

Terms and Conditions

These terms and conditions apply to the funeral service described in the Funeral Arrangement Form.

Background

You have requested that Premier Funeral Group Pty Ltd t/a Michael Hutchinson Funeral Director (**we, us, our**) performs the funeral service particularised in the Funeral Arrangement Form. The various components and particulars of the Funeral Service, including an estimate of fees and disbursements relating thereto, are provided in the Funeral Arrangement Form. The Funeral Arrangement Form (including the Estimate) and these terms and conditions, together, form a binding contract between You and us (**Funeral Agreement**).

1. Funeral Service and Funeral Arrangements

- 1.1 We agree to perform the Funeral Service consistent with the particulars stated in the Funeral Arrangement Form. You acknowledge and agree that the particulars included in the Funeral Arrangement Form are consistent with your wishes and, if applicable and so far as You are aware (having made all reasonable enquiries), the wishes of the Deceased.
- 1.2 If You wish to make any changes to the particulars set out in the Funeral Arrangement Form, You (or the Deceased's next of kin, as applicable) must provide written instructions to us no later than 48 hours prior to the Funeral Service. On receiving the instructions, we will advise You as to whether those instructions are possible, and any additional Fees or Disbursements that may apply.
- 1.3 Without limiting clause 7, we will use all reasonable:
 - (a) care and skill in performing the Funeral Service, but we shall however not be liable for any Losses suffered or incurred in connection with any delay or failure to perform the Funeral Service if the cause of the delay or failure is beyond our reasonable control; and
 - (b) endeavours to ensure that the Funeral Service is held on the date and time stated in the Funeral Arrangement Form, but we will not be liable for any Losses if this is not possible for any reason whatsoever.

2. Fees and Charges

- 2.1 You acknowledge that you have been provided with the Estimate. We have prepared the Estimate in good faith. However, You acknowledge that it is an estimate only, and that the actual cost may vary if, for example, additional services are provided or Disbursements are greater than that assumed in the Estimate. Some of the items (including, without limitation, third party disbursements such as cemetery fees (if applicable) and death certificates) are subject to confirmation and may change. We will advise You of any material changes to the Estimate as soon as practicable once we become aware of the changes.
- 2.2 If You pay more than the final invoice amount, we will reimburse You within ten working days after the final costs of the Funeral Service are known or, if later, the amount the overpayment is determined.
- 2.3 Without limiting clauses 4 and 5, You acknowledge that we may need to incur Disbursements in connection with the Funeral Service (for example, booking a cemetery plot), and You consent to us doing so on Your behalf.

3. Payment

- 3.1 You must pay us the Fees and Disbursements in consideration for us preparing for, and performing, the Funeral Service. Payment for the Funeral Service must be made in accordance with the Payment Terms. Invoices are payable within the time specified in the Payment Terms.
- 3.2 Unless otherwise agreed by us in writing, payment under clause 3.1 is not subject to, or conditional upon, the grant of probate or any receipt of insurance proceeds, compensation or other payment. You are personally liable for the payment of the invoice. If there is more than one of You, You are each jointly and severally liable to pay the Fees and Disbursements.
- 3.3 If the Payment Terms require any payment to be paid prior to the delivery of the Funeral Service, and that payment is not received when due, You acknowledge and agree that we may, after providing You with a final reminder, postpone or cancel the Funeral Service and, at our sole discretion, deduct from any money held, or require You to promptly pay, any Fees and Disbursements as properly incurred by us until that date, or as may be incurred as a result of re-scheduling the Funeral Service.
- 3.4 If You do not pay the Fees and Disbursements in accordance with the Payment Terms, we may in our discretion, charge interest at the interest rate specified in the Payment Terms (if any) on the overdue amount.

4. Agency

- 4.1 Without prejudice to clause 2.2, You authorise us to contract either as principal or agent for You in relation to the provision of the Funeral Service.
- 4.2 Where we enter into a contract of the type contemplated in clause 4.1 with a third party, You agree to pay any amounts due under that contract (whether by way of Disbursement or directly to the third party, as notified by us).

5. Authority

5.1 You authorise us to:

- (a) convey the Deceased into our care;
- (b) facilitate all normal hygienic preparations of the Deceased that we consider necessary;
- (c) undertake all mortuary procedures:
 - a. necessary in our reasonable opinion, which (if applicable) may include the removal of any pacemaker, pain control pump or cardiovascular defibrillator; or
 - b. helpful for the sanitisation and presentation of the Deceased in consideration for the safety and wellbeing of the Deceased, our staff, family members or any other person who may lawfully and properly view the Deceased; and
- (d) cremate or bury (as stated in the Funeral Arrangement Form) the body of the Deceased and that no reason exists for any further inquiry or examination.

5.2 You acknowledge and agree that, if the Funeral Service includes the cremation of the Deceased and if the Deceased's ashes are returned to us following the cremation, the ashes will be, subject to applicable laws, held for a period of three months (or such longer period specified by us from time to time), following which they may be disposed of without further notice to You. You acknowledge and agree that, subject to applicable laws, the ashes may be released by us to the person stated as such in the Funeral Arrangement Form, or in accordance with other written instructions signed by (or on behalf of) You.

