

December 2024

Funeral Services Agreement: Terms & Conditions

This document sets out the terms and conditions for our funeral director services.

In this document we explain the terms and conditions applying to our funeral services. It includes key information about how we will treat the deceased, what funeral services will be provided, and how we are to be paid. When we use “we” or “funeral director”, we generally mean us (The Lychway Funeral Directors Ltd and its related companies namely (Kelly Funeral Home; Rose City Funeral Home; Chester Burt Funeral Home; and Purely Cremations and Simple Burials) unless referring to you (as the client) for the purposes of obtaining your authorisations. When we use “Funeral Services” we refer to the services that you have asked us to provide as set out in the customer authority.

For the purposes of this legal contract, our legal entity is The Lychway Funeral Directors Ltd and its related companies namely (Kelly Funeral Home; Rose City Funeral Home; Chester Burt Funeral Home; and Purely Cremations and Simple Burials) (which we refer to as “we”). Our contact details are found on our websites.

Our legal contract with you, which we call the “Funeral Services Agreement”, includes the following documents:

1. the customer authority; and
2. the terms and conditions set out in this document.

We are happy to help you if you have any questions. Please do not hesitate to contact us if you need any assistance or have any queries.

Some key information about our Funeral Services

We will first discuss with you the Funeral Services that we offer and what services you wish us to perform. There are a lot of choices available, so we recommend that you take your time to ensure that the Funeral Services selected best meet your needs and your budget.

We are agreeing to provide you the Funeral Services that are set out on our customer authority form. Following our initial discussions with you, we will prepare the customer authority and a Tax Invoice - Initial Payment to record our understanding of the Funeral Services that you have requested us to perform, and our estimated costs to perform them.

Once you have confirmed you are happy with the Funeral Services and our estimated costs, there may be limited opportunity for you to change your mind. This is because once we have commenced some of our Funeral Services, some of them are unable to be practically reversed. We will of course always meet our obligations under the Consumer Guarantees Act 1993.

If the Funeral Services are not right for you, please let us know. We are always more than happy to vary them, or stop performing them. Where you ask us to stop performing or vary the Funeral Services after we have started, we may charge you for our costs in performing the Funeral Services up to the time that you tell us to stop or vary them.

It is important that you comply with your obligations in the Funeral Services Agreement, including the payment of our fees. This includes ensuring that there is funding available to pay our fees. We require that our fees be paid on the date specified in the customer authority.

Providing a Caring & Personal Funeral Service

Our payment arrangements are not subject to the grant of probate (or appointment of administrators), nor receipt of funds from any funding arrangements that may be available to you (such as Work and Income, Veteran's Affairs, ACC, insurance proceeds or the like). For our reasonable protection, in circumstances where payment is not made when required, we will look to the person or persons who signs the customer authority / Funeral Services Agreement for payment.

If there are any delays in paying us, please contact us to discuss. If we are unable to agree alternative payment means, then we reserve the right to charge penalty interest at 1.25% per month for late payments, and charge our reasonable costs (both debt collection and legal costs) incurred in recovering any outstanding fees.

General Terms and Conditions Section

1. Parties: In these terms and conditions, we will refer to the person or persons that are described in the customer authority as the client as "you" or "your". References to "we", "us" or "our" means The Lychway Funeral Directors Ltd and its related companies namely (Kelly Funeral Home; Rose City Funeral Home; Chester Burt Funeral Home; and Purely Cremations and Simple Burials).

2. Defined Terms: In these terms and conditions, capitalised terms are to be given the meaning provided in either the customer authority, or these terms and conditions.

3. Appointment: You appoint us to provide the Funeral Services in accordance with the details provided in the customer authority, which is incorporated and forms part of the Funeral Services Agreement. We agree to provide the Funeral Services to you in return for you paying us the Fees.

