

TWO MEN AND A TRUCK LIMITED

TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1. "Two Men" means Two Men and a Truck Limited and Ardie Store Limited, and the agents and employees of Two Men and a Truck Limited and/or Ardie Store Limited.
- 1.2. "Customer" means the person or entity who has instructed Two Men to provide the Services or any person acting on that person or entity's behalf.
- 1.3. "Customer's Premises" means any place/s or area/s provided by the Customer where the Services will be carried out and includes any surrounding or adjacent place or area that may be necessary to enable provision of the Services.
- 1.4. "Goods" means the unit/s, article/s, or object/s supplied by the Customer for the provision of the Services.
- 1.5. "Services" means all services, work or advice provided to the Customer by Two Men.
- 1.6. "Standard Rates" means the amounts charged, exclusive of GST, by Two Men for the provision of Services on an hourly, daily, weekly, monthly or fixed basis which may be reviewed and updated by Two Men from time to time.
- 1.7. "Terms and Conditions" means the terms and conditions contained in these terms and conditions of trade.
- 1.8. "Variation" means any change, deletion, adjustment, and/or alteration to the Terms and Conditions.
- 1.9. "Vehicle" means any vehicle, truck, or utility, and any item or equipment that may be affixed to the vehicle, truck, or utility, provided by Two Men for the provision of Services.

2. Introduction

- 2.1. The supply of Services by Two Men to the Customer is governed by the Terms and Conditions, unless Two Men and the Customer agree to a Variation in writing.
- 2.2. The Terms and Conditions come into force, and are deemed to be accepted by the Customer, when Two Men accepts instructions from the Customer to supply the Services.

3. Services

- 3.1. Two Men will provide the Services to the Customer with all reasonable care and skill as would ordinarily be expected in the provision of such services.
- 3.2. The Customer acknowledges that it has used its own skill and knowledge in selecting the Services to be provided by Two Men so that the Services are fit for the Customer's intended

purpose. Two Men is not responsible for the suitability of the Services for the Customer, subject to subclauses 3.3 and 4.2.2.

- 3.3. Prior to accepting the Customer's instructions to provide the Services to the Customer, Two Men may elect to visit and examine the Goods and/or Customer's Premises with a view to determining its suitability to provide the Services to the Customer.
- 3.4. Services will not be provided in respect of Goods which are dangerous, explosive, corrosive, or otherwise likely to cause damage, loss, or injury to any person or property. If it becomes apparent to Two Men following commencement of the Services that any Goods are dangerous, explosive, corrosive, or otherwise likely to cause damage, loss, or injury to any person or property, Two Men may immediately cancel provision of the Services and the Customer will pay Two Men's reasonable costs and disbursements incurred up to the time of cancellation. The Customer indemnifies Two Men against any loss, damage or claim arising from Services provided in respect of Goods which are dangerous, explosive, corrosive, or otherwise likely to cause damage, loss, or injury to any person or property.

4. Customer's Warranties and Obligations

- 4.1. The Customer warrants that:
 - 4.1.1. the Customer is the lawful owner or occupier of the Customer's Premises or has obtained prior to commencement of the Services all necessary permits, approvals, and/or authorisations from the lawful owner or occupier of the Customer's Premises to enter upon the Customer's Premises for the purposes of providing the Services. The Customer indemnifies Two Men in respect of any loss or damage caused by, or any claim brought against Two Men, arising from or in connection to the entering upon the Customer's Premises to enable provision of the Services;
 - 4.1.2. the Customer has lawful ownership of the Goods or has the right and authority on behalf of the owner of the Goods to enter into these Terms and Conditions and instruct Two Men to provide the Services and that no other person or entity has any charge or lien in respect of the Goods, or right or authority to prevent Two Men from providing the Services. The Customer indemnifies Two Men in respect of any claim brought against

