

TERMS AND CONDITIONS

Preamble

These terms and conditions together with any Quotation to which these terms are attached or in which these terms are referred, make up a legally binding agreement ("Agreement") between With A Midwives Help (ABN 50 445 625 308) ("With A Midwives Help") and the person(s) or company or authorised representative named in the attached or previously signed, Quotation, or as detailed in this Agreement ("the Client").

With A Midwives Help and the Client agree as follows:

1. Definitions

Baby means the infant child of the Parent including adopted and/or surrogate and/or step children of the Parent. **Babies** mean more than one Baby of the Parent and these terms are used interchangeably.

Client means the person(s) or company or authorised representative named in the attached or previously signed Quotation, or as detailed in the Agreement who is responsible for payment of all invoices. Where the Parent and the Client are one and the same person these two terms are used interchangeably.

Client's Premises means the premises from which the Services will be rendered, which could mean at the Client's and/or the Parent's home.

Fee means the fee payable for Services set out in With A Midwives Help's invoice and may or may not include Goods and Services Tax (GST), reasonable administrative charges and other charges affecting the cost of the Services.

Intellectual Property Rights means any and all commercial and intellectual property rights that may arise, and is not limited to, confidential information, industry know-how, designs, patents, trademarks that are either registered or unregistered, irrespective of whether they are currently in existence or registrable and includes all applications for and any right to make application for registration of those rights and includes all applications for renewal and extension of such rights.

Parent means the parent of the Baby, regardless of whether the Parent is the biological, adoptive, or step parent of the Baby. Where the Parent and the Client are one and the same person these two terms are used interchangeably.

Quote or Quotation means the quote issued by With A Midwives Help to the client as contemplated in clause 2 of this Agreement. These terms are used interchangeably in this Agreement.

Services means the services and/or labour reasonably associated with such services under the Agreement and as specified in the attached quotation form.

Session means the time period during which With A Midwives Help will provide the Services to the client.

With A Midwives Help means With A Midwives Help (ABN 50 445 625 308) and its successor, assigns or authorised representative.

2. Quotes

2.1 Any Quotation provided in writing by With A Midwives Help is open to be accepted for five (5) business days.

2.2 With A Midwives Help reserves the right to change material detail of any Quotation which is not accepted as set out in clause 2.1, in respect of but not limited to available dates and times for Services and the Fees.

3. Acceptance of this Agreement

3.1 This Agreement will be deemed accepted if the Client: -

3.1.1 Signs these terms and conditions; and/or

3.1.2 Signs the Quotation; and/or

3.1.3 Pays any tax invoice issued for Services rendered or any amount in advance for anticipated Services.

3.2 This Agreement may be executed in counterparts and all counterparts together constitute one instrument. This Agreement is binding on all Parties upon signature and exchange of counterparts.

4. Price and payment

4.1 At With A Midwives Help's sole discretion the Fee shall be either:

4.1.1 With A Midwives Help's quoted Fee as per the Quotation issued in accordance with clause 2 of this Agreement; or

4.1.2 As detailed on invoices provided by With A Midwives Help to the Client in respect of the Services supplied in the event that the Services supplied differed from the Services as set out in the Quotation at the request of the Client.

4.2 With A Midwives Help reserves the right to change the Fee in the event of the Client changing the Services required after acceptance of the Quotation and/or this Agreement and such an amended fee will be reflected in the next invoice issued to the Client.

4.3 With A Midwives Help reserves the right to charge an additional fee for travel for Services performed at the Client's Premises, if the Client's Premises are outside a 20km radius of Melbourne's Central Business District.

4.4 The Fee is payable as follows: -

4.4.1 50% of the quoted Fee is required at the time of securing the booking of the Session; and

4.4.2 The remaining 50% is payable before the commencement of the Session, unless otherwise agreed to between the Client and With A Midwives Help.

4.5 If With A Midwives Help is providing an email or phone package: -

4.5.1 Payment of 50% of the quoted Fee is required prior to the commencement of the Services; and

4.5.2 The remainder of the Fee must be paid twenty-four (24) hours after receiving the sleep plan via email. Time is of the essence for payment of the Fee.

4.6 If With A Midwives Help does not require payment as per clause 4.4 above but comes to a periodic payment arrangement with the Client, the Client may be required to pay a deposit, and if so requested, the Client agrees that With A Midwives Help is under no obligation to commence the Services until the deposit is received in full. In the event of default by the Client as contemplated in this Agreement, With A Midwives Help is entitled to retain the deposit and seek any other remedy to the full extent permitted by the law.