4. Our Obligations: We agree to provide the Funeral Services to you in accordance the terms of this Funeral Services Agreement. In providing the Funeral Services, we will:

4.1 act in accordance with the professional standards required of The Lychway Funeral Directors Ltd and its related companies namely (Kelly Funeral Home; Rose City Funeral Home; Chester Burt Funeral Home; and Purely Cremations and Simple Burials) by the Funeral Directors Association of New Zealand Incorporated;

4.2 provide you with reasonable access to our premises at reasonable times during our normal working hours as required to allow you to obtain the benefit of the Funeral Services;

4.3 ensure we have professionally trained staff available to respond to your inquiries at all reasonable times; and

4.4 otherwise provide the Funeral Services in accordance with applicable law.

5. Your obligations: In receiving the Funeral Services, you agree that you will (and that you will take reasonable steps to ensure those that are under your control will):

5.1 comply with our reasonable instructions in respect of our delivery of the Funeral Services;

5.2 observe all health and safety rules and regulations, and any other reasonable security requirements, that apply at any of our premises and any crematorium or cemetery (including our requirements regarding health and safety, and control of infectious diseases); and

5.3 provide all required information that is reasonably requested by us to allow us to deliver the Funeral Services.

6. Use of Third Parties. As part of providing the Funeral Services you may request that we engage third parties on your behalf to perform parts of the funeral. While we will endeavour to recommend to you third parties that we consider are of good value and quality, we do not accept

any responsibility for the goods, services or actions of those third parties (including a failure by those third parties to provide such goods, services or actions). We will provide you with all required documentation that we may hold to assist any direct claim that you may wish to bring against those third parties.

7. Variations: The estimate of Fees, indicated on the customer authority is based on information known to us when we prepare the customer authority, which is detailed in the Tax Invoice - Initial Payment. The final Fees may vary due to unforeseen circumstances (we describe some of these circumstances in paragraph 3 of the customer authority). We will advise you of any substantive increase to the estimate of Fees when they become known (we will endeavour to minimise disruptive communications to you during the funeral process). If this occurs, the amount payable by you will vary from our estimate to take into account the changed circumstances and we will invoice you for the actual amount payable. No deduction will be made to our fees due to any benefits, commissions or rebates received by us from our suppliers.

8. Fees: In respect of the Fees:

8.1 The Fees payable by you in respect of the Funeral Services are those initially estimated in the customer authority. As recorded in the customer authority, our Fees in the customer authority are estimates and may change for the reasons set out in the customer authority.

8.2 Some or all of the Fees (where identified in the customer authority) will be required to be paid in advance (time being of the essence) of the Funeral Services. We will identify the amount of any initial payment required in the Fees section of the customer authority. If an initial payment is not paid as required, we will not be obliged to perform the Funeral Services and may, where we have commenced some of the Funeral Services, suspend any further provisions of Funeral Services until the initial payment is received by us.

8.3 Where part of the Funeral Services includes engagement of a third party to provide ancillary goods or services, you appoint us as your agent to engage those third parties on your behalf and agree to pay any such third party directly. By appointing us as your agent, you will be directly liable to those third parties. While we may elect to assist you with any claim you may have against those third parties, you will need to raise your claim directly with those third parties.

8.4 Any variations to the Funeral Services that are agreed in writing after the date that you engage us under this Funeral Services Agreement (including the engagement of any additional third parties) will be added to the Fees and itemised in your invoice.

8.5 To the extent that we receive a contribution to the Fees from a third party (including Work and Income, ACC, Ministry of Justice, Veterans Affairs, Insurance Companies), we will apply that contribution to such invoices in such manner that we choose.

9. Invoicing and Payment:

9.1 We will use our reasonable endeavours to prepare and issue an invoice for the Fees within a reasonable time (which is usually within 7 days) after the funeral. On occasion, we may be reliant on receiving invoices from third parties to finalise your invoice, which may cause us to delay getting the invoice to you.

