



# Southern Metropolitan Cemeteries NSW

## Terms and Conditions

### Table of Contents

<b>1. General Terms</b>	2
1.1. Definitions	2
1.2. Interpretation	4
1.3. Declaration	5
1.4. What is this document?	5
1.5. Agreement	5
(a) Quotations	5
(b) Deed of Agreement	6
(c) Tenure	6
1.6. Fees	6
1.7. Payment	7
1.8. Commencement and Expiry	7
1.9. Termination	7
1.10. Cancellation	8
1.11. SMCNSW Policy and Procedures	8
<b>2. Interment Rights</b>	8
2.1. Types of Interment Rights	8
2.2. Conditions of Grant	8
2.3. Order of succession to a Right of Interment	9
2.4. Rules of intestacy to apply to interment rights not bequeathed	9
2.5. Authorisation to exercise	9
<b>3. Memorialisation</b>	10
3.1. Memorial and Monuments	10
3.2. Cremation	10
<b>4. General Terms</b>	11
4.1. Assignment or Delegation	11
4.2. Advice and Information	11
4.3. Limitations of Liability	11
4.4. Force Majeure	11
<b>5. Privacy – Collection Statement</b>	12
5.1. Collection of Information	12



# 1. General Terms

## 1.1. Definitions

The following terms have the particular meanings set out below when used in this document:

**Administration Fees** means the reasonable fees incurred for SMCNSW to process and attend to your applications or requests for services.

**Agreement** means the agreement formed by our acceptance of the application made by you for a Right of Interment which these Terms and Conditions are attached to and form part of.

**Allotment** means an unused grave, or a site for ashes interment.

**Applicant** means you as the person or persons making the application to SMCNSW for goods and services.

**Appropriate fee** means the payable fees as informed or advertised from time to time.

**At need** means an ash or burial site for immediate use.

**BCA** means Building Code of Australia.

**C&C Act** means the *Cemeteries and Crematoria Act 2013* (NSW).

**CCNSW** means Cemeteries & Crematoria NSW.

**Casket** means a container for the body of the deceased.

**Cemetery** means a building or place used primarily for the interment and memorialisation of human remains (whether or not it contains an associated building for conducting memorial services).

**Cemetery operator's register** means a register kept by a cemetery operator (or crematoria operator where applicable) in accordance with section 63 of the *Cemeteries and Crematoria Act 2013* that records the following activities conducted by the operator after 25 June 2018:

- (a) interment rights granted
- (b) memorials erected in respect of interment sites
- (c) interments carried out
- (d) cremations carried out
- (e) disturbances/removal of remains

**Chapel** means a room at a funeral home or a building where funeral or other services are held.

**Client** means applicants for interment rights, clients and prospective clients.

**Coffin** means a body-shaped container for the body of the deceased, usually made of wood.

**Columbarium** means a sepulchral vault or other structure with tiers of recesses (or niches) in the walls to receive the ashes of the dead.

**Columbarium wall** means a free-standing wall in a cemetery with niches or plaques for the placement of ashes.

**Cremation** means a process for the reduction of bodily remains by fire or heat, alkaline hydrolysis or by other means prescribed by the regulations.

**Crematorium** means a building in which deceased persons are cremated (whether or not it contains an associated building for conducting memorial services) and includes premises in which bodily remains are disposed of by alkaline hydrolysis.

**Crypt** means a structure (chamber or vault) above or below ground that is technically a mausoleum used to house a number of interments, either of the same family or at least the same denomination.

**Exercised Right of Interment** means a location over which there is a Right of Interment where Human Remains have been interred or a Memorial has been installed.

**Exhumation** means the removal of a dead person's remains (not cremated remains) from a grave or a vault, but does not include their removal from one vault for immediate transfer to another vault in the same cemetery or their temporary removal for the purposes of reburial in the same grave or vault.



**Grave** means the site in the cemetery where the coffin/casket containing the deceased will be or has been placed.

**Grave marker** means any object used to mark a grave site such as plaques, signs, rocks, timber crosses and monuments.

**Headstone** means a marker that lies at the head of the grave that names the person/people interred in the allotment/grave.