4.7 In the event that the Services do not require any home visits, the Client must make full payment of the Fee prior to the commencement of the Session and/or Services.

4.8 The Client may be charged interest on any outstanding invoices at the rate of three percent (3%) above the cash rate as governed by the Reserve Bank of Australia, calculated on a daily basis from the day the invoice becomes due until it is paid.

4.9 The Client agrees to pay With A Midwives Help or its representative any reasonable expenses incurred in collecting outstanding amounts due by the Client to With A Midwives Help. Such expenses are not limited to legal costs alone.

4.10 Payment must be made by one of With A Midwives Help's accepted payment methods, which may change from time to time. Where payment is not in the form of cash, it will only be

deemed as having occurred where the payment has been irrevocably received or is available to be drawn down upon by With A Midwives Help.

5. Supply of Services

5.1 With A Midwives Help reserves its right to:

5.1.1 Decline requests for any Services requested by the Client; and

5.1.2 Cancel or postpone any Services at its discretion.

5.2 The Services will be supplied to the Client at the Client's Premises unless expressly agreed to otherwise between With A Midwives Help and the Client.

5.3 During the Sessions, With A Midwives Help will:

5.3.1 Provide the Services to the Client and the Baby as stipulated in the Quotation or as agreed otherwise, in writing;

5.3.2 Deal with the Client and the Baby as authorised by the Agreement; and

5.3.3 Will not deal with the Client nor the Baby in any way which With A Midwives Help is not authorised to in accordance with the Agreement.

5.4 The Client acknowledges that they have been advised by With A Midwives Help to follow the guidelines of the SIDS safe sleeping campaign in order to receive the maximum benefit from the Services and in the interest of the safety of the Baby.

5.5 With A Midwives Help may provide additional support via email and/or telephone and text message between the hours of 8.00am and 9.00pm, seven (7) days per week. Whenever reasonably possible, Clients will receive a response within two (2) hours of receipt of their communication. Any email, telephone and/or text message received after 9.00pm will be attended to the following day.

5.6 The Client and the Parent acknowledge that With A Midwives Help reserves the right to immediately and without notice to the Client and/or the Parent, report the Client and/or the Parent to the Police and/or any other relevant authority if it is reasonably suspected that the Baby is being abused, albeit emotionally and/or physically and/or if such abuse is in the form of neglect, and that With A Midwives Help will not be required to provide the Client and/or Parent with any substantiating evidence and/or documents in order to exercise the right afforded by this clause 5.6.

5.7 The Client and/or Parent acknowledge that, in the event that With A Midwives Help reasonably believes the Baby is experiencing a life threatening and/or serious medical emergency during a Session, that With A Midwives Help will be entitled to immediately contact the relevant emergency services, regardless of being expressly authorised to do so by the Client and/or Parent or not.

5.8 The client and/or parent acknowledges that the session will not proceed in the event that the Baby is and/or becomes unwell. With A Midwives Help reserves the right to reschedule the entire or remainder of the appointment once the Baby is in full health, without additional charge to the Client and/or Parent.

6. Client's Obligations

6.1 The Client will ensure that during consultations at the Client's Premises, one or both Parents are present at all times for each Session.

6.2 The Client will inform With A Midwives Help of any special requirements that need to be accommodated including but not limited to any cultural, religious requirements, allergies, illnesses, diseases, medical or health conditions of the Client and/or the Child.

6.3 The Client will ensure that all information provided to With A Midwives Help is true and correct at all times.

6.4 If the Client is going to miss a Session, the Client must notify With A Midwives Help at least forty-eight (48) hours prior to the Session. If the Client gives With A Midwives Help any less notice than as provided for in this clause 6.4 With A Midwives Help reserves the right to charge the Client the full Fee for the Session.

6.5 The Client and/or the Parent acknowledges that information and advice offered by With A Midwives Help is for informational purposes only and is not a substitute for medical advice and/or treatment. The Client agrees to always seek the advice of a medical practitioner regarding matters that may require medical attention and/or diagnosis, and before following the advice and using techniques of With A Midwives Help.

6.6 The Client agrees and acknowledges that the information and advice provided by With A Midwives Help is intended for the Client's and/or Parent's purposes only. The Client acknowledges the information provided may