



# Cemetery Terms and Conditions

Please carefully read the terms and conditions set out below before signing any attached or associated documentation.

## A. Definitions and interpretation

### A. (1) Definitions

**Allotment or Site** means sites within the cemetery capable of interment of human remains (consisting of both body and cremated remains).

**Applicant** means a person applying for the goods and/or services and includes the person's heirs, successors or assigns.

**Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday in the town or city where the goods and/or services were or are being purchased.

**Interment (interred)** means the placement of human remains (body or cremated) in a grave, crypt, mausoleum, niche, garden etc.

**Memorial** means a monument, plaque, headstone, garden or any other item installed or placed on an Allotment to commemorate or identify a deceased person.

**Ornament** means items used to decorate a site (being for example, vases or receptacles, statues, photos, boxes, shells, pebbles, solar lights, wind chimes, flags, windmills, candles, toys).

**Payment Plan Agreement** means an agreement documenting an agreed arrangement to pay the purchase price by instalments.

**Rights Holder** means the person who holds the Interment rights and who TRC will contact in regard to the Interment.

**TRC** means Toowoomba Regional Council

**You (Your)** means the Applicant.

### A. (2) Interpretation

In these Terms and Conditions, unless the context indicates otherwise:

- (a) a reference to:
  - (i) a person includes a natural person, partnership, body corporate, association, joint venture, trust, committee, incorporated or unincorporated association, Government Authority or other entity;
  - (ii) a statute, regulation, code or provision of a statute, regulation or code (**Law**) includes that Law, in the Commonwealth, a state regulation, code or provision enacted in replacement of that Law, another regulation or other statutory instrument made or issued under that Law and any amendment made to that Law as a consequence of another statute, regulation, code or provision;
  - (iii) any thing includes the whole and each part of it.
- (b) the singular includes the plural and vice versa, and a gender includes other genders; and
- (c) "including" and similar expressions are not words of limitation.
- (iv) or territory, as amended or re-enacted, a statute,

### A. (3) Business Days

If a day on or by which a person must do something under these Terms and Conditions or Payment Plan Agreement is not a Business Day:

- (a) if the act involves a payment, the person must do it on or by the next Business Day unless that day falls in the following month, in which case, on the previous Business Day; and

- (b) in any other case, the person must do it on or by the previous Business Day.

### A. (4) Multiple parties

- (a) If the Applicant comprises two or more persons or a term used in these Terms and Conditions refers to more than one person:
  - (i) an obligation of those persons is joint and several;
  - (ii) a right of those persons is held jointly and severally; and
  - (iii) any other reference to that Applicant is a reference to each of those persons separately.
- (b) These Terms and Conditions bind each person who signs as Applicant even if another person who was intended to sign does not sign it.

## B. General

### Use and development of Cemeteries

Any statement or reference concerning specifications, requirements, restrictions, controls, dimensions or heights as they relate to:

- (i) monuments (either generally or to one or more monuments);
- (ii) rights of Interment;
- (iii) graves and gravesites;
- (iv) memorials, vaults;
- (v) cemetery infrastructure (including but not limited to roads, gardens, trees and cemetery facilities); or
- (vi) future plans for the development and/or use of any part of the cemetery, made to You or contained in these Terms and Conditions or in any other document (including but not limited to promotional brochures) is indicative only and all such specifications, requirements, restrictions, controls, dimensions or heights may be varied by TRC, in its absolute discretion, at any time.

### TRC will maintain the cemetery

Subject to events beyond TRC's control (such as extreme weather), TRC will maintain its cemeteries to a reasonable standard, at all times.

### Payment for goods and/or services

Immediately upon signing the attached application form for cemetery goods and/or services, You will be required to pay the purchase price and/or any associated fees.

If TRC agrees that You may pay the purchase price in monthly instalments over a period of up to 24 months (**Payment Plan**), then the following applies:

- Payment Plans must be finalised within 24 months of the date of the Payment Plan Agreement.
- Goods and/or services purchased under Payment Plan must include an Interment Site and/or an Interment product, with the option of also purchasing a memorial product. The purchase of a memorial product **only is not** allowed under a Payment Plan.
- No goods and/or services will be supplied until the purchase price has been paid in full.
- The deposit paid at the time of entering a Payment Plan must be equal to or greater than:-
  - the specified Administration Fee; **plus**
  - 10% of the total products purchased under the Payment Plan.