**Holder of an interment right** means the person recorded in the cemetery operator's register in relation to that cemetery as the holder of the interment right.

**Human remains** means bodily remains and includes:

- (a) the remains of a stillborn child
- (b) bodily remains after they have been cremated

**Inscription** means commonly used for text inscribed on headstones or plaques.

**Interment of human remains** means:

- (a) the placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains, or
- (b) the burial in the earth of human remains (directly in the earth or in a container).

**Interment site** means a place in a cemetery for the interment of human remains.

**Maintenance** means that of a cemetery, crematorium, structure or thing includes alteration, removal, renewal, relocation and repair of the cemetery, crematorium, structure or thing.

**Mausoleum** means a structure erected and designed to entomb coffins, caskets, etc. above ground and as a resting place for human remains without the burial of the remains in the earth. It does not include a structure designed as a resting place exclusively for cremated human remains.

**Memorial** means:

- (a) a gravestone, monument, tombstone, headstone, ledger plaque, cenotaph or other monument
- (b) any other structure or permanent physical object used to memorialise a deceased person

**Memorial garden** means an area within a cemetery or crematorium consisting of landscape features, walls, pathways, decorative gardens for the interment and/or memorialisation of cremated remains.

**Monument** means a marker that lies on or beside a grave that names the occupant/s of the grave.

**Niche** means a space in a columbarium, mausoleum or niche wall to hold an urn.

**Niche wall** means a specially designed wall where ashes of the deceased are placed and a memorial plaque with inscription is installed on the wall.

**Operator of a cemetery and cemetery operator** means the following:

- (a) for a Crown cemetery or crematorium—the Crown cemetery operator
- (b) for a cemetery or crematorium administered by a council having control under section 48 of the *Local Government Act* 1993—the council
- (c) in any other case—the person or body for the time being responsible for the management of the cemetery or crematorium

**Perpetual care** means fulfilling the perpetual care obligation refers to the cemetery operator caring for the grounds, providing access to resting places, protecting and maintaining the cemetery's perimeter, making various capital improvements to existing structures, water systems and driveways as required.

**Place of Interment** means any place where Human Remains (actual remains or the cremated remains) are or are to be interred and includes graves, crypts, niche walls or any other structure or plot which serves as a receptacle for the deceased.

**Policy or Procedure** means SMCNSW's Policies in relation to the provision of the goods and services, the use of the goods and services, access to the cemetery ground, and any other matters which SMCNSW provides for in its policies, including any SMCNSW rules and regulations.



These documents may be updated from time to time and the updated policy or rule will apply from the date it is published on SMCNSW's website.

**Premises** means;

- (a) land or a place (whether built on or not).
- (b) a building or structure
- (c) a proposed building or area where there is intention to build

**Pre-payment date** means the date 24 hours before the service or provision of goods that payment is due.

**Pre-need** means ash or burial site to be used at a future date.

**Privacy Act** means the *Privacy Act* 1988 (Cth).

**Right of Interment** means the exclusive right to have Human Remains interred at a particular place of Interment subject to the rights and obligations that the Holder of Right has under the Act and otherwise subject to the terms and conditions agreed to under the Right of Interment.

**SMCNSW or Seller or we or us** means the Southern Metropolitan Cemeteries NSW ABN 13 806 606 081.

**Urn** means a container for holding the cremated remains (ashes) of the deceased.

**Vault** means a small building or chamber for the housing of casket(s), which may be above ground or partly underground.

**You or buyer or applicant or rights holder or consumer** means all persons who are named as Applicant or as the Holder of Right.

## 1.2. Interpretation

The following rules apply unless the context requires otherwise.