9.2 You agree to pay the Fees set out in our invoice within 14 days of the date of the invoice.

9.3 Our invoice is not subject to the grant of probate, or reimbursement from any insurance funds, prepaid funeral funds, superannuation funds or any government department (including Work and Income, ACC, Ministry of Justice, Veterans Affairs). This means that we will not delay recovering the Fees from you if there is any delay or failure in receiving such funds from a third party.

9.4 If you wish to query or dispute any part of our invoice, you must before the date that the invoice becomes payable under clause 9.2:

(a) advise us in writing, prior to the date that the invoice becomes payable under clause 9.2;

(b) pay to us any part of the invoice that is not in dispute. Any part payment received from you is not an admission by us that we accept the dispute.

We will then resolve the dispute with you in accordance with clause 19.

10. Commissions and Rebates: You acknowledge and consent to us receiving rebate payments, commissions, benefits or other pecuniary interests from some third party providers of funeral goods or related services and acknowledge that this serves as sufficient disclosure of the rebate, payment, benefit or other pecuniary interest.

11. Liability for personal effects:

11.1 You understand that The Lychway Funeral Directors Limited and/or its subsidiary companies takes all care but accepts no liability for the property and the personal effects that remain with the deceased. You will ensure all jewellery and valuables you require back have been returned to you prior to the burial or cremation.

11.2 We do not take or accept any responsibility relating to any claims relating to Jewellery that was released to the Previous Caregiver.

11.3 The parties acknowledge that from time to time you may request that jewellery is placed on the Deceased during viewings of the Deceased. We are happy to assist with placement of jewellery on the Deceased for these purposes, but we do not accept any risk or liability arising from the placement of jewellery on the Deceased (including in circumstances where that jewellery is not removed prior to cremation or burial).

11. If we happen to locate personal effects of the Deceased (and we can identify these as relating to the Deceased), we will contact you for instructions. Once we have sent the property to you, we will have no further obligations in respect of that personal property. If we have not received a response within 30 days we have the right to destroy that property.

12. Liability for Funeral Services: We are committed to providing the Funeral Services to you in accordance with all of our legal obligations under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and all other law. In providing the Funeral Services our standards will be informed by the standards required by the Funeral Directors Association of New Zealand Inc. Our liability in providing the Funeral Services is limited to our obligations and warranties under law and the standards required by the Funeral Directors Association of New Zealand Inc. Nothing in this agreement is intended to limit or restrict any of your rights or obligations under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986.

13. Special Terms and Conditions: We may from time to time, offer certain packages, marketing offers and other promotions that contain special terms and conditions applicable to that particular offer. If applicable, the special terms and conditions are additional conditions that are to be read with, and will form part of, this Funeral Services Agreement.

Where there is an inconsistency between the special terms and conditions and these general terms and conditions, the special terms and conditions will override these general terms and conditions to the extent of the inconsistency. Where applicable, a copy of the special terms and conditions will be included with the Funeral Services Agreement.

14. Intellectual Property: In providing the Funeral Services, we will provide you with a licence to use our intellectual property. Any intellectual property that we may generate in the

preparation of or delivery of the Funeral Services will be retained by us. You agree to follow our reasonable instructions on the use of our intellectual property.

15. Termination: The Funeral Services Agreement may be terminated in accordance with this clause and as otherwise permitted at law (including where such a right of termination may become available under the Consumer Guarantees Act 1993):

15.1 Early Termination: You may cancel the Funeral Services and terminate this Funeral Services Agreement at any time on 5 Business Days' notice. Upon termination under this clause you will be responsible for the cost of any expenses already incurred by us in carrying out the Funeral Services up to the date that this Funeral Service Agreement is terminated, providing we will never recover an amount greater than the Fees (unless you fail to pay the Fees by their due date, then we may charge you the additional Fees as set out in the customer authority (such as interest on any late payments)).

Any initial payment that has been paid may be refundable subject to our rights to recover our costs in performing the Funeral Services, as detailed above.

