

# LANCASTER MEMORIALS LTD

## TERMS & CONDITIONS

### 1. THESE TERMS

**1.1 What these terms cover.** These are the **terms and conditions** on which we supply products to you, whether these are Goods or Services.

**1.2 Why you should read them.** Please read these **terms** carefully before placing your order. These **terms** tell you who we are, how we will provide products to you, how you and we may change or end the contract, what to do if there is a problem and other important information.

### 2. INFORMATION ABOUT US AND HOW TO CONTACT US

**2.1 Who we are.** We/us/our (all references relate to) are Lancaster Memorials Ltd, a company registered in England and Wales. Our company registration number is 04707811 and our registered office is at 78 Pontefract Road, Ackworth, Pontefract, WF7 7ED.

**2.2 How to contact us.** You can contact us by telephoning our customer service team at 01977 791426 or by writing to us at [dave@lancastermemorials.co.uk](mailto:dave@lancastermemorials.co.uk)

**2.3 How we may contact you.** If we have to contact you, we will do so by telephone or by writing to you at the email address or postal address you provided to us in your order.

**2.4 "Writing" includes emails.** When we use the words "writing" or "written" in these **terms**, this includes emails.

### 3. OUR CONTRACT WITH YOU

**3.1 How we will accept your order.** Our acceptance of your order will take place when, following your written or verbal acceptance of our quote, we tell you that we are able to provide you with the Goods and/or Services by providing a confirmation of order, at which point a contract will come into existence between you and us. Please note that the prices quoted are valid for a period of 28 days from the date of the original quote.

**3.2 If we cannot accept your order.** If we are unable to accept your order, we will inform you of this and will not charge you for the Goods and/or Services. This might be because products are out of stock, because of unexpected limits on our resources which we could not reasonably plan for or because we have identified an error in the price or description of the product or because we are unable to meet a delivery deadline you have specified.

**3.3 Sales literature and website.** Any samples, drawings, descriptive matter, or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Services contained in our brochures or on our website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

**3.4 Your order number.** We will assign an order reference to your order and tell you what it is when we accept your order. It will help us if you can tell us the order number whenever you contact us about your order.

### 4. OUR GOODS

**4.1 Goods may vary slightly from their pictures.** The images of the products in our brochure or on our website are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device's display of the colours or the printed pictures in brochures accurately reflect the colour of the products. Your product may vary slightly from those images. Please note that stone is a natural quarried product so each individual stone can vary in colour and pattern.

**4.2 Quality of Goods.** We warrant that on purchase or delivery and installation, the Goods shall:

- (a) conform with their description and any applicable Goods Specification;
- (b) be free from material defects in design, material, and workmanship;
- (c) be of satisfactory quality (within the meaning of the Consumer Rights Act 2015).

**4.3 Replacement Goods.** Subject to [Clause 4.5](#), we shall, at our option, replace the defective Goods if:

- (a) you give notice in writing within 7 days of the Goods being installed or supplied;
- (b) we are given a reasonable opportunity of examining such Goods.

**4.4 Liability for Goods.** We shall not be liable for the Goods' failure to comply with the terms of [Clause 4.3](#) if:

- (a) you make any further use of such Goods after giving a notice in accordance with [Clause 4.3](#);
- (b) you alter or amend the Goods without our written consent;
- (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (d) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

**4.5** Except as provided in this [Clause 4](#), we shall have no liability to you in respect of the Goods' failure to comply with the terms set out in [Clause 4.2](#).

**4.6 When you become responsible for the Goods.** The Goods and their risk will be your responsibility from the time we deliver them to or install at the address you gave us.

**4.7 When you own Goods.** The legal title to the Goods and materials shall not pass to you until we have received payment in full (in cleared funds).

**4.8 Legal title to the Goods.** Until title to the Goods has passed to you, (where necessary) you shall:

- (a) not remove, deface, or obscure any identifying mark or packaging on or relating to the Goods;
- (b) give us such information relating to the Goods as we may require from time to time.

**4.9** The **terms of these Conditions** shall apply to any repaired or replacement Goods supplied by us.

### 5. YOUR RIGHTS TO MAKE CHANGES

**5.1** If you wish to make a change to the Goods you have ordered please contact us. We will let you know if the change is possible. If it is possible, we will let you know about any changes to the price of the product, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

### 6. OUR RIGHTS TO MAKE CHANGES

**6.1 Minor changes to the Goods.** We reserve the right to change the Goods:

- (a) to reflect changes in relevant laws and regulatory requirements; and
- (b) to implement minor technical adjustments and improvements.

### 7. SUPPLY OF GOODS & SERVICES

**7.1** These Terms and Conditions apply to the following Goods and Services (with specific details provided in quote), provided by us:

- (a) Supply and installation of Monuments;
- (b) Renovations and additional inscriptions to existing monuments.

