

## Terms and Conditions

These terms and conditions (“**Terms**”) are the Terms that apply to the purchase of Goods and Services from A. G. Down Ltd a company registered in England, number 00734179, whose trading address is 66 South Street, Bridport, Dorset DT6 3NN (“**A. G. Down**”) (“**we**”, “**us**”, “**our**”). A. G. Down also trades as W.G. Potter, Overmass & Chapple and E. A. Dodd & Son.

Please read these terms carefully as they set out how we will provide Goods and/or Services to you, how you and we may change or end the Contract, what to do if there is a problem and other important information. We are family owned independent company offering a range of professional funeral services and related Goods and/ or Services.

### 1. Definitions & Interpretation

- a. “**Contract**” means the contract enacted between the Parties when you sign an Order for our Goods and/or Services.
  - b. “**Customer**” means the person or persons who require the Goods and Services of A. G. Down (you, your).
  - c. “**Goods**” means including but not limited to goods associated with funeral or other goods required by you.
  - d. “**Memorial(s)**” means any monument(s), headstone or other such stone memorial created as part of a contract.
  - e. “**Order**” means the order accepted by A. G. Down for Goods and/or Services.
  - f. “**Party**” means Customer or A. G. Down.
  - g. “**Parties**” means Customer and A. G. Down.
  - h. “**Services**” means the professional funeral services and other associated memorial services.
- 1.1 If there is any inconsistency between what is set out in any of the conditions in these Terms and what is set out in any communication in writing or variation (“**Variation**”) agreed in writing between the Parties the Variation shall prevail.
  - 1.2 These Terms are the entire agreement between the Parties and supersedes any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date of receipt of these Terms, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

### 2. Our Contract with You

- 2.1 For funerals, our acceptance of your Order will take place when we tell you that we are able to provide you with our Goods and/or Services, which we will also confirm in writing to you, at which point a Contract will come into existence between you and us.
- 2.2 You accept that we may incur costs in providing Goods and/or Services to you before the Contract commences and you further agree that if you subsequently decide not to proceed, we may charge you our reasonable costs for those Goods and/or Services.
- 2.3 Our acceptance of your Order will take place when we write to you to accept it, at which point a Contract will come into existence between you and us.
  - 2.3.1 If we are unable to accept part or all of your Order, we will inform you of this and will not charge you for the Goods and/or Services unable to be delivered.
  - 2.3.2 This might be because Goods are out of stock, because of unexpected limits on our resources which we could not reasonably plan for, because we have identified an error in the price or description of the Goods and/or Services, or because we are unable to meet a delivery deadline you have specified.

### 3. Our Goods and Services

- 3.1 We will provide the Goods and/or Services to you set out in your Order.
- 3.2 The Goods and/or Services we provide to you will:
  - 3.2.1 correspond to the description and any specification you agree with us (see clause 10 below); and
  - 3.2.2 be of satisfactory quality and fit for any purpose which we inform you of or that you make known to us.
- 3.3 We will deliver the Services to you with reasonable care and skill commensurate with best industry practice.

### 4. Your Rights to make Changes

- 4.1 If you wish to make a change to the Goods and/or Services you have ordered please contact us.
- 4.2 We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Goods and/or Services, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change. If we cannot make the change or the consequences of making the change are unacceptable to you, you may want to end the contract (see clause 7.2).

### 5. Our Rights to make Changes

- 5.1 We may make minor changes to the Goods and/or Services to reflect changes in relevant laws and regulatory requirements.
- 5.2 If we have to make any other changes to these terms or the Goods and/or Services, we will notify you and you may then contact us to end the Contract before the changes take effect and receive a refund for any Goods and/or Services paid for but not received.

### 6. Price and Payment

- 6.1 The price of the Goods and/or Services (which includes VAT where applicable) will be the price as told to you at the time you place an Order with us. We use our best efforts to ensure that the price of the Goods and/or Services advised to you are correct. However please see clause 6.3 for what happens if we discover an error in the price of the Goods and/or Services you order.
- 6.2 You agree that you are responsible for paying us the full price of the Goods and/or Services when such payment falls due, before, and irrespective of the receipt of any sums due from any third party, including but not limited to any Government contribution.

