

**1. OUR AGREEMENT WITH YOU**

- 1.1 These Terms and Conditions will apply to the provision of any Goods and Services by us (HonourThem™) to you. We also have separate terms and conditions which govern your access and use of our Website (“**Website Terms of Use**”) and a privacy policy which sets out how we collect and use your personal information (“**Privacy Policy**”). By accepting these Terms and Conditions, you will also be deemed to have accepted our Website Terms of Use and Privacy Policy.
- 1.2 In the absence of any express acceptance from you of these Terms and Conditions (such as an email from you confirming acceptance or you returning a signed copy of these Terms and Conditions to us), your acceptance of these Terms and Conditions, Website Terms of Use and Privacy Policy will be deemed to occur on the earlier of:
- (a) you setting up an account for the creation of an online Tribute; or
  - (b) you setting up an account on our Website for the purchase of Goods and/or Services; or
  - (c) you placing an order for any Goods and/or Services via your account on our Website or on the phone; or
  - (d) providing information for the establishment of any records, such as burial plot information for our Cemetery Directory.

**2. ORDERS & OWNERSHIP**

- 2.1 You may order any Goods and Services from us via our Website, by phone or email (details of our phone number and email address are set out at clause 23 of these Terms and Conditions.) Fulfilment of any such orders is subject to our acceptance and we will not be under any obligation to accept any such order.
- 2.2 We will continue to own any Goods until such time as payment has been received in full from you/your bank in cleared funds. If any payment is dishonoured subsequent to our having provided any Goods to you, you must immediately reimburse us for the costs of those goods plus any fees charges or expenses incurred as a result of such payment being dishonoured.
- 2.3 We will not be obliged to provide any Goods and/or Services until such time as we have received payment in full in cleared funds.

**3. RISK AND DELIVERY OF GOODS**

- 3.1 Delivery occurs at the time possession of the Goods:
- (a) passes to you (or a person nominated by you); or
  - (b) passes to any courier/delivery services nominated by you; or
  - (c) the Goods are placed at the grave site, headstone or place of remembrance by us.
- Risk in the Goods passes to you immediately upon delivery.
- 3.2 We will endeavour to deliver the Goods and provide the Services purchased within the prescribed deadline. If we are unable to meet this deadline we will do our best to inform you of any delay and provide an updated delivery and/or completion date. If the revised delivery and/or completion date is not to your satisfaction you will have the right to cancel the order at no cost (provided that if we have already part-performed the order, we may recover such proportion of the price as is commensurate with the Work already undertaken).

#### **4. ESTIMATES**

- 4.1 Unless stated and agreed otherwise, when we agree to provide an estimate for any special orders/Work ("Estimate") it will be stated on a GST exclusive basis and subject to clause 5 below.
- 4.2 While we reserve the right to withdraw an Estimate at any time prior to acceptance, each Estimate will be invalid unless accepted within 7 days, after which the Work will be subject to reconfirmation.

#### **5. PRICE**

- 5.1 If we provide Goods and/or Services (other than those which can be ordered at a fixed price on the Website) at your request, prior to or without your having accepted an Estimate in writing, then we will be entitled to charge you for such work using our ordinary charging basis (including full recovery of all costs and expenses incurred by us in providing the Goods and/or Services at your request). You acknowledge and agree that we may recover such fees, costs and expenses as fixed by us (acting reasonable) on a *quantum meruit* entitlement as a liquidated debt due.
- 5.2 Notwithstanding anything to the contrary expressed or implied in these Terms and Conditions, Website Terms of Use and/or the Privacy Policy, and notwithstanding that you may have tendered payment for such Goods and/or Services, we shall not be obliged to provide such Goods and/or Services where the price specified by them is inadvertently or erroneously specified on the Website ("Misstated Price"); we will, however, at your election either (a) refund any monies received from you on account such Misstated Price, or (b) apply such monies towards the actual price for such Goods and/or Services.
- 5.3 Other than in respect of Goods or Services that we provide an Estimate in respect of, all pricing appearing on our Website or in any goods and services catalogue is stated in New Zealand Dollars (NZD) and is inclusive of GST. If you are ordering Goods and/or Services using a non-New Zealand denominated credit card you may incur additional banking fees, charges and expenses when placing your order. We must receive the price stated in New Zealand dollars (NZD) net of any costs, fees and expenses charged by your bank.