**7.2 When we will provide the Goods and Services.** During the order process we will let you know when we will provide the Goods and Services to you. Please note that we reserve the right to change this date at our discretion and will notify you should this be necessary.

**7.3 We are not responsible for delays outside our control.** If our supply of the Goods is delayed by an event outside our control, then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. We will not be liable for any direct or indirect loss caused by such delays.

**7.4 Workmanship Guarantee.** We will provide a 30-year Workmanship Guarantee on installation of joints and fixings commencing from the installation date.

### 8. YOUR OBLIGATIONS UNDER THE CONTRACT

**8.1 Additional Obligations.** In addition to any, and all other obligations within this contract, you shall:

- (a) ensure that the terms of the order and any information it provides in relation to the Goods and Services to be provided are complete and accurate;
- (b) co-operate with us in all matters relating to the Goods and Services;
- (c) ensure you have the authority to make the order;
- (d) ensure you have ownership of the plot where the Gravestone is to be placed;
- (e) provide us with such information and materials as we may reasonably require in order to supply the Goods and Services, and ensure that such information is complete and accurate in all material respects;
- (f) for any inscriptions, provide details a minimum of 4 weeks prior to the installation date, unless the relevant cemetery authority requires these immediately, at which point they will be needed immediately;
- (g) provide all media a minimum of 4 weeks prior to the installation date;
- (h) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and Services before the date on which we start;
- (i) comply with all applicable laws, including health and safety laws.

**8.2 Customer default.** If our performance of any of our obligations under the contract are prevented or delayed by any act or omission by you or your representatives or agents or by failure by you to perform any relevant obligation, then:

(a) without limiting or affecting any other right or remedy available to it, we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays our performance of any of its obligations;

- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of your obligations as set out in this [Clause 8.2](#);
- (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

### 9. IF THERE IS A PROBLEM WITH THE GOODS OR SERVICES

**9.1 How to tell us about problems.** If you have any questions or complaints about the goods or services, please contact us. You can telephone our customer service team at 01977 791426 or write to us at [dave@lancastermemorials.co.uk](mailto:dave@lancastermemorials.co.uk).

**9.2 Your obligation to return rejected goods.** If you wish to exercise your legal rights to reject goods you must either return them in person to where you bought them, post them back to us or (if they are not suitable for posting) allow us to collect them. We will pay the costs of postage or collection.

### 10. PRICE AND PAYMENT

**10.1 The Price and Payment for goods and services.**

- (a) the charges shall be calculated on a time and material basis, with specific details stipulated in the quote and order confirmation and payment will be required in accordance with [Clause 10.1\(b\)](#);
- (b) the fees for the agreed Goods and Services will be charged in the following manner:
  - (i) New Memorials - Non-refundable Deposit fee (subject to [Clauses 12.1 & 12.3](#)) of 30% of total value of the Order, plus cemetery fee required at the point of Order; or
  - (ii) Renovations and Additional Inscriptions - Non-refundable Deposit fee (subject to [Clauses 12.1 & 12.3](#)) of £300.00, plus the cemetery fee required at the point of Order;
  - (iii) Completion - final payment for the remaining balance of the agreed fee required upon completion and payable within 14 days of invoice.

**10.2 Sundrys.** All sundries are payable at point of purchase.

**10.3 Where to submit payment.** You shall pay each invoice submitted by us in full and in cleared funds to a bank account nominated in writing by us, and time for payment shall be of the essence of the Contract.

**10.4 Late payment.** If you fail to make a payment due to us under the Contract by the due date, then, without limiting the our remedies under [Clause 12](#), you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this [Clause 10.4](#) will accrue each day at 4% a year.

**10.5 Debt Recovery and Legal Fees.** Under the terms of this agreement, you agree to pay any and all legal costs, fees and disbursements incurred by us instructing Debt Recovery agents of legal representatives to recover outstanding sums owed under the contract from you.

**10.6** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

#### **11. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**

**11.1 We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.

**11.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the products as summarised at [Clause 9.2](#) and for defective products under the Consumer Protection Act 1987.

**11.3 Further limitations of our potential liability to you.** Subject to the terms of [Clause 11.2](#), we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data, or information;
- (f) loss or damage caused by a subcontractor;
- (g) any pre-existing damage or wear and tear to an existing gravestone;
- (h) loss of or damage to goodwill; and
- (i) any indirect or consequential loss.

**11.4 Our total liability.** Subject to [Clause 11.3](#) our total liability to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 100% of the total charges paid under the Contract.