1. Headings are for convenience only and do not affect interpretation of this agreement.
2. The singular includes the plural and vice versa.
3. Words that are gender neutral or gender specific include each gender.
4. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
5. Words or phrases with "such as", "including", "particularly" and similar expressions are not used as, nor are intended to be interpreted as, words of limitation
6. A reference to:
  - (a) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate
  - (b) a party includes its agents, successors and permitted assigns
  - (c) agreement or document (including a reference to this SCTC) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this SCTC or that other agreement or document.
  - (d) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement (SCTC).
  - (e) this agreement includes all schedules and attachments to it
  - (f) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced
  - (g) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it
  - (h) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing
  - (i) a monetary amount is in Australian dollars and all amounts payable under or in connection with this agreement are payable in Australian dollars
  - (j) an agreement on the part of two or more persons binds them jointly and not severally/severally and not jointly/ jointly and each of them severally.



7. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it.
8. A day is the period of time commencing at midnight and ending immediately before the next midnight is to occur and
9. If a period of time is calculated from a particular day, act or event (such as the giving of a notice), it is to be calculated inclusive of that day, or the day of that act or event.
10. *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

### 1.3. Declaration

1. I declare and acknowledge;
  - (a) that I have been given the opportunity to read and understand the matters set out in this SCTC.
  - (b) that I am of lawful age and/or legally competent to enter into this agreement.
  - (c) I have the authority to sign the SCTC, am legally responsible to undertake the obligations outlined in the SCTC.
  - (d) that the conditions set out in this document are contractual in nature, are intended to have legal effect and are not merely a warning or recital.
  - (e) that the information I have provided is true and accurate to the best of my knowledge.

### 1.4. What is this document?

1. These terms are the standard terms for consumers, known as Standard Consumer Terms and Conditions ("SCTC").
2. Capitalized Words and additional definitions are available for reference at the beginning of this agreement.
3. The SCTC applies to;
  - (a) all orders or applications for goods and/or services, placed by you the consumer with Southern Metropolitan Cemeteries Land Manager (SMCNSW) ABN 13 806 606 081.
  - (b) any right or grant issued pursuant to the application of the *Cemeteries and Crematoria Act 2013* (CC2013).
4. If you complete and we accept your application form (Application) you agree to be bound by this SCTC.
  - (a) The following documents form the contract.
    - (i) Application Form and
    - (ii) This SCTC and
    - (iii) Policies and Procedures of SMCNSW (as updated from time to time)

### 1.5. Agreement

1. You agree;
  - (a) That this Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement.
  - (b) you will provide regular updates to SMCNSW about any change of contact details, address, or any information we require that ensures our compliance with our record keeping obligations.

#### (a) Quotations

1. All quotations given by SMCNSW are an invitation for provision of goods or services to the buyer's specification and do not give rise to any contract between the parties.
2. SMCNSW reserves the right to vary or withdraw a quotation at any time prior to the supply of goods or services.
3. Any figures given by SMCNSW are estimates only and may change at any time without notice.
4. Quotations are valid for the time specified on the quotation starting from the date of issue.
5. When no time is specified they are valid for 14 days including the date of issue.

#### (b) Deed of Agreement

Every Order by you for the provision of Goods or Services must be submitted using SMCNSW's prescribed form (unless otherwise agreed). **(Application)**



For and on behalf of  
**Southern Metropolitan  
 Cemeteries NSW**

Reference	SMCNSW-CC-FOR-013_1	Document owner	CC	Revision No.	2
Authorised by	Manager, Marketing	Issue Date	Jan 2021	Revision Date	Jan 2023

1. An Application will only be deemed to be placed by you if the Application clearly identifies the Goods or Services ordered and the Supplier's Quote.
2. You must provide valid original identification documentation.
  - (a) Combined 100 points
  - (b) Include 1 photographic Identification
3. SMCNSW may in its absolute discretion refuse to provide Goods or Services where:
  - (a) The application form is incomplete;
  - (b) Goods are unavailable for any reason whatsoever; or
  - (c) payment for Goods or Services has not been received by SMCNSW.

Any costs incurred by SMCNSW in reliance on incorrect or inadequate information provided by you in an Application may result in the imposition of an additional charge.

