

Mama Coach – Terms of Service

1. PURPOSE OF THIS DOCUMENT

- 1.1. **Outline:** This Agreement documents the terms and conditions between the Parties for the provision of Services by us to you, (which includes education, coaching and support services) at the date you accept this Agreement.
- 1.2. **Acceptance:** This Agreement takes effect and will apply when:
 - 1.2.1. you book an appointment with us via the Mama Coach Platform;
 - 1.2.2. you instruct or direct us to perform the Services;
 - 1.2.3. you obtain the benefit of the Services; or
 - 1.2.4. you make payment, or partial payment, for any Services supplied by us.
- 1.3. **The Mama Coach Inc:** The Parties acknowledge and agree that The Mama Coach Inc is not a party to this Agreement and that it takes no responsibility for either party's performance of their obligations under this Agreement.
- 1.4. **Inconsistency:** To the extent of any inconsistency between this Agreement and any information on the Mama Coach Platform, this Agreement will prevail.

2. SERVICES

- 2.1. **Disclaimer:** *The Services are limited to coaching, education and support only and do not constitute medical advice. If you think you have a medical emergency, you should call your doctor or the emergency services immediately. Any decisions you make affecting your health should always be made in consultation with a doctor, and not on the basis of the Services.*
- 2.2. **Services:** Subject to payment of the Fees and compliance by you with the terms of this Agreement, we agree to provide the Services to you.
- 2.3. **Term:** The provision of the Services shall subsist from the Commencement Date (or in the case of a subsequent instructions, or other relevant document or agreement, such other relevant date as may be applicable) until we have complied with our obligations with respect to the particular Services (subject to earlier termination of this Agreement).
- 2.4. **Suspension:** We have no obligation to provide and may suspend the provision of the Services if a payment is not made when due under this Agreement. Non-payment and suspension of Services and any collateral rights and services in such circumstances is without prejudice our rights.

3. FEES

- 3.1. **Payment:** You agree to pay us the Fees when due. Unless otherwise agreed, we require payment of our tax invoice, in respect of our Fees, in full (without any deduction or set-off) prior to commencement of the Services.
- 3.2. **Variation of Fees:** Subject to your rights under applicable laws, we reserve the right to vary our Fees from time to time and we will provide you with reasonable notice of any such variation of price.
- 3.3. **Overdue Fees:** If our Fees are not paid when due, we may charge you interest at the rate that is 2% above the RBA's cash rate (www.rba.gov.au) per annum.

4. GST

- 4.1. **Exclusive of GST:** Unless otherwise expressly stated, the Fees and any other sums payable under or in accordance with this Agreement are exclusive of Goods and Services Tax (GST).
- 4.2. **Payment:** You must pay all GST in addition to all other sums payable by you to us or to any third party (in the same manner and at the same time as the Fees to which it relates are payable). The

amount of GST payable by you will be calculated by multiplying the sum payable for the supply by the relevant GST rate (currently 10%) and will be payable when you are required to pay for the supply.

- 4.3. **Tax invoice:** We will issue a tax invoice for any taxable supply by us to you, which will enable you, if permitted by the GST law, to claim a credit for GST paid by you. If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

5. OBLIGATIONS + PERFORMANCE

- 5.1. **Timing:** We will use reasonable endeavours to provide the Services in accordance with the timeframes agreed with you and if none are specified then within a reasonable period or appropriate time. However, you acknowledge and agree that we will not be responsible for delays in providing the Services.
- 5.2. **Our obligations:** When providing the Services we will:
 - 5.2.1. use reasonable skill and care; and
 - 5.2.2. comply with all relevant laws applicable to it.
- 5.3. **Additional Services:** You may seek additional *ad hoc* assistance and other Services (substantive or not) from time to time. You may give us such instructions at any time. Such work will be undertaken in accordance with this Agreement.

6. WAIVER

- 6.1. You acknowledge and accept that we and the The Mama Coach Inc:
 - 6.1.1. are not responsible or liable to any extent for any existing physical or medical conditions of either you or your child (either before or after it is born);
 - 6.1.2. cannot foresee or predict which physical or medical conditions may arise for either you or your child during or after pregnancy; and
 - 6.1.3. provide services limited to coaching and support alone, and will not provide any medical, nursing or pharmacological advice regarding you or your child.

7. STATUTORY GUARANTEES + LIMITATION OF LIABILITY

- 7.1. **No restriction:** Nothing in this Agreement excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by law that cannot be lawfully excluded, restricted or modified.
- 7.2. **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms, any such provision(s) will be void to the extent it is unfair within the meaning of section 24 of the ACL.
- 7.3. **Guarantees:** Subject to clause 7.1, we do not give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, with respect to the supply by us of any Services in connection with this Agreement.
- 7.4. **Limitation:** Subject to clauses 7.1 and 7.5 our aggregate liability for breach of or liabilities under, in respect of and in connection with this Agreement, any Services, as well as its duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis is limited to the supply of the services again or the payment of the cost of having the services supplied again.
- 7.5. **Indirect Loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of this Agreement).

- 7.6. **Indemnity:** You indemnify and keep us indemnified in respect of all damages, losses, costs and expenses that we may incur:
- 7.6.1. in connection with your breach of this Agreement; and
- 7.6.2. to the extent that you cause or contribute to the loss, damage, costs and expenses that we may incur.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. **Our intellectual property:** All of our Intellectual Property Rights in and relating to the production, development and supply of the Services, including but not limited to specifications, and other literature remains our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent.

