearing360, the contractors, subcontractors and their respective servants, and agents against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and
 - (d) In the case of goods referred to in paragraph 4.7(a), (b), and (c), the goods may be destroyed or otherwise dealt with at the sole discretion of Bearing360, the contractor, subcontractor or any other person in whose custody they may be, at the expense of the customer, without Bearing360, the contractor, subcontractor or such person being responsible or accountable in any way.
- 4.9 If Bearing360 agrees to arrange the carriage or handling of goods described in clause 4.8 the customer shall provide all directions, documents and information relating to the goods (including any relevant permits) necessary to enable Bearing360, or its contractors of sub-contractors to:
- (a) comply with any applicable laws and regulations; and
 - (b) arrange for the goods to be carried or handled safely and with proper care.

5. **Delivery**

- 5.1 Goods will be deemed to have been delivered to the customer when they are delivered to the address stipulated by the customer for that purpose, or to the port of discharge or place of delivery (as applicable).
- 5.2 Subject to clause 5.1, Bearing360 and its contractors and sub-contractors shall have the right to deliver goods at any time within the geographic limits of the port of discharge or the place of delivery (as applicable).
- 5.3 In all circumstances responsibility for goods shall cease when they are delivered in accordance with clauses 5.1 and 5.2.
- 5.4 Any time for delivery given by Bearing360 is approximate only. Bearing360 does not undertake that the goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use. Bearing360 shall have no liability for any loss or damage resulting from delay in delivery of the goods.
- 5.5 If the customer fails or refuses to take delivery of the goods at the time and place that Bearing360 or its contractors or sub-contractors are entitled to effect delivery, Bearing360 or its contractors or sub-contractors may, without notice to the customer, unpack and store the goods at the cost and risk of the customer. Such storage shall constitute delivery of the goods.
- 5.6 If the customer fails or refuses to take delivery of goods within 30 calendar days of its becoming due under clause 5.5 and in the reasonable opinion of Bearing360 or its contractors or sub-contractors the goods are likely to deteriorate, perish, become worthless or incur charges in excess of their value, Bearing360 or its contractors or sub-contractors may sell or dispose of the goods. They shall apply any proceeds in reduction of any sums due to them from the customer.

6. Charges, including Freight

- 6.1 All quotations given by Bearing360 are based on the costs applicable at the date of the quotation in respect of freight, bunker adjustment factor, cartage, demurrage, detention, port dues / fees, customs fees, Bearing360's agency or booking fees, and any other applicable charges, and any relevant rates of exchange, taxes, duties or any other costs, and on the latest available quotations from carriers utilised by Bearing360.
- 6.2 Quotations given by Bearing360 may include a limited amount of free time. Detention or demurrage rates shall be as per the relevant port or carrier's tariff, as applicable, unless otherwise stated in writing.
- 6.3 Any increase at any time in such charges due to variations in charges by third parties shall be for the customer's account. The customer shall not be entitled to a refund if there is a decrease in such charges or if the actual cost is less than the amount quoted by Bearing360.
- 6.4 The charges are calculated on information and particulars provided by the customer. Bearing360 may at any time be entitled to inspect, re-weigh, re-measure or re-value the goods or require the goods to be inspected, re-weighed, re-measured, or re-valued, and may adjust its charges accordingly. The customer is responsible to pay the correct charges and any costs incurred by Bearing360 in checking the information and particulars.
- 6.5 Freight shall be deemed earned as soon as the goods (or containers, where goods are presented stuffed into containers) are accepted by Bearing360 or its contractors or sub-contractors at the place of receipt (or at the port of loading, if the carriage is a port to port shipment), whether or not the goods are lost or damaged. Freight may be invoiced separately from other charges.
- 6.6 Bearing360 may in its discretion pay, and the customer shall be liable to reimburse Bearing360 on demand, any taxes, duties or any other costs or expenses (including fines or penalties arising as a result of the customer's failure to pay such costs or expenses) in connection with the performance of the services.
- 6.7 Unless otherwise stated, all charges are exclusive of GST or any other applicable taxes (which are payable by the customer).
- 6.8 Bearing360 shall be entitled to payment of all charges, whether costs incurred have been paid by Bearing360 or not.
- 6.9 All charges shall be paid by the customer in full on the due date, without set-off, counterclaim, or deduction, whether goods are damaged, or not delivered, goods or vessel lost or not lost, and such charges shall be non-refundable in any circumstance.
- 6.10 The due date for all amounts payable to Bearing360 is the date or dates notified by Bearing360 in writing (including due dates or other payment terms stated in any invoices issued by Bearing360 to the customer).
- 6.11 If payment of charges is not made by the due date, the customer shall be in breach of these terms and must pay default interest on any outstanding amount, calculated at 4% above the Official Cash Rate of the Reserve Bank of New Zealand, against the total balance outstanding.