**11.5 Claims.** All claims against us must be brought within one year after the cause of action arises and you agree to waive any statute of limitations which might apply by operation of law or otherwise.

**11.6** This [Clause 11](#) shall survive termination of the Contract.

#### **12. ENDING THE CONTRACT**

**12.1 Your rights to end the contract before we have delivered or installed the goods.** Without affecting any other right or remedy available to it, you may terminate the contract prior to us delivering or installing the Goods. Please note that if you cancel within 14 days of ordering, we will refund your deposit (in these circumstances only). If you cancel between the period of 14 days after ordering and 29 days prior to installation you will lose your deposit fee, as a cancellation fee. If you cancel within 28 days of the installation date we will retain the deposit fee ([Clause 10.11\(b\)\(i\)\(B\)\(iv\)](#)), as a cancellation fee, plus you will also be liable to pay us the cost of any outlay we have incurred (i.e. cost of the granite, cemetery fee, photo plaques etc).

**12.2 Your rights to end the contract after work has commenced.** Without affecting any other right or remedy available to it, you may terminate the Contract by providing us immediate written notice if:

- (a) we commit a material breach of our obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days, after receipt of notice in writing to do so;
- (b) we take any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) we suspend, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of our business.

**12.3 Our rights to end the contract before works commence.** Without affecting any other right or remedy available to it, we may terminate the contract prior to agreed delivery or installation by giving you written notice. Please note that in these circumstances we will refund of the Deposit fee.

**12.4 Our rights to end the contract.** Without affecting any other right or remedy available to it, we may terminate the Contract with immediate effect by giving you written notice if:

- (a) you commit a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 24 hours of being notified in writing to do so;
- (b) fail to pay any amount due under the Contract on the due date for payment;
- (c) you take any step or action in connection with entering bankruptcy, administration, provisional liquidation, bankruptcy or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (d) (where applicable) you suspend, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- (e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

**12.5 Suspension of services.** Without affecting any other right or remedy available to it, we may suspend the supply of Services under the Contract or any other contract between us, if the you fail to pay any amount due under the Contract on the due date for payment, you become subject to any of the events listed in [Clause 12.4\(c\)](#) to [Clause 12.4\(f\)](#), or the we reasonably believes that you are about to become subject to any of them.

#### **13. CONSEQUENCES OF ENDING THE CONTRACT**

**13.1 What happens if the contract is ended early.** On ending the Contract:

- (a) we shall retain the Non-refundable Deposit fee (unless [Clause 12.3](#) applies) and you shall immediately pay to us all of our outstanding unpaid invoices and interest. In respect of any Goods and Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) you shall return all of our Goods and Materials which have not been fully paid for. If you fail to do so, then we may return to the plot and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

**13.2** Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**13.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

#### **14. DATA PROTECTION & PROCESSING**

**14.1** We both acknowledge that for the purposes of General Data Protection Regulation (GDPR), that you are the Data Controller, and we are the Data Processor in respect of any Personal Data.

**14.2** We shall process the Personal Data only in accordance with your instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the you.

**14.3** We will take all reasonable measures to ensure they adhere to its obligations under Articles 30 and 32 of GDPR taking into account the information that the Data controller has made available to it.

**14.4** We shall take reasonable steps to ensure the reliability of all our employees who have access to the Personal Data.

**14.5** We both warrant to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards, and other similar instruments.

**14.6** We warrant that, having regard to the state of technological development and the costs of implementing any measures, we will:

- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
  - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, or damage; and
  - (ii) the nature of the data to be protected.
- (b) take reasonable steps to ensure compliance with those measures.

**14.7** We both agree to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages, or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this [Clause 14](#).

**14.8** You acknowledge that we are reliant on you for direction as to the extent to which we are entitled to use and process the Personal Data. Consequently, we will not be liable for any claim brought by a Data Subject arising from any action or omission by us, to the extent that such action or omission resulted directly from your instructions.

**14.9** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### **15. OTHER IMPORTANT TERMS**

##### **15.1 Intellectual Property Rights**

- (a) All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by you) shall be owned by us.
- (b) You agree to grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services to you.

**15.2 Force Majeure.** Neither party shall be liable for failure to perform, nor be deemed to be in default, under this Agreement for any delay or failure in performance resulting from causes beyond its reasonable control, including but not limited to acts of God, acts of Governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquake, riot, insurrection, civil disturbance, sabotage, embargo, blockade, acts of war, accident, pandemics, epidemics, lightning damage, electromagnetic interference, radio interference, strikes, industrial dispute, power failure or any other cause beyond its reasonable control.

**15.3 If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

**15.4 Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you, but we continue to provide the products, we can still require you to make the payment at a later date.

**15.5 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

**15.6 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**15.7 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**15.8 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.