### (c) Tenure

1. To the extent permitted by law, and subject to clause 2, the Right of interment is held in perpetuity. However, at least one interment must take place within 50 years of the date of the grant of the right.
2. If after 50 years from the date of the grant of the Right of Interment, the Right of Interment has not been exercised, SMCNSW may reclaim the Place of Interment if the holder cannot be located. It is the responsibility of the Holder to ensure that SMCNSW is advised of any change of address or contact information. Where a right has not been used and SMCNSW has conducted all diligent enquiries to locate the Holder of Right and has been unable to do so, the Right of Interment will be deemed to have expired after 50 years.

## 1.6. Fees

1. SMCNSW (with the permission of the regulator) may from time to time set the fees or charges payable with respect to the following:
  - (a) grant of interment rights (including the renewal of renewable interment rights) with respect to interment sites in the cemetery,
  - (b) use of the whole or any part of the cemetery and any building, structure or enclosure in the reserve,
  - (c) use of digital, optical, and audio equipment on site to record, store, transmit,
  - (d) parking or use of any vehicle or class of vehicles on the cemetery,
  - (e) use of electricity, gas and water,
  - (f) removal of effluent, rubbish disposal and cleaning of the cemetery, including those areas designated in your interment right,
  - (g) issuing a funeral permit; and
  - (h) exhumation, digging or opening a grave; and
  - (i) a grant or renewal of a grant of a right of burial; and
  - (j) permission to erect new or additional memorials and for provision and supervision of such work; and
  - (k) cremation; and
  - (l) conducting a funeral; and
  - (m) inspection of registers and issue of extracts or certified copies therefrom; and
  - (n) registration of the assignment or bequest of a right of burial; and
  - (o) maintenance of graves; and
  - (p) extraordinary services provided for funerals; and
  - (q) disposal of ashes; and
  - (r) engaging consultants, undertaking reviews/assessments,
  - (s) rectification, remediation, and repairs of structures and buildings (including headstones, plaques, crypts, vaults, and pathways)
  - (t) administrative fees, application (re)processing and (re)submission fees
  - (u) late payment fees, merchant processing fees, booking fees
  - (v) any reasonable fees to recover costs we incur.



## 1.7. Payment

You and SMCNSW agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.

- (1) The amount payable by you will be the amount set out in the invoice. This will be calculated as:
- (a) the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
  - (b) where no Quote has been provided by SMCNSW, SMCNSW's usual charges for the goods or services (or both) as described in the Application.

All payments must be paid to SMCNSW and cleared:

- (2) on or prior to the due date specified on the tax invoice issued to you or
- (3) where the circumstance requires, a minimum of (Twenty-Four) 24 hours before date of service/supply of goods. (pre-payment date)
- (4) If any invoice is due but unpaid and or not cleared, SMCNSW may withhold the provision of any further Goods or Services until overdue amounts are paid in full. This includes any payments being made by a third party on your behalf.
- (5) SMCNSW may in its complete discretion apply any payment received from you to any amount owing by you to SMCNSW. You are not entitled to retain any money owing to SMCNSW

You must pay all charges without any set off, counter claim or deduction.

- (6) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of SMCNSW, are to be paid by the Customer as a debt due and payable under SCTC.
- (7) Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

## 1.8. Commencement and Expiry

Your agreement starts when you:

- (1) sign the application and we accept your deed or agreement
- (2) We receive documented authorisation on your behalf
- (3) In certain circumstances, when you pay the amount quoted immediately

This agreement ends if;

- (a) You do not comply with the agreement
- (b) If you fail to pay
- (c) When the licence has been transferred

## 1.9. Termination

In certain circumstances you may terminate this SCTC or cancel the provision of any goods or Services by;

- 1. giving us 30 days' notice either in writing or oral notice; or
- 2. giving us notice, if:
  - (a) we breach a material term of this SCTC and we can remedy that breach, but we do not remedy that breach within 30 days after you give us notice requiring us to do so; or
  - (b) we breach a material term of the agreement and we cannot remedy that breach, and the breach was not as a result of circumstances reasonably attributable to you.