- 6.3 It is always possible that, despite our best efforts, some of the Goods and/or Services we sell may be incorrectly priced. We will normally check prices before accepting your Order so that, where the correct price of the Goods and/or Services at your Order date is less than our stated price at your Order date, we will charge the lower amount.
- 6.3.1 If the correct price of the Goods and/or Services at your order date is higher than the price stated to you, we will contact you for your instructions before we accept your Order.
- 6.3.2 You must pay for the Goods and/or Services within 28 days of us providing you with a correctly issued invoice.
- 6.3.3 If you do not make any payment to us by the due date, we may charge interest to you on the overdue amount at the rate of 8% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. If we decide to charge interest, you must pay us interest together with any overdue amount.
- 6.3.4 A. G. Down reserves the right to add any expenses, legal costs or debt recovery fees on a full indemnity basis where legal action is commenced due to non-payment.
- 6.3.5 If you think an invoice is incorrect, please contact us promptly to let us know. You will not be charged for any charges or until the dispute is resolved. Once the dispute is resolved we reserve the right to charge you interest on correctly invoiced sums from the original due date.

## **7. Your Right to Cancel**

- 7.1 Exercising your right to change your mind (Consumer Contracts Regulations 2013). For most Goods and/or Services bought over the telephone, by exchange of emails or away from our premises, you have a legal right to change your mind within the relevant cancellation period and receive a refund as follows:
- 7.1.1 Cancelling an order for Goods. For Goods you have bought from us you have the right to change your mind and cancel within 14 days after the day you (or someone you nominate) receives the Goods.
- 7.1.1.1 You do not have the right to cancel if you change your mind in respect of Goods that are made to your specification and/or clearly personalised to the deceased, including but not limited to, coffins, obituaries floral tributes, Memorials, memorial inscriptions. This is because we would be unable to re-use these Goods for another Customer if you cancelled and therefore, we cannot accept cancellations of such Goods.
- 7.2 Cancelling an order for Services. For Services you have ordered from us you have the right to change your mind and cancel within 14 days after the day on which we accept your Order. By accepting receipt of these Terms you expressly request that we commence the Services within the 14-day cancellation period provided by the Consumer Contracts Regulations 2013.
- 7.2.1 You acknowledge that if the Services are fully performed within the 14 days cancellation period, you will lose the right to change your mind and cancel the services under the Consumer Contracts Regulations 2013.
- 7.2.2 If you cancel after we have started the Services but before the Services are completed then you must pay us for the Services provided up until the time you tell us that you have changed your mind.
- 7.3 To exercise your right to cancel, you must inform us of your decision to cancel by a clear statement in writing (for the purposes of this clause 7 *in writing* constitutes email, but not any other electronic means or text). If you require us to provide a cancellation notice, please let us know.
- 7.4 If you are exercising your right to change your mind in respect of goods which were delivered and the goods are suitable for posting you must pay for the cost of return.

## **8. Our Responsibility for loss or Damage Suffered by You**

- 7.1 A. G. Down accepts liability for
- 7.1.1 death or personal injury resulting from its negligence;
- 7.1.2 fraud or fraudulent misrepresentation;
- 7.1.3 any other liability which cannot be excluded by law.
- 7.2 Save for the provisions of clause 7.1:
- 7.2.1 our liability for any loss or damage you suffer is limited to the total Contract price due by you to us; A. G. Down's total liability in respect of any one default under any Order shall not exceed the total amount being paid under that Order. If a number of defaults give rise to substantially the same loss or are attributable to the same or similar cause, then they shall be regarded as giving rise to only one claim. A. G. Down will be afforded a reasonable opportunity to remedy any such default;
- 7.2.2 we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the order process;
- 7.2.3 we accept no liability for any loss or damage to your property or that of any other person howsoever caused even if foreseeable by A. G. Down; and
- 7.2.4 we are not liable for any loss or damage suffered by the Customer which results from the Customer's failure to follow any instructions given by A. G. Down.
- 7.3 A. G. Down will accept liability for direct physical damage to the tangible property of the Customer to the extent it is caused by the negligence of A. G. Down subject to the exclusions set out in clause 7.2.1.

## **9. Force majeure**

- 9.1 We will not be liable or responsible for any failure to perform or delay in the delivery of any Goods and/or Services in the event of any strike, lock out, trade dispute, accident, fire, flood, inclement weather, or any natural disaster or act of God or any contingency whatsoever beyond our reasonable control (a "**Delaying Event**") affecting the delivery of the Goods and/or Services ordered by you.