- Two Men arising from or in connection to breach of this subclause;
- 4.1.3. the Customer authorises Two Men to take any action which Two Men reasonably considers is in the best interests of the Customer and/or owner of the Goods for the protection of the Goods.
- 4.2. The Customer will:
- 4.2.1. pay for the Services, in accordance with clause 8; and
 - 4.2.2. provide to Two Men all information known to the Customer or able to be obtained by the Customer relating to the Goods, the Customer's Premises, and the Services required by Customer, to enable Two Men to determine its suitability to provide the Services, including but not limited to the quantity, type, and specifications of the Goods, and any known hazards or dangers associated with the Goods and/or Customer's Premises. For the avoidance of doubt, this clause applies despite any investigations carried out by Two Men for the purposes of determining its suitability to provide the Services;
 - 4.2.3. provide Two Men with access to the Customer's Premises and to all amenities necessary for it to carry out the Services;
 - 4.2.4. ensure that the Customer's Premises remains in such a reasonable state and condition as to enable Two Men to safely provide the Services.
- 4.3. The Customer acknowledges that Two Men may rely on any information provided by the Customer to enable Two Men to provide the Services. Where Two Men relies upon information provided by the Customer and thereby accepts instructions to provide the Services, and it subsequently becomes apparent to Two Men, in its sole discretion and at any time whether or not the provision of Services has commenced, that its Services and/or Vehicle/s is unsuitable or unable to safely perform the Services required by the Customer, Two Men may cease provision of the Services immediately and will have no liability to the Customer relating to its unsuitability or inability to provide the Services. The Customer will pay all reasonable costs and disbursements incurred by Two Men by reason of Two Men's reliance on information provided by the Customer.

5. Date for Services and Estimated Completion

- 5.1. The Services will be provided on a date or dates mutually agreed between Two Men and the Customer ("Date for Services"), subject to subclause 5.2.

- 5.2. Two Men will endeavour to ensure that Services are provided on the Date for Services but does not guarantee the Date for Services. If at any time it becomes apparent to Two Men that, for any reason whether or not in the control of Two Men the Date for Services will be unsuitable, it will give notice to the Customer as soon as reasonably possible and the parties will attempt to agree an alternative Date for Services.
- 5.3. Two Men will not be liable for any loss or damage to the Customer arising from or in connection to delay in provision of the Services.

6. Quotation

- 6.1. Where a written quotation is given by Two Men for the Services ("Quote"), the Quote will be valid for thirty (30) days from the date of issue and will be exclusive of GST, unless otherwise stated in the Quote.
- 6.2. The price specified in the Quote may be adjusted prior to the completion of the Services, by written notice to the Customer, if due to circumstances beyond Two Men's reasonable control there will be an increase in the cost of provision of the Services to Two Men, including but not limited to any delays experienced during provision of the Services.

7. Standard Rates

- 7.1. Where no Quote is provided by Two Men for the Services, the Standard Rates applicable at the time the Services are provided will apply to the provision of the Services.
- 7.2. Two Men will take reasonable steps to advise the Customer of the Standard Rates that will apply to the provision of Services to the Customer. However, Two Men's failure to advise the Customer of the Standard Rates prior to provision of the Services will not affect the application of the Standard Rates for the provision of the Services to the Customer.
- 7.3. For the avoidance of doubt, the Standard Rates will apply to all aspects of the provision of the Services by Two Men to the Customer, including but not limited to any delays experienced during provision of the Services whether or not within the control of Two Men.

8. Price and Payment Terms

- 8.1. The price of the Services:
 - 8.1.1. will be calculated in accordance with Two Men's Standard Rates at the time the Services are provided plus GST; or
 - 8.1.2. where a Quote has been provided, will be the price specified in the Quote provided to the Customer plus GST.
- 8.2. The Customer will pay the price for the Services immediately upon completion of the Services, subject to subclause 8.3.

- 8.3. Two Men may, at Two Men's discretion, render invoice/s for the price of the Services, to be provided to the Customer upon completion of the Services and/or from time to time in accordance with Two Men's usual business practices. Payment of the invoiced amount will be due by the Customer from the date of the invoice ("the Due Date").
- 8.4. If the Customer fails to pay any invoiced amount within five (5) working days of the Due Date, the Customer will be in default and Two Men may at its discretion charge interest on the amount owing at a rate of 1% per month, from the Due Date until the date of payment including after judgment.
- 8.5. The Customer indemnifies Two Men from and against Two Men's costs and disbursements in recovering any outstanding monies owed, including legal costs on a solicitor and client basis, and any other costs of collection.

9. Liability

- 9.1. The Goods are at all times throughout the provision of the Services at the owner's risk and Two Men will not be liable to the Customer or to any other person for any loss of, damage to, or failure to produce, the Goods by any cause, unless such loss or damage is intentionally caused by Two Men.
- 9.2. Subject to subclause 9.1, Two Men's liability for any loss or damage caused directly or indirectly to the Customer in connection with the provision of the Services is limited at Two Men's sole discretion to:
 - 9.2.1. providing the Services again; or
 - 9.2.2. damages not exceeding the price paid by the Customer for the Services.
- 9.3. Except as otherwise provided at subclause 9.2, and to the fullest extent permitted by law:
 - 9.3.1. All other warranties, whether express, implied or statutory, are excluded; and
 - 9.3.2. Two Men is not liable for any direct, consequential, indirect or special damage or loss (including loss of profits or revenue) suffered by the Customer or any other person; and
 - 9.3.3. Two Men will not be liable to the Customer or to any other person in contract (including under any warranty), tort (including negligence), equity or otherwise for any loss or damage of any kind to the Customer, or any other person, under the Terms and Conditions or in relation to any Service provided to the Customer.
- 9.4. The Customer indemnifies Two Men against any claim made by a third party for loss or damage however arising in relation to the Services including Two Men's reasonable legal expenses.