15.2 Material Breach: Either party may terminate this Funeral Services Agreement where there has been a material breach of this Funeral Services Agreement.

16. Privacy:

16.1 We will treat your personal information and information you provide to us about the deceased with the utmost care, and we will never sell personal information to other companies for marketing purposes without obtaining your consent.

16.2 We will always collect and handle personal information in accordance with our Privacy Policy. Where you have provided information in relation to the Deceased, this information will only be used for the purpose of assisting us to carrying out the Funeral Services (including any audit obligations in respect of our delivery of the Funeral Services).

17. Payment Methods: You may pay the Fees through direct payment into our bank account, by debit card or in cash without additional charge. You may also pay via Visa or Mastercard credit cards, but the following Fees (which may change from time to time) will apply:

Credit Card Type

Transaction Charge Rate

Visa / Mastercard

1.65%

18. Infectious Diseases: We are committed to providing the best possible quality of service to our clients and their families and to the safety of our team and all in our community. We have implemented a range of protocols to manage the risks of transmission of infectious diseases that may arise in the course of us providing the Funeral Services. These include measures where you may be required to comply under the terms of this contract, as directed by us. Protocols may include:

18.1 checking in and out of our venues or associated premises (for example by using a QR Code);

18.2 wearing of personal protective equipment (such as face masks);

18.3 maintaining hand hygiene protocols;

18.4 specific procedures for our team members associated with transferring and preparation of deceased persons;

18.5 other specific measures designed to manage the risk of transmission when viewing a deceased person who was suffering from an infectious disease.

18.6 We reserve the right to withdraw or modify the Funeral Services where required for the purposes of controlling or mitigating risks associated with infectious diseases.

19. Problems with our Funeral Services. Any disputes arising out of this Funeral Services Agreement will be resolved in accordance with this clause. If you have any issue or problem with the Funeral Services, you will first contact us and advise us of details of your issue or problem. If we are at fault, we will do our best to fix it as soon as possible. If we are unable to resolve the problem to your satisfaction, we will work with you to see if we can resolve the issue together. If we cannot resolve the issue together, you are then free to resolve the issue through the complaints process of the Funeral Directors Association of New Zealand (<https://funeraldirectors.co.nz/aboutus/log-a-complaint/>) or through the courts (or disputes tribunal).

19.1 Embalming is a procedure performed on a dead human body to disinfect and preserve, thereby reducing deterioration, and restoring a natural appearance. You understand that The Lychway Funeral Directors Limited and/or its subsidiary companies takes all care but accepts no liability or responsibility of the final outcome of the embalming process. All care is taken to ensure that the embalm process is to the standards laid out by the NZ Embalmers Association.

Should you decide not to have your deceased person embalmed or go against our advice we do not accept any claim against us.

The advice and or opinion of The Lychway Funeral Directors Limited; that not having the deceased embalmed and the deceased going home, un-embalmed, is not recommended, however, it is on your insistence that you wish to have the deceased at home in this manner, and it is your responsibility entirely.

19.2 I/we understand and I/we have been advised that it is not in my/our best interest to view the deceased and you accept all responsibility and liability for choosing to view the deceased against our advice and indemnify The Lychway Funeral Directors Limited of all possible claims that may arise from your insistence of viewing the deceased person against the Professional Advice and or opinion of The Lychway Funeral Directors Limited.

General

20. Force Majeure: Neither party (First Party) will be liable for any loss or damage or delay, act or omission, or failure by it under this Funeral Services Agreement, which is caused by Force Majeure, providing that:

20.1 whenever the First Party becomes aware that such a result has occurred or is likely to occur, the First Party will notify the other party by written notice accordingly;

20.2 each party will continue to use all reasonable endeavours to perform its obligations as required under this Funeral Services Agreement;

20.3 neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and

20.4 For the purposes of this clause, Force Majeure means in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any act of God, act or regulation of any governmental authority, war or national emergency, accident, epidemic, pandemic, fire, riot, strike, lock-out, or other form of industrial action). It does not include any event or circumstance which could have been avoided by the affected party exercising reasonable care and diligence, nor lack of funds, authority or power on the part of the affected party.