#### **6. TERMS OF PAYMENT**

- 6.1 In all cases advance payment by credit card or direct deposit in cleared funds inclusive of New Zealand Goods and Service Tax (GST) must have been made before we are obliged to deliver any Goods and provide any Services.
- 6.2 We are not responsible for any fees assessed by your credit card company and/or bank.
- 6.3 If any payment is not made by you by the Due Date, we will be entitled to charge interest upon all monies outstanding at a rate of 18% per annum, calculated on a daily basis, compounding from the Due Date down to the date of payment in full. We may suspend any Work until all outstanding money owed by you to us is paid in full and we reserve the right to cancel any Work at our discretion.
- 6.4 Payment of all money owed by you to us shall be without set-off or deduction of any kind.
- 6.5 We reserve the right to apportion payments to outstanding accounts as we think fit.
- 6.6 Once an order has been processed we are unable to offer a refund. At our sole discretion we may vary the date of Service or Goods delivery in response to your requests.

## **7. PERFORMANCE OF WORK – ENTITLEMENT TO REQUEST WORK AND REFUNDS**

7.1 We will:

- (a) perform the Work with reasonable skill, care and diligence in a professional manner;
- (b) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you;
- (c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.

7.2 In ordering the Goods/Services/Work, you:

- (a) warrant that you are properly authorised to request or permit the delivery of Goods or the provision of Services to the nominated location, and there is no legal impediment or proper reason why such Good or Services should not be delivered or provided.
- (b) agree to give us clear instructions;
- (c) must promptly provide any information or content required from you which is necessary to enable us to complete the Work;

7.3 We will only provide Services at the specific request of the purchaser of a plot or their representatives or assignees; in placing an order and/or requesting Services you are confirming (for the purposes of this clause 7.3) that you hold such authority. We cannot, and do not, accept any responsibility for problems arising from the provision of a Service and/or delivery of Goods where relevant permissions have not been obtained from the purchasers of the plots or their representatives contrary to your warrant given in clauses 7.2(a) and your representations in this clause. You must indemnify us upon demand for all costs, losses and expenses (including solicitor/client costs on an indemnity basis) arising due to any breach by you of the provisions of clauses 7.2(a) and 7.3 of these Terms and Conditions.

7.4 If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.

7.5 Subject only to clause 3.2 once an order has been placed it may only be cancelled at our absolute discretion. We are not obliged to provide a refund if you have changed your mind about a particular purchase, so please choose carefully. If the Goods are faulty we will meet our obligations under the Consumer Guarantees Act to provide a remedy.

7.5 If you order services that are not commensurate with the extent of the actual Work/Services required to be provided by us, we reserve the right to cease provision of the services once we have completed such part of the Work as is commensurate with the actual payment received (as determined by us acting reasonable). Once we have determined that this clause applies to your order, we will contact you to discuss the anticipated actual expense of completing the Work sought.

## **8. LIMITATION OF LIABILITY**

8.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

8.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Work and/or Goods from us for the purposes of a business as defined in section 2 and permitted under section 43 of that Act.

- 8.3 Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause 8.5, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work or Goods provided by us to you.
- 8.4 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Work.
- 8.5 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms and Conditions or for any other reason, such liability is limited to the amount of the actual cost paid by you for the Goods and/or Services from which such claim arises or to which it relates. You acknowledge that the nature of the Goods (where fresh flowers/floral displays) are not amenable to return and agree that your remedies are therefore limited to pursuing a refund in such circumstances. If you make a claim in writing to us in relation to the Goods or Services provided under the Work, we may, in our discretion, re-perform the services, or refund the amount of those Goods or Services to you, provided that:
- (a) you must supply the date and number of any invoice relating to the Work/evidence (to our reasonable satisfaction) of any defects/faults with the Goods; and
  - (b) we must have a reasonable opportunity to inspect the Work.