10. Insurance

- 10.1. The Customer acknowledges that Two Men does not insure the Goods and will have no liability in relation to the Goods pursuant to subclause 9.1. It is the Customer's responsibility to arrange and maintain any insurance required by the Customer in relation to the Goods and/or Services.

11. Consumer Guarantees Act 1993 (CGA)

- 11.1. Where the Customer is a consumer under the CGA who acquires the Services from Two Men other than for the purpose of business, then these Terms and Conditions will be subject to the provisions of the CGA.
- 11.2. Where the Services are provided for business purposes, the Customer agrees that the provisions of the CGA will not apply.

12. Cancellation

- 12.1. The Customer may cancel an instruction for Services by giving Two Men at least 48 hours written notice of cancellation. If the Customer fails to give at least 48 hours written notice of cancellation, in addition to any other rights Two Men may have, the Customer must pay to Two Men a cancellation fee of \$250 (including GST).
- 12.2. Two Men may cancel any instructions for Services which it has accepted if, in Two Men's opinion, it would be unreasonable, impractical, undesirable, illegal or unsafe to complete the Services, if any information supplied by the Customer is materially incorrect, or if in Two Men's opinion satisfactory services cannot be provided.

13. Lien

- 13.1. Where the Services are subject to a statutory lien, that lien will take precedence over the provisions of subclause 13.2 and subclause 13.2 will not apply.
- 13.2. Subject to subclause 13.1, the Goods in Two Men's possession are subject to a general lien for any amounts owing by the Customer to Two Men arising from or in connection to the Services. Where Two Men retain a lien over the Goods and the Customer fails to pay any invoiced amount within five (5) working days of the Due Date in accordance with subclause 7.3, Two Men may at its discretion:
 - 13.2.1. sell the Goods by private arrangement or public auction; and/or
 - 13.2.2. dispose of the Goods in any other manner, whether for value or not, as Two Men see fit.
- 13.3. Funds recovered from the sale or disposal of Goods will be applied as follows:
 - 13.3.1. first, to pay the costs of and associated with the sale or disposal of the Goods;

- 13.3.2. second to all amounts owing by the Customer to Two Men, including but not limited to any invoiced amounts, interest accrued in accordance with subclause 8.4, costs incurred by Two Men in accordance with subclause 8.5, and any other costs incurred selling or disposing of the Goods;
- 13.3.3. third, any excess funds will be paid to the Customer.

14. Dispute Resolution

- 14.1. Where a dispute or difference arises between the Customer and Two Men in relation to the Terms and Conditions or in relation to Services provided by Two Men, the parties will in the first instance and in good faith use their best endeavours to resolve the matter between themselves.
- 14.2. If the dispute or difference cannot be resolved within a reasonable time then the parties may refer the dispute or difference to mediation to be conducted by a mediator acceptable to both parties. The costs of the mediator will be borne equally between Two Men and the Customer.
- 14.3. If the parties do not agree upon the appointment of a mediator within a reasonable period, then the mediator will be appointed by AMINZ.
- 14.4. Nothing in these dispute resolution provisions limits any right the parties may have to bring a claim before the District Court or the High Court or the Disputes Tribunal.

15. Variation

- 15.1. Two Men may vary the Terms and Conditions at any time without notice to the Customer. The New Terms and Conditions will be enforceable by Two Men from the date they were provided to the Customer.
- 15.2. The Customer and Two Men may in writing agree to vary the Terms and Conditions as they relate to the provision of Services from Two Men to the Customer.

16. Miscellaneous

- 16.1. The application of these Terms and Conditions together with any annexures referred within are the entire agreement between Two Men and the Customer and supersede all representation, agreements or other communications made by Two Men.
- 16.2. If any part of these Terms and Conditions is illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective and the rest of these Terms and Conditions are not affected.
- 16.3. The law of New Zealand must apply to this agreement except to the extent expressly negated or varied by this agreement.

CUSTOMER ACKNOWLEDGMENT:

These goods are to be carried at owner’s risk. This means that the carrier, Two Men, will pay no compensation if the goods are lost or damaged, unless the carrier intentionally loses or damages them.

Customer’s Signature

Customer’s Name

Date