In certain circumstances we may terminate this SCTC or withhold the provision of services;

## 1.10. Cancellation

- 1. If there is a cancellation of the Application by the Buyer, SMCNSW has the right to claim compensation for any losses suffered by SMCNSW as a result of such cancellation. We may charge an administration fee in relation to a cancellation.





## 1.11. SMCNSW Policy and Procedures

SMCNSW may make such provision as it considers necessary for the following:

1. the setting aside of sections for different types and classes of interments,
2. the establishment of standards of construction and design for monuments and structures,
3. the size, multiple use and location of interment sites,
4. interments in vaults, crypts, mausoleum, or any structure on the land
5. the erection or installation of structures and the making of inscriptions,
6. the carrying out of work by monumental masons,
7. the qualifications required by, and the security deposits required to be lodged by, monumental masons,
8. the removal, replacement and maintenance of structures,
9. the placing of vases, statuettes, jars, bottles or other items of embellishment on or near graves, monuments, crypts or vaults,
10. the improvement and maintenance of the cemetery,
11. the making of arrangements for the care of interment sites on an annual (or longer term) or another basis,
12. the supply of goods and services incidental to the conduct of interments and other matters relating to the cemetery,
13. the conduct of religious or other ceremonies of interment or commemoration,
14. the disposition and memorialization of cremated human remains,
15. landscaping and setbacks from stormwater and drainage canals and similar watercourses and structures,
16. scope of authorised work, duration of work, completion dates,
17. safety, quality, aesthetic, and maintenance requirements
18. any other matter relating to the management of the cemetery or crematorium consistent with, any applicable law, regulation or court order.

## 2. Interment Rights

### 2.1. Types of Interment Rights

1. SMCNSW may grant an interment right entitling the person or persons to whom it is granted the exclusive right of interment in a specified interment site:
  - (a) in perpetuity (a perpetual interment right), or
  - (b) for the period (a renewable interment right).

### 2.2. Conditions of Grant

A Grant is not issued unless:

- (a) SMCNSW has accepted your application for a Right of Interment and
- (b) you have paid the full purchase price.

Grant of license under s2 does not affect the operation of any regulations under the *Public Health Act 2010* relating to cemeteries.

1. The agreement grants the applicant only the reservation of the right of interment and does not grant, represent, confer or provide a right or certificate to;
  - (a) the land, roads, paths, or any access area to or from any lot of a cemetery, mausoleum or crypt, other than as a means of access, or





- (b) the gardens, structures, buildings or other property of a cemetery, mausoleum or crypt.
- (c) any land defined as *Crown Lands Act 1986* where SMCNSW is the appointed or registered as Land Manager.

2. Right of interment entitles the person(s) to whom it is granted;

- (a) An exclusive right of burial or disposition of the remains of the deceased in the nominated burial place(s)
- (b) The authority to give written consent for a person's remains being interred in the nominated burial place(s)
- (c) The authority to provide written instructions for all arrangements associated with the nominated burial place(s)

3. Site Specifics

(a) Capacity

- (i) You accept that the interment site capacity may only be representative of the potential availability as such the actual capacity of an interment site will be determined at the time of interment. SMCNSW does not warrant the actual capacity and disclaims liability should the capacity differ.

(b) Use

- (i) For all burial positions the capacity for full coffin burials must be exhausted prior to the interment of cremated remains.

4. An interment right granted must be exercised within a period of 50 years from the issue date of the certificate.

## 2.3. Order of succession to a Right of Interment

1. If the Holder of Right dies, or cannot be found the Right of Interment (and all associated rights) will be passed to the next person entitled to be the Holder of Right in the following order:

- (a) where there are two or more Holders of Right of Interment, the Right of Interment will pass to the surviving Holder(s) of Right;
- (b) where the Holder of the Right dies, the Right of Interment will pass in accordance with the will of that person or,
- (c) if there is no will, in accordance with law.