- Additional payments of any amount may be paid at any time during the term of the Payment Plan Agreement and will be taken into account when calculating the final payout figure and/or final payments.
- No interest will be charged by TRC.
- The outstanding balance must be reduced each month by at least an amount equivalent to the monthly payment amount.
  - Failure to do so may result in the cancellation of the Payment Plan with: (i) all monies paid up to date of cancellation less an amount equivalent to the deposit amount, being refunded to the first named Applicant; and (ii) the supply of all selected cemetery goods and/or services being cancelled from the cancellation date.
- If no payment is received within five (5) business days of the due date and/or the outstanding balance is overdue by more than two (2) business days, a reminder letter will be sent to all Applicants. Failure to respond to this letter may result in the cancellation of the Payment Plan with: (i) all monies paid up to date of cancellation less an amount equivalent to the deposit amount, being refunded to the first named Applicant; and (ii) the supply of all selected cemetery goods and/or services being cancelled from the cancellation date.
- You may cancel the Payment Plan in writing. Following receipt of notification of the cancellation of the Payment Plan, (i) all monies paid up to date of cancellation less an amount equivalent to the deposit amount, will be refunded to the first named Applicant; and (ii) the supply of all cemetery goods and/or services will be cancelled from the cancellation date.

The purchase price for goods and/or services and all applicable Cemetery fees and charges must be paid in full before:

- an Interment is performed.
- a plaque, headstone or monument is ordered,
- a service is carried out (cleaning, painting etc.).

If TRC does not accept the attached application, all monies paid by the Applicant will be refunded to the first named Applicant.

### **Cancellation**

If the Applicant and/or Rights Holder cancels an –

- exercised right of Interment (that is, if a Memorial has been installed or human remains have been Interred at the Allotment), there will be no refund.
- unexercised (reservation) right of Interment, TRC may at its discretion, partially refund some of the monies paid by the Applicant in relation to the cancelled goods and/or services.

Once surrendered, TRC has full entitlement to the Site and the Applicant and/or the Rights Holder has no further rights or responsibilities under that right of Interment.

In addition to the cancellation terms above, the following also applies:

If a monument has been placed on a grave, the cancellation will not be finalised until the monument has been removed and any damage done to the grave as a result of the monument's removal has been rectified to TRC's satisfaction. The removal of the monument is to be arranged by the Applicant and/or Rights Holder at Your and/or the Rights Holder's cost.

### **Notify TRC of your change of address**

It is Your responsibility to notify TRC of any changes to Your and/or the Right Holder's contact details.

### **Standard, Superior and Premium Location fees**

All location fees are reviewed annually by TRC. Designated superior or premium areas may incur an additional fee of more than 50% above the standard location fee.

### **C. The Allotment**

#### **TRC will reserve the Allotment**

TRC will reserve the Allotment for use by You and/or any Rights Holder from the date of the purchase price for the Allotment is paid in full. For the avoidance of doubt, as the purchase of an Allotment is a contractual right only, neither You nor any Rights

Holder have any property rights in the Allotment or the land on which the Allotment is located.

### **Certificate of Cemetery Services –**

Upon full payment of the price for the Allotment, TRC will issue a certificate evidencing the Interment rights of the Rights Holder or nominated user.

### **Authorisation**

Applications for Interment or other arrangements with respect to an Allotment may only be made with the authority of the Rights Holder.

Applicants must provide:

- A copy of the certificate of Cemetery Services or other equivalent document that identifies the Rights Holder; and
- Where the Applicant is not the Rights Holder – A letter of Authority from the Rights Holder or such other document as required by TRC.

### **Transfer of Interment Right –**

Interment rights may not be sold, transferred or transmitted by death. An Interment right for an Allotment may be surrendered to TRC. Upon surrender TRC will pay the Applicant equivalent to the amount paid by the Applicant (being an amount no greater than the original purchase price of the Allotment) less an administration fee. If there is more than one Applicant, TRC will refund the monies to the first named Applicant.

Alternatively, TRC may at its discretion, permit the transfer to a relative. Any such transfer will not be effective until the TRC is notified of, and has recorded, the transfer, and the applicable fees have been paid in full.

### **Use of site by a Rights Holder**

Unless otherwise confirmed in writing, TRC is not obliged to increase the number of Rights Holders who may use a Site.

### **Right to refuse Interment**

TRC may acting reasonably, refuse to carry out an Interment:

- if any bones, remains, archaeological or historic relic, or object of any kind are discovered in the course of digging, opening or preparing the Allotment for an Interment; or
- if any person has engaged in conduct or has such a reputation which in TRC's opinion, would harm the reputation of the cemetery or TRC or cause distress for any bereaved families of deceased persons Interred within the cemetery; or

(iii) for any other reason permitted by applicable legislation. If TRC refuses to carry out an Interment in these circumstances, TRC will either allocate an alternative Site or will refund in full, all fees paid for the applicable Allotment.