9. TERMINATION

- 9.1. **Non-payment:** We may terminate this Agreement by notice in writing to you, where you fail to pay any sum payable under this Agreement on or before the due date for payment of that sum.
- 9.2. **Breach:** Either Party may terminate this Agreement if the other Party materially breaches any term of this Agreement or other relevant agreement or document not otherwise mentioned in this clause 9.2 and the defaulting Party does not remedy the default or breach (if capable of remedy) to the full satisfaction of the non-defaulting Party within 10 days after receipt by the defaulting Party of a notice from the non-defaulting Party specifying the relevant material breach.
- 9.3. **Termination Date:** Termination under clauses 9.1 and 9.2 becomes effective on the date that notice in writing is delivered to the defaulting Party stating that a sum has not been paid or that a material breach has occurred which is not capable of remedy or has not been remedied within the relevant 10 day period.
- 9.4. **Termination by you:** You may terminate this Agreement at any time by giving at least 24 hours' prior written notice to us.
- 9.5. If this Agreement is terminated in accordance with this clause 9, you will be liable for payment of Services provided up to the date of termination.
- 9.6. **After termination:** Upon termination of this Agreement, neither Party will have any further obligations under this Agreement other than:
- 9.6.1. in respect of any liability for antecedent breach; or
- 9.6.2. any liability in respect of provisions of this Agreement which are expressed to continue in full force and effect notwithstanding termination.
- 9.7. **Survival:** The following clauses of this Agreement shall continue in full force and effect notwithstanding termination of this Agreement: clauses 7 (*statutory guarantees + limitation of liability*) 8 (*intellectual property rights*), 9 (*termination*), 10 (*assignment*), 11 (*force majeure*), 12 (*governing law*) and 14 (*definitions*).

10. ASSIGNMENT

- 10.1. **Assignment:** you may not assign, dispose of or otherwise transfer this Agreement or any rights or obligations under this Agreement without our prior written permission. We may on notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under this Agreement.

11. CONFIDENTIALITY + PRIVACY

- 11.1. **Confidentiality:** We will maintain in a secure manner all confidential information imparted to us in connection with the Services. We will not, without your authority, disclose to another client confidential information or knowledge obtained by us as a result of acting for you. We will not disclose to you, nor be under

any obligation to disclose to you any confidential information or knowledge obtained by us as a result of acting for any other client.

- 11.2. **Electronic communications:** Unless otherwise agreed with you, we generally only send documents and correspondence to you by email and not by post or other physical means of delivery unless we believe physical delivery is appropriate.
- 11.3. **Acknowledgement:** You agree that if you elect to correspond or exchange documents with us in electronic form, the transmission may be subject to unauthorised interference by a third party beyond our control. We will have no liability to you for any loss or damage which you may suffer as a consequence of any unauthorised interception of, or interference with, the transmission, or the storage within our computer system, or information confidential to you.
- 11.4. **Privacy laws:** The Parties shall comply with relevant laws applicable to them relating to the privacy and security of any relevant personal information, including the *Privacy Act 1988* (Cth). Please see our Collection Notice for more information.

12. GOVERNING LAW + SEVERABILITY

- 12.1. **Governing Law:** This Agreement is governed by the laws of the State or Territory in which the Coach provides services under this Agreement. Each party submits to the non-exclusive jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.
- 12.2. **Severability:** Each clause in this Agreement is severable. If any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

13. DEFINITIONS + INTERPRETATION

- 13.1. **Personal Pronouns:** In this Agreement, unless the context otherwise requires or provides:
- 13.1.1. the terms **we, us, our or Coach** means a nurse, nurse practitioner, or midwife registered with the Australian Health Practitioner Regulation Agency and identified on the Mama Coach Platform as a "Mama Coach"; and
- 13.1.2. the terms **you, your or Customer** refers to the person that accepts the provision of Services by a Coach and agrees by conduct or by virtue of notice or otherwise to be bound by this Agreement, including any related party or authorised person of the relevant person.
- 13.2. **Defined terms:** In these Service Terms, unless otherwise provided, the following terms shall have their meaning as specified:

Agreement means this agreement to provide Services to you based on the basis of these Service Terms.

Collection Notice means the document issued by us notifying you of the collection of your personal information and the purposes for which that information is collected.

Commencement Date means the date stated in correspondence accepted by us or as otherwise agreed or applicable.

Fees means the Services fees specified:

- (a) in our correspondence with you;
- (b) on the Mama Coach Platform;
- (b) on any third party platform under which we use to facilitate the issuing and receipt of payment, or
- (c) in other relevant documents in respect of the Services,
- as varied by us in accordance with this Agreement.

Intellectual Property Rights means all present and future intellectual and industrial property rights subsisting in any and all media and materials (whether now known or created in the future), conferred by statute, at common law or in equity and wherever existing.

Mama Coach Platform means <https://themamacoach.com/> and all relevant sub-domains, and any other web-based tools, interfaces, and websites established and used by us from time to time.

Parties means the Coach and the Customer.

Regulatory Requirements means all applicable laws including practice requirements stipulated by any regulatory authority (whether established pursuant to statute or otherwise and whether mandatory or voluntary), regulations, instruments and provisions in force from time to time and any binding codes of practice.

Service Terms means this document.

Services means the education, coaching and support services provided online and / or in person, relating to topics including but not limited to, pregnancy, parenting, breast feeding and baby sleep support.

The Mama Coach Inc means The Mama Coach Inc of PO Box 24023
Evergreen RPO, Calgary, AB T2Y0J9