- 6.12 Bearing360 reserves the right to recover from the customer any expenses, legal costs or debt collection agency fees incurred by it in the enforcement of any rights contained in these terms, including the recovery of outstanding amounts.
- 6.13 Without prejudice to any other rights it may have, if at any time payment of Bearing360's charges are in arrears, Bearing360 shall be entitled: (a) to suspend performance of any of its obligations, until payment of outstanding amounts is made in full, without any liability to the customer during the period of suspension; or (b) to terminate the contract (including following any period of suspension) without any liability to the customer.

7. **Application of legislation**

- 7.1 The customer acknowledges and agrees that the services are provided "*in trade*" for the purposes of the Consumer Guarantees Act 1993 ("**CGA**") and that all warranties, conditions and other terms implied by the CGA are excluded to the fullest extent permitted by law. The parties acknowledge and agree that the exclusions contained in this clause 7.1 are fair and reasonable.
- 7.2 Where any legislation applies to the services:
- (a) The terms shall be read subject to any provision which is mandatory; and
 - (b) Bearing360 shall be entitled to any rights, exclusions of liability or limitations of liability applicable under such legislation.

8. **Insurance**

- 8.1 Insurance of the goods is the sole responsibility of the customer.
- 8.2 Charges paid to Bearing360 do not include costs of insuring the goods.

9. **Lien**

- 9.1 Bearing360 shall have a particular and general lien on the goods and any related documents or any other goods of the customer in the possession or control of Bearing360 or its contractors or sub-contractors at any time for any outstanding amounts payable to Bearing360. The goods shall be detained at the customer's cost.
- 9.2 If outstanding amounts payable to Bearing360 are not paid within 14 days after notice has been given to the customer that the lien is being exercised, the goods may be sold by auction or otherwise in Bearing360's sole discretion and at the customer's expense, and the net proceeds of sale applied to the outstanding amounts. Any such sale shall not prejudice Bearing360's right to recover any balance due or the costs of detention and sale.

10. **Liability**

- 10.1 Without prejudice to clause 4.1, these provisions shall apply to any liability that Bearing360 may have to the customer in relation to the services. Where Bearing360 is or is deemed to be a carrier under a contract compulsorily subject to any applicable national legislation or international convention governing the carriage of the goods, it