- 9.2 Such suspension or cancellation shall not constitute a breach of any Contract between us, nor will you be entitled to claim for any loss or damage howsoever arising as a result of a Delaying Event.

#### **10. Goods and Services Specification**

- 10.1 The images of the Goods in our brochures are for illustrative purposes only.
- 10.2 Although we have made every effort to display the colours accurately, we cannot guarantee that a picture in our brochure accurately reflects the colour of the Goods. For example, where Goods are made of natural occurring material, we are unable to guarantee that such material will match the exact colour or appearance of the image in our brochure as natural variations in tone and texture, including natural blemishes, may occur. As such your Goods may vary slightly from those images.

#### **11. The Deceased**

- 11.1 We make reasonable and proper efforts to care for the deceased and may need to carry out recognised embalming procedures at our discretion.
- 11.2 We reserve the right to refuse any person to allow viewing of the deceased at any time including, but without limitation, if they suffered from an infectious disease, where you have asked for the coffin to be closed or where, in our opinion, it is not advisable to do so.
- 11.3 Unless arising from a negligent action or breach of the Contract by us, we shall not be liable for:
- 11.3.1 loss of any item including but not limited to jewellery, clothing or personal effects of the deceased or such items left with them but belonging to any other person.

#### **12. Obituaries**

- 12.1 We accept no liability for any failure of a third party to publish an obituary or for any misspelling or inaccuracy in any obituary notice where the variation from what we have submitted is the fault of a third party.
- 12.2 It is your responsibility to proof read any wording we send you and revert to us with any errors.

#### **13. Data Protection Personal Information**

- 13.1 A. G. Down agree to abide by the provisions of the General Data Protection Regulations 2016/679 (**GDPR 2018**) for any works they enact under these Terms.
- 13.2 A. G. Down will not share the Customer's personal data with any third parties for any reasons without the prior consent of the Customer.
- 13.3 All data will only be collected, processed and held in accordance with A. G. Down's rights and obligations arising under the provisions and principles of the GDPR 2018.
- 13.4 A. G. Down treat all Confidential Information as secret and confidential and safeguard it accordingly and will process your data in accordance with our privacy policy, a copy of which is available at <https://www.funeraldirectors.uk.com/privacy-policy/> and a paper copy can be provided on request.

#### **14. Memorials and Headstones**

- 14.1 Any Memorials are created by an independent memorial stonemasons.
- 14.2 Although we have made every effort to display the colours accurately, we cannot guarantee that a picture in our brochure accurately reflects the colour of a Memorial. For example where a Memorial is made of natural occurring material and/or quarried stone, we are unable to guarantee that such material will match the exact colour or appearance of the image in our brochure as natural variations in tone and texture, including natural blemishes, may occur. A Memorial may vary slightly from those images.
- 14.3 If we are making a Memorial to measurements you are responsible for ensuring that these measurements and/or specification are correct. You can obtain information and tips on how to measure or provide the specification by contacting us.
- 14.4 If you ask us to provide a Memorial we will discuss with you, either in person, over the telephone or in writing, the layout of the lettering and the wording of any inscription to be inscribed on the memorial. Following this we will provide you with a proof inscription layout ("**Memorial Proof**") for you to review. You should check the Memorial Proof carefully and confirm acceptance to us. We shall not be liable for any errors in the inscription where the inscription conforms to the accepted Memorial Proof.
- 14.5 Any alterations required to a memorial, other than due to a mistake by us, may give rise to an additional charge which shall be a reasonable amount to reflect the additional work that we have had to undertake.
- 14.6 We guarantee:
- 14.6.1 the gilding and/or paint finish of any new lettering carried out by us on a Memorial from fading, flaking, lifting for a period of ten years from the date of erecting the Memorial at the location advised by you ("**Fixing**"). This guarantee is conditional upon no modification having been made to the Memorial, no cleaning agents or abrasive surfaces having been employed on the Memorial and no damage having occurred to the surface of the Memorial; and
- 14.6.2 the integrity of all joints for a period of ten years from the date of Fixing. This includes the integrity of the foundation, the joints, (where a Memorial is a headstone) between a headstone and base, but does not cover joints disrupted by Memorial safety testing where the Memorial has failed an accepted quantitative test.
- 14.6.2.1 It should be noted that some joints are designed to 'give' under these circumstances especially where the Memorial may be fixed in the knowledge that it will need to be removed for an added inscription in the future.
- 14.6.2.2 Bolt fixings will not be affected by this exclusion. We fix in accordance with the current British Standard under BRAMM regulations and cannot guarantee any fixings installed by another mason or company.