### **Once the Right of Interment is exercised it is held in perpetuity**

For all time.

### **Priority Allocation**

At the sole discretion of TRC, areas that are not yet open for sale may be purchased ahead of time. In this instance, a priority allocation fee may be payable. This fee may be more than 100% above the standard Allotment fee.

### **D. Interment**

Upon acceptance of an application to purchase a right of Interment for an Allotment, the Applicant and/or the Rights Holder are granted an exclusive right to use the allocated Allotment as an Interment place, subject to the following conditions:

- no vault, monument, headstone or marker shall be made, erected or placed on the Allotment without the written approval of TRC;
- no grave shall be dug without the written approval of TRC; and
- if at the time of Interment an existing memorial impedes the digging of a grave, TRC will without notice but at the cost of the Applicant and/or Rights Holder, arrange for the monument to be removed by a supplier of its choice.

The Applicant and/or the Rights Holder must comply with the following:

- All rules and regulations made by TRC from time to time, (including the payment of all applicable fees and charges ); and
- The *Burials Assistance Act 1965*, the *Births, Deaths and Marriages Registration Act 2003* and the *Land Act 1994* and regulations as amended, varied or replaced from time to time.

Each Interment will incur an Interment fee. This fee must be paid in full before the Interment occurs.

Interment fees must be pre-paid. Interment services are provided on Business Days during normal business hours. Additional fees may be incurred if Interment services are provided on weekends and/or public holidays.

Subject to TRC's approval, cremated remains may be Interred into a grave/crypt upon authority of the Rights Holder and upon full payment of the applicable fees.

### **E. Memorials**

A Memorial permit fee applies to any works carried out within a TRC controlled cemetery.

TRC may from time to time, impose restrictions on the dimensions of and styles of Memorials.

Before purchasing any right of Interment, the Applicant and/or Rights Holder should seek written clarification as to the applicable Memorial specifications.

Any vault, monument, headstone or marker dug, erected or placed, must be maintained by the Applicant and/or the Rights Holder to the standard of condition or repair determined by TRC from time to time.

TRC reserves the right to refuse permission to erect or remove anything placed on a grave, crypt or memorial if TRC acting reasonably, decides it would cause harm to cemetery staff and/or visitors or it would contravene the Cemetery's rules.

TRC acting reasonably, reserves the right to reject designs it considers inappropriate. TRC also reserves the right to vary permit requirements from time to time.

TRC is subject to the Code of Competitive Conduct in relation to its Cemetery Services, pursuant to the *Local Government Act 2009*.

### **External suppliers**

Plaques and memorials may be purchased, supplied and affixed in position by TRC. Plaques and memorials may also be supplied by external suppliers. The contact details for alternative suppliers are available in the Yellow Pages or on the internet. To ensure correct placement and appropriateness of any externally supplied products into a TRC controlled cemetery; before affixing a plaque or memorial TRC's prior written approval must be obtained. Placement and application fees may apply. TRC is not responsible for the quality of workmanship or installation of any items purchased from external suppliers.

No plaque and/or memorials will be ordered, supplied or affixed until full payment has been received.

### **Use of natural products**

Many Memorials are made of natural products (e.g. granite or stone), as a consequence, you agree that natural imperfections or variations may be present in colour, pattern or texture of the product and that these imperfections or variations are unavoidable and are not considered defects.

TRC will endeavour to match the sample or materials ordered, as closely as possible. If a Memorial is pre-paid there is a risk that at the time the Memorial is required the specific Memorial is no longer manufactured or readily available. If this is the case, TRC will consult with You or Your representative and endeavour to provide a Memorial as close as practicable to the type and cost of the pre-purchased Memorial.

The cost of inscription or lettering is outlined with each product in the Memorial Brochure. Additional lettering, lines, text, pictures or symbols are not included unless specifically requested. In accordance with the customer price list current at time of purchase, a fee will apply for additional inscriptions. Inscriptions in languages other than English require an English translation, certified by a qualified Interpreter of the other language.

### **Care of Memorials**

To the extent permitted by law, unless the maintenance and/or repair is necessary due to damage caused solely by TRC's employees and/or agents, TRC is not responsible for the maintenance and/or repair of any Memorial, headstones or ornamentation (including where maintenance and/or repair is necessary due to fair wear and tear, fading, discolouration over time, cracking, chipping or movement of Memorials or headstones).

### **Privacy statement**

TRC knows that You care how information about You is used and shared, and we appreciate Your trust that we will do so carefully and sensibly. TRC is committed to protecting your privacy. A full copy of TRCs' Privacy Policy is available online at [www.tr.qld.gov.au/privacy](http://www.tr.qld.gov.au/privacy).