- shall be entitled to all rights, exceptions and limitations conferred on the carrier (other than as expressly set out in clauses 10.2, 10.3 and 10.4 below).
- 10.2 All carriage and handling which is subject to the Contract and Commercial Law Act 2017 (**CCLA**) shall be performed on the basis of “at limited carrier’s risk” as defined in the CCLA, unless otherwise agreed in writing.
- 10.3 The provisions of sections 274 to 281 of the CCLA shall not apply.
- 10.4 Where goods are subject to international sea carriage, Bearing360 shall have the benefit of any rights, exclusions of liability or limitations of liability contained in any bill of lading or waybill or other transport document issued in respect of the goods, or conferred under any applicable national legislation or international convention governing the carriage of the goods.
- 10.5 For all claims other than those to which clauses 10.1 – 10.4 apply, whether under contract, tort, or otherwise, Bearing360’s liability shall be limited to the maximum of NZ\$2,000, or the total value of the charges paid by the customer for the services for the relevant shipment (as stated in Bearing360’s quotation or as otherwise agreed in writing).
- 10.6 In all circumstances Bearing360’s maximum aggregate liability for all claims arising out of any one incidence or occurrence shall be limited to NZ\$25,000.
- 10.7 Subject to any mandatory provision of law to the contrary imposing liability, Bearing360 shall not have any liability in respect of claims for:
- (a) Loss of or damage to goods resulting from any failure or breakdown of machinery or plant, shortage of power or labour, or pilferage, theft or burglary (or any attempt of theft or burglary) whether by Bearing360, its contractors or sub-contractors or their employees or agents, or any other person.
 - (b) Any failure to perform or in performing services, including any failure in connection with any instruction, advice, information or service given or provided to any person whether in respect of the goods or any other matter or thing.
 - (c) Any loss of or damage to goods resulting from any act or omission of the customer.
 - (d) Any loss resulting from delay in delivery of the goods.
 - (e) Any loss resulting from a force majeure event.
- 10.8 In no circumstance shall Bearing 360 be liable for any indirect, consequential, or special loss or damage or cost or expense, including but not limited to loss of market, loss of profit, loss of revenue, or loss of use.
- 10.9 All the rights, exclusions of liability or limitations of liability in these terms shall continue to have full force and effect in all circumstances and notwithstanding any breach of contract by, or any negligence on the part of, Bearing360.
- 10.10 Bearing360 shall have no liability to the customer unless:
- (a) Written notice of any claim, giving full particulars of the events giving rise to the claim and any alleged damage or loss, is received by Bearing360 within 14 days after delivery of the goods or, in the case of non-delivery or loss of the

goods, within 14 days of the date on which the goods should have been delivered, and in any other case within 14 days of the event giving rise to the claim; and

- (b) An action is commenced in a court of competent jurisdiction within six months of delivery or, in the case of non-delivery or loss of goods, within six months of the date on which the goods should have been delivered.

10.11 Any claim which has not been made strictly in accordance with the provisions of clause 10.10 shall be deemed to be waived and absolutely barred.

11. Force Majeure Event

11.1 Bearing360 shall not be liable for any failure or delay in performing the services if the failure or delay arises from a cause beyond the reasonable control of Bearing360 (**force majeure event**).

11.2 If a force majeure event continues for a period exceeding 90 calendar days, Bearing360 shall be entitled to terminate the contract on giving written notice to the customer, without any liability to the customer.

12. Termination

12.1 Bearing360 may terminate the contract at any time by giving written notice to the customer:

- (a) If clauses 6.13 or 11.2 apply;
- (b) If the customer is in material breach of the contract; or
- (c) If the customer is unable to pay its debts as they fall due, goes into receivership or liquidation, or ceases to carry on its business.

12.2 If Bearing360 elects to terminate the contract under this clause, termination shall be without prejudice to any rights, powers or remedies it may have under these terms or at law, existing at the date of termination.

13. General

13.1 Any unlawful provision in this Agreement will be severed, and the remaining provisions will be enforceable, provided that the severance does not materially affect the purpose or intent of this Agreement.

13.2 Bearing360's rights, powers and remedies remain unrestricted and may be exercised without prejudice to every other right, power or remedy at any time. Each provision in these terms survives to the extent it is unfulfilled and does not merge on performance of another provision.

13.3 No delay or failure to act by Bearing360 shall be a waiver. No waiver by Bearing360 shall be effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.

13.4 No variation of this Agreement shall be effective unless it is in writing and signed by each party.

13.5 These terms shall be available and extend to protect Bearing360's sub-contractors and contractors.

14. **Law and Jurisdiction**

14.1 This contract shall be governed by, and interpreted in accordance with, the laws of New Zealand.

14.2 The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any dispute, matter or thing arising in respect of this contract.