- 14.7 While we use reasonable care when erecting Memorials. We shall not be liable to you or any other person for any damage to any item placed on a grave, including planting and vases at the time of erecting, removing or re-fixing a memorial.
- 14.8 We shall not be liable for any damage to a Memorial once erected, however caused, including, but without limitation, damage caused from the sinking of the grave and/or flooding or collapse of the grave at any time.
- 14.9 Existing lettering, emblems or carving not carried out by us are not included in this guarantee even if we have repainted due to the shallowness or anomalies of other mason's work.
- 14.10 We do not guarantee any part of any Memorial which we did not originally supply.
- 14.11 Whilst we will always strive to match the existing lettering on a Memorial when adding an inscription, we cannot guarantee an exact match.
- 14.12 Complaints in relation to Memorials can be made to The British Register of Accredited Memorial Masons (BRAMM) at [www.bramm-uk.org](http://www.bramm-uk.org).

## **15. Online Tributes, Social Media and Donations**

- 15.1 We use Muchloved as a Tribute Site and details may be shared to other social media sites, any of which are accessible and viewable to anyone and therefore any information posted on these sites will be non-confidential.
  - 15.1.1 Any views expressed by contributors are expressly those of the individuals who express their support.
- 15.2 Users of these site are expressly prohibited from transmitting information that violates the rights of any third party, and from posting comments that are slanderous, obscene, libellous, threatening, abusive, or otherwise in violation of the law.
  - 15.2.1 A. G. Down may, but is not obligated to, monitor these sites where you may post such information and will have no liability related to the content of any postings.
- 15.3 Tribute Pages can opt to fundraise for a chosen charity or fundraising organisation and all donations are automatically processed online, with the recipient charity or fundraising organisation provided with a fully integrated reporting and Gift Aid reclaim service.
- 15.4 To run, administer and maintain this facility a fee of 3.2% is deducted by MuchLoved from the gross donation in addition to the third-party payment card transaction fee of 1.3%. This online donation processing service is run on a not-for-profit basis and there is no other charge or fee.
  - 15.4.1 MuchLoved are committed to keeping donation processing fees fair and reasonable for all Administrators and their donors.
  - 15.4.2 A. G. Down does not receive any part of these fees.

## **16. General**

- 16.1 You need our consent to transfer your rights to someone else. You may only transfer your rights or your obligations under these Terms to another person if we agree to this in writing.
- 16.2 Where an Order is placed by two or more people and each named person is set out on the Order, each of the named people will be jointly and severally liable for compliance with the obligations and liabilities as set out in these Terms (this means that we are entitled to enforce our rights against one, some or all of you as we consider appropriate in the circumstances).
- 16.3 In the event that one or more of the provisions of these Terms is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from these Terms. The remainder of any agreement and/or these Terms shall be valid and enforceable.
- 16.4 Even if we delay in enforcing these Terms or a Contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your breaking a Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Goods and/or Services, we can still require you to make the payment at a later date.
- 16.5 Failure by either Party at any time to enforce the provisions of these Terms or to require performance by either Party of any of the provisions of these Terms shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of these Terms or any part thereof or the right of either Party to enforce any provision herein.
- 16.6 In the event of a disagreement or dispute between the Parties in relation to the Services or in relation to the interpretation of these Terms, the Parties shall, in the first instance, endeavor to resolve the disagreement or dispute themselves (or through their representatives). Where this cannot be achieved then the parties agree to refer to Alternative Dispute Resolution, which is a process where an independent body considers the facts of a dispute and seeks to resolve it, without recourse to going to court you having to go to court. If you are not happy with how we have handled any complaint, you may want to contact the alternative dispute resolution provider we use. You can submit complaints to The National Association of Funeral Directors <https://nafd.org.uk/resolve>.
  - 16.6.1 Nothing in this clause 16.6 precludes court action by A. G. Down for recovery for non-payment of correctly issued invoices.

## **17. Contracts (Rights of Third Parties)**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to any Agreement and no person who is not a party to these Terms shall be entitled to enforce any of the provisions of these Terms pursuant to that Act.

## **18. Governing law**

These Terms are governed by, and are to be construed in accordance with, English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.