21. Notices: Every notice given or required to be given under this agreement (Notice) will be in writing and in the English language. A Notice will be served on a party at the address of that party set out in the Customer Authority or to such other address of that party in New Zealand as that party notified the other party in accordance with this clause.

21.1 Every Notice will be delivered by hand or sent by courier, by post or by email.

21.2 A Notice will be deemed to be served if by hand or courier, at the time of delivery and, if posted, at 10am on the third Business Day after the day it was put in the post if sent within New Zealand, or at 10am (local time at the place of destination) on the 15th Business Day after the day it was put in the post if sent internationally. If sent by email, it will be deemed to be served at the time of despatch, if despatched before 5pm (local time to the sender) and in any other case at 10am (local time to the sender) on the first Business Day after the date of despatch.

21.3 In proving service of a Notice it will be sufficient to prove that delivery was made or that the envelope containing the Notice was properly addressed and posted by prepaid post or that the email was despatched from the sender's email server without the sender receiving any "out of office" auto-reply or other indication of non-receipt.

22. Variations: Any variation or waiver of these general terms and conditions of this Funeral Services Agreement will not be binding unless set out in writing, expressed to amend or waive this Funeral Services Agreement and agreed to or signed by or on behalf of each of the parties.

23. Relationship between parties: Nothing in this Funeral Services Agreement constitutes a partnership, joint venture or relationship of employer and employee between the parties. Except as otherwise provided in this Funeral Services Agreement, neither party may act or hold itself out as an agent or representative of the other party, nor assume or create any obligations on behalf of that other party.

24. Partial invalidity: If any provision of this Funeral Services Agreement, or any part of a provision of this Funeral Services Agreement, is found to be illegal, invalid or unenforceable the remaining provisions, or the remainder of the provision concerned, will continue in effect.

25. No waiver: A failure or delay in enforcing compliance with any term of this Funeral Services Agreement will not be a waiver of that or any other term of this Funeral Services Agreement.

26. Costs: Except as may be otherwise provided in this Funeral Services Agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation and implementation of this Funeral Services Agreement.

27. Further assurances: Each party will execute such further documents and perform and do such further acts and things as the other party may reasonably request in writing in order to carry the provisions of this Funeral Services Agreement into full effect.

28. Interpretation: In the construction and interpretation of this Funeral Services Agreement unless inconsistent with the context or otherwise specified:

28.1 In the event of a conflict or inconsistency between the sections of this Funeral Services Agreement, the following order of priority will apply:

- (a) any special terms;
- (b) the Privacy Policy;
- (c) the customer authority; and
- (d) these terms and conditions set out in this section;

28.2 words importing the singular number include the plural and vice versa, references to any gender include every gender and references to persons include corporations and unincorporated bodies of persons, government or semi-government bodies or agencies or political subdivisions of them;

28.3 references to any party include that party's executors, administrators, successors and permitted assigns;

28.4 headings are inserted for convenience only and do not affect the interpretation of this agreement;

(a) references to "dollars" and "\$" are references to New Zealand dollars;

(b) referring to anything after the word "including", "include" or "includes" does not limit what else might be included and any such reference is without limitation to what else might be included;

(c) references to "written" and "in writing" include any means of permanent visible representation (including email);

(d) references to any document include all modifications and replacement documents from time to time;

(e) where any act, matter or thing is to be done on a day that is not a Business Day, that act, matter or thing may be done on the next succeeding Business Day;

(f) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and

(g) obligations and agreements given by or in favour of two or more persons are given by, or for the benefit of, (as applicable) each of them jointly and severally