2. Any person claiming to be entitled to have the Right of Interment transferred to them must comply with the requirements in (2.4) and be either;

- (a) either be as executor or
- (b) administrator or as the person entitled under the will
- (c) under the rules of intestacy to inherit the Right of Interment. (2.4)

## 2.4. Rules of intestacy to apply to interment rights not bequeathed

1. If the holder of an interment right dies and has not bequeathed the interment right, the interment right is to be dealt with as if it were personal property forming part of the estate of an intestate.
2. A person to whom an interment right devolves as a result of intestacy does not become the holder of the interment right until the SMCNSW's register is amended to indicate that fact.
3. On application made by a person to whom an interment right has devolved as a result of intestacy, SMCNSW will assess and amend the cemetery register so as to indicate that the person has become the holder of the interment right.
4. An applicant's application under this section must comply with all the following requirements;

- (a) must be in the form approved by SMCNSW
- (b) provide death certificate
- (c) provide any last wills and testaments
- (d) provide any probate, or other relevant court documents
- (e) provide any requested identification
- (f) provide any other information requested

## 2.5. Authorisation to exercise

- (a) Applications to SMCNSW to exercise a Right of Interment (interment into, or memorialisation of, a Place of Interment) must be made to SMCNSW by or with the written authority of, the Holder of Right and SMCNSW's authorisation obtained prior to any application to exercise of a Right of Interment to inter human remains.



- (b) Anyone applying to exercise a Right of Interment must provide proof he or she or they:
- (c) is or are the Holder of Right (by providing the deed for the Right of Interment); or
- (d) acts with the authority of the Holder of Right. In this case, the application needs to include a copy of the
- (e) letter of authority, or evidence of next of kin or other documentation as required by SMCNSW.
- (f) Where a Right of Interment is held by two or more people as the Holder of Right and one of them wishes to take any action with respect to the Right of Interment, he or she warrants to SMCNSW that he or she has the other Holders of Right's permission to act in the manner proposed.
- (g) If requested to do so by SMCNSW, he or she must provide evidence of the other Holders of Right permission has been granted for the proposed action.
- (h) If evidence of permission is requested by SMCNSW, it must be provided prior to any action taking place with respect to the Right of Interment.

### 3. Memorialisation

#### 3.1. Memorial and Monuments

All Allotments and Monuments may be subject to;

1. the *Heritage Act 1977* and the *Heritage Regulation 2012*,
2. *Aboriginal and Torres Strait Island Heritage Protection Act 1984*
3. the *Burra Charter*, and
4. *Cemeteries and Crematoria Act 2013 (NSW)*.
5. the Local Government Authority Bylaws,
6. *Environment Protection and Biodiversity Conservation Act 1999*,
7. *Crown Land Management Act 2016 (NSW)*.
8. SMCNSW Policies and Procedures including but not limited to:
  - (a) Heritage and Monuments Policy,
  - (b) Stone Mason Rules and Guidelines,
  - (c) Conservation Management Plan
  - (d) Standard Consumer Terms and Conditions (SCTC)

#### 3.2. Cremation

This applies when you contact us to provide you with cremation services.

1. Before cremation, you will provide us with:
  - (a) Application For Permission to Cremate;
  - (b) Attending Practitioner Cremation Certificate;
  - (c) Medical Referee Cremation Permit;
  - (d) Medical Cause of Death; and
  - (e) Any form required by law.
2. You agree that you will also provide:
  - (a) Written instructions on the method of ash disposal post-cremation; and
  - (b) Any other form we direct you to complete and provide to us.
3. Post Cremation:
  - (a) We will dispose of the ashes in accordance with the instructions you have provided us in 3.2.2(a).
4. Disposal instructions may include:
  - (a) Ash Scatter;
  - (b) Inter;
  - (c) Collect;



- (d) Abandon in accordance with s 6; or
- (e) other such available options from time to time.

5. Possession in the absence of disposal instructions:

- (a) You direct us to hold the ashes in our possession for a reasonable time, no longer than six months.
- (b) During this period, you will contact us with disposal instructions.