6. Confirmation of authority

6.1 You confirm that:

- (a) You have full legal power and authority to enter into the Funeral Agreement;
- (b) You have taken all necessary action (including obtaining all relevant approvals) to authorise the signing and performance of the Funeral Agreement;
- (c) the Funeral Agreement constitutes legal, valid and binding obligations on You, enforceable in accordance its terms; and
- (d) entering into the Funeral Agreement will not result in a breach of any applicable law or agreement to which You are a party.

6.2 You confirm that you have obtained the requisite consents and authorities for any personal information that You provide to us in connection with the Funeral Service and consent to us using it for the purpose of providing the Funeral Service and to protect our lawful interests, including by sharing it with third parties (including with third parties who are engaged by You or us in connection with the Funeral Service).

6.3 Where You enter into the Funeral Agreement in any capacity other than Your personal capacity (for example as an executor, next of kin, personal representative or trustee), You agree to be bound by each of the provisions of the Funeral Agreement in both that capacity and Your personal capacity.

7. Liability

7.1 You release and discharge us and our related bodies corporate and our respective officers, employees, contractors and agents from all Claims (other than in the case of fraud, wilful misconduct or gross negligence) whatsoever which You may have in respect of any act, cause, matter or thing relating to the Funeral Service, including (without limitation) for any Losses suffered or incurred, including the loss or damage of any jewellery, clothing or other personal items received in connection with the Funeral Service.

7.2 Without limiting clause 7.1, our liability for any Loss arising from or in relation to the Funeral Agreement, whether arising from breach of contract, tort (including negligence) or otherwise, is limited to an amount equal to five times the Fees (excluding Disbursements) paid by You (except to the extent such a cap is prohibited under applicable laws, in which case our liability shall be limited to the amount stipulated in the applicable laws).

7.3 Without limiting clauses 7.1 or 7.2, You indemnify us against any Loss resulting from Your breach of the Funeral Agreement (including any costs or expenses incurred by us in the enforcement of any rights under the Funeral Agreement, including reasonable solicitor's fees or debt collection agency fees).

7.4 The parties acknowledge that under the Australian Consumer Law (**ACL**), consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services. Nothing in the Funeral Agreement will be read or applied to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, confirmation, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified.

8. General Provisions

8.1 Failure by us to enforce any of our rights under the Funeral Agreement shall not be deemed to be a waiver unless we confirm that waiver in writing.

- 8.2 If any provision of the Funeral Agreement shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions of the Funeral Agreement shall not be affected, prejudiced or impaired.
- 8.3 You acknowledge that, if the Funeral Service includes a live streaming, that live streaming is provided through a third-party service provider. Further, You acknowledge that there is potential for internet connectivity, picture and sound quality issues. We cannot guarantee, and are not responsible for the failure, interruption or lack of quality of, any live streaming or recording.
- 8.4 These terms and conditions are governed by the laws of the state or territory in which we are located. The parties submit to the non-exclusive jurisdiction of the courts of that state or territory.
- 8.5 The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.
- 8.6 In the event of any inconsistency between the Payment Terms (which are set out in the Funeral Arrangement Form) and these terms and conditions, the Payment Terms will prevail to the extent of the inconsistency.
- 8.7 You consent to us, from time to time, sending You material which we think may be of interest to You, or otherwise market and promote our services to You. A copy of our privacy policy is available on our website.
- 8.8 The Funeral Agreement sets out the entire agreement and understanding between the parties with respect to its subject matter and supersedes all prior agreements, understandings and representations. No part of the Funeral Agreement may be amended or modified unless in writing signed by or on behalf of You and us.
- 8.9 Either party may terminate the Funeral Agreement by written notice with immediate effect if the other party is in breach of its obligations under the Funeral Agreement and has failed to remedy (if capable of remedy) that default within five days of receipt of notice of breach.

Definitions

In these terms and conditions, defined terms shall have the meaning provided below, unless the context otherwise admits:

"Claims" includes in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

"Deceased" means the person named as the deceased in the Funeral Arrangement Form.

"Disbursements" means any expenses we incur on your behalf in respect of the Funeral Service.

"Estimate" means the estimate of Fees and Disbursements provided to You.

"Fees" means the fees and charges payable to us in connection with delivery of the Funeral Service.

"Funeral Agreement" has the meaning given above in the Background section of these terms and conditions.

"Funeral Arrangement Form" means the funeral arrangement form to which these terms and conditions are attached.

"Funeral Service" means the funeral service and ancillary services delivered by us in accordance with the Funeral Agreement.

"Losses" includes any loss, damage, cost, Claims, liability or expenses of any nature or description (including legal costs) and includes indirect and consequential losses.

"Payment Terms" means the terms of payment for the Funeral Service as stated in the Funeral Arrangement Form.

"You" means the person or persons who sign the Funeral Agreement as the "client" and **"Your"** shall have a corresponding meaning.