## **9. DEFAULT**

- 9.1 The security interests created by these Terms and Conditions become enforceable if any of the following events occur:
- (a) you fail to pay any money owing on the Due Date;
  - (b) you sell, part with possession or dispose of any Goods or do anything inconsistent with our ownership of the Goods prior to making payment in full to us;
  - (c) you are otherwise in breach of your obligations under these Terms and Conditions.
- 9.2 If any of the events described in clause 9.1 occur, in addition to any remedies we may have at law, we may do one or more of the following:
- (a) suspend or cancel the Work in accordance with clause 6;
  - (b) charge default interest in accordance with clause 6;
  - (c) immediately terminate our agreement with you by notice in writing to you.
- 9.3 If any payment made by you is subsequently dishonoured, reversed or set aside, we will be entitled to recover from you as a liquidated debt the amount of such dishonoured payment plus default interest and all costs of and incidental to our collecting such monies from you (including, without limitation, full solicitor/clients costs).

## **10. INTELLECTUAL PROPERTY**

- 10.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of the Work:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms and Conditions (whether you or us);
  - (b) any new Intellectual Property will be dealt with in accordance with clause 11.

- 10.2 If any Work is to be undertaken based on your designs, you warrant that the undertaking of the Work by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the Work infringes any patent, copyright or other rights of any other person.

## **11. INTELLECTUAL PROPERTY OWNERSHIP**

- 11.1 Subject to clauses 10.1(a), you agree that we own all Intellectual Property in the world, including any copyright, trademarks, designs, drawings, photographs, systems, solutions, electronic data, documents and other material that we have produced in connection with any Goods and/or Services or otherwise provided to you, in any Work and in any other work performed by us for you. Furthermore, you agree that the provisions of Section 21(3) of the Copyright Act shall not apply to any Goods and/or Services or Work provided to you by us.
- 11.2 We shall retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.
- 11.3 You must not attribute the Work to anyone other than us or remove any of our trade marks, signatures, logos or similar from our Work.
- 11.4 You acknowledge that we have the sole right to use and market the HonourThem™ name/image, and that any use or exercise of that name/image by you comprises a breach of our intellectual property rights; if we are required to take any steps to protect our intellectual property rights we will be entitled to recover indemnity costs from you.
- 11.5 This clause 11 shall continue in force as between the parties notwithstanding the termination of these Terms and Conditions or the completion of the Work.
- 11.6 Clauses 10 and 11 of these Terms and Conditions must be read subject to the rights entitlements and interests we are granted under the Website Terms of Use and Privacy Policy. The rights entitlements and interests we are granted under the Website Terms of Use and Privacy Policy are not, for the avoidance of any doubt, to be construed as being limited by these Terms and Conditions.

## **12. PRIVACY OF INFORMATION**

- 12.1 You authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
  - (b) to disclose information about you:
    - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
    - (ii) to any third-party service provider that helps us operate our business and provide Goods and/or Services requested by you;
    - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms and Conditions.
  - (c) to otherwise collect, retain and use your information as provided for in our Privacy Policy and Website Terms of Use.

### **13. NOTICES**

- 13.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors).

### **14. VARIATION**

- 14.1 We may amend or modify these Terms and Conditions at any time. Any change or variation to these Terms and Conditions shall, at our discretion, be notified to you on the Website or provided to you by email and shall become effective on and from the date of such publication or notification.
- 14.2 You are deemed to have accepted such changes the next time you order any Goods and/or Services following the date that such amended Terms and Conditions have been notified to you.

### **15. CONFIDENTIALITY**

- 15.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

### **16. COSTS**

- 16.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms and Conditions.

### **17. CREDIT INFORMATION**

- 17.1 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness where necessary.

### **18. JURISDICTION**

- 18.1 These Terms and Conditions are governed by and construed in accordance with the current laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms and Conditions.

### **19. ASSIGNMENT**

- 19.1 You are not permitted to assign, transfer or otherwise deal in any of your rights, powers or obligations under these Terms and Conditions. We may subcontract, assign, transfer or otherwise deal with our rights and obligations under these Terms and Conditions without your consent.

### **20. CHANGE IN CONTROL**

- 20.1 If we sell or otherwise transfer part of the whole of HonourThem™ or our assets to another organisation, including our database, you agree that your personal information and any other information collected through providing Goods and/or Services to you may be among the items sold or transferred.

### **20. DISPUTES**

- 20.1 Any claim or dispute arising under these Terms and Conditions shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

20.2 HonourThem reserves the right to remove harmful content immediately from the site without discussion. Please refer to the HonourThem Website Terms of Use Policy. If the content needs explanation, then we follow a process called Safe Harbour Provisions as set out by the New Zealand Department of Internal Affairs and Department of Justice and the Harmful Digital Communications Act.

20.3 HonourThem reserved the right to remove content invading copyright immediately from the site without discussion. Please refer to the HonourThem Website Terms of Use Policy.

## 21. FORCE MAJEURE

21.1 We shall not be liable for delay or failure to perform the Work if the cause of delay or failure is beyond our control.

## 22. DEFINITIONS

22.1 In these Terms and Conditions:

**“Cemetery Directory”** means information of any cemetery or place of remembrance or dedication, including the name and/or location of the cemetery or place of remembrance or dedication and any plots or names including details of any deceased persons.

**“Due Date”** means the day no later than the 2<sup>nd</sup> to last business day of the month following the month in which the order is placed, unless otherwise stated.

**“Estimate”** has the meaning given to that term in clause 4.1.

**“Goods”** means any goods ordered by you from, and supplied by, HonourThem™.

**“GST”** means goods and services tax payable under the Goods and Services Tax Act 1985.

**“Intellectual Property”** means all patents, trademarks, trade names, designs, domain names (including related URL’s), trade secrets, inventions, formulae, models, plans, licences, know-how, databases, technical information, discoveries, ideas, underlying or proprietary data, research, results, reports, drawings, techniques, specifications, standards, methods, manuals, get-up, rights in computer software, copyright in works and all rights or forms of protection of a similar nature, whether or not registered, throughout the world, and (where applicable) the right, and any application, to register any of these rights.

**“Misstated Price”** has the meaning given to that term in clause 5.2.

**“Privacy Policy”** has the meaning given to that term in clause 1.1.

**“Services”** means any services ordered by you from, and supplied by, HonourThem™.

**“Trade marks”** means those registered and unregistered trademarks owned and/or used by HonourThem™.

**“Tribute”** means any act, statement, gift or action that shows gratitude, respect, admiration, remembrance or acknowledgement of a living person or deceased person.

**“User”** means any person who logs on or visits or views our Website or its contents thereof.

**“Website”** means HonourThem website located at [www.HonourThem.co.nz](http://www.HonourThem.co.nz).

**“Website Services”** means services provided to Users of our Website including emails, bulletin boards, chat areas, newsgroups, forums and/or other message of communication facilities for communication between Users or the recording of memories or Tributes.

**“Website Terms of Use”** has the meaning given to that term in clause 1.1.

**“Work”** means HonourThem™ or a third party’s performance of services for you on our behalf including any cleaning, maintenance or restorative services, and the production or supply of

any Goods by us as part of or related to such services, as described on the front page of these Terms and Conditions.

- 22.2 The rule of construction known as the 'contra proferentem' rule does not apply to these Terms and Conditions.
- 22.3 Words importing the singular include the plural and vice versa.
- 22.4 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms and Conditions.
- 22.5 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.
- 22.6 References to a statute include references to:
- (a) regulations, orders, rules or notices made pursuant to that statute;
  - (b) all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
  - (c) any statute passed in substitution of that statute.
- 22.7 References to "us" include our employees, franchisees, contractors and agents.
- 22.8 In these Terms and Conditions we have used "we", "us", and "our" to refer to HonourThem™ New Zealand Limited and its affiliated companies, and "you" to refer to our customer. By ordering Work from us, you agree to these Terms and Conditions to the exclusion of your terms (if any).

### **23. Address**

HonourThem™ New Zealand Limited is a Limited Liability Company incorporated in New Zealand. Our phone number is 0800 874 288 and our email address is: [hello@honourthem.co.nz](mailto:hello@honourthem.co.nz)