6. After a reasonable time and attempt to contact you:

- (a) You direct SMCNSW to exercise its absolute discretion and dispose of the ashes.
- (b) You agree to remain liable for the charges we incur in accordance with this section.
- (c) We reserve the right to charge you for the disposal of ashes.

## 4. General Terms

### 4.1. Assignment or Delegation

1. An exclusive right of burial cannot be transferred or sold. If the holder of an exclusive right of burial does not want it anymore, and the plot has not been used, they can surrender the right back to the SMCNSW and purchase price refunded.

- (a) If the right is surrendered or reclaimed under the applicable rules: the holder will have no further entitlements under the exclusive right of burial.

### 4.2. Advice and Information

You acknowledge and accept;

- (a) opinions and advice given by staff or representatives of SMCNSW may not reflect the organisations views or opinions and the any advice and information is provided without any warranty of accuracy, appropriateness or reliability; and
- (b) any advice, recommendation, information, assistance or service given by SMCNSW in relation to goods or services or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given; and
- (c) that SMCNSW does not accept and liability or responsibility for any loss suffered by you for reliance on such advice, recommendation, information, assistance or service; and
- (d) you will take all necessary steps to ensure you receive external advice and alternate opinions, and will not solely rely on the information provided to you by SMCNSW; and
- (e) SMCNSW reserves the right to remove, modify, alter, retract or disclaim any advice or information provided without notice.

### 4.3. Limitations of Liability

- (a) SMCNSW limits any liability it might have to a maximum amount being the price you have paid of the goods or services in question.

### 4.4. Force Majeure

1. SMCNSW will not be liable for the failure of performance under this Agreement if the failure is due to an unforeseen event beyond the control of SMCNSW and as a result renders the agreement impossible to be performed. This may include however is not limited to any;

- (a) Acts of God,
- (b) civil or military authority,
- (c) acts of public enemy, war, terrorism
- (d) civil unrest, riot, uprising,
- (e) pandemic,
- (f) accidents,
- (g) fires,
- (h) explosions,
- (i) earthquakes, floods, the elements,



For and on behalf of  
**Southern Metropolitan  
 Cemeteries NSW**

Reference	SMCNSW-CC-FOR-013_1	Document owner	CC	Revision No.	2
Authorised by	Manager, Marketing	Issue Date	Jan 2021	Revision Date	Jan 2023

- (j) strikes, labour disputes,
- (k) shortage of suitable parts, components, materials, labour or transportation;
- (l) natural or man-made eventuality beyond the reasonable control of SMCNSW,

2. Any Party affected by such event shall immediately inform the other Party of the same and shall use all reasonable endeavours to comply with any existing or ongoing agreements and the associated terms and conditions.

## 5. Privacy – Collection Statement

### 5.1. Collection of Information

1. Information collected is held in accordance with the *Privacy and Personal Information Protection Act 1998*. Personal information is collected for a lawful purpose that directly relates to our primary function of providing cemetery/cremation services in accordance with the *Cemeteries and Crematoria Act 2013*.
2. SMCNSW collects personal information to assist in the processing of this application and to notify Applicant(s) and Holder(s) of Right about matters concerning them or the applicable Place of Interment or the provision of goods and services contracted for. This collection of personal information is also required to assist SMCNSW in complying with its obligations under the CC2013.
3. We will not collect any more information than is necessary to fulfil these functions. Except as necessary to carry out these functions, we will not disclose your personal information to anyone without your consent unless legally required to do so.
4. We will take all reasonable steps to protect the security of any personal information held, be it stored in electronic or hard copy format. You may request access to your personal information held by us, except in the circumstances set out in Part 2, Division 3 of the *Privacy and Personal Information Protection Act 1998*.
5. Under the CC2013, SMCNSW is required to keep records regarding interments, cremations and Rights of Interment. Members of the public are entitled to request and be provided with access to those records.
6. If the Applicant or the Holder of Right chooses not to provide the personal information requested in this application, SMCNSW may not be able to process the application or provide the goods and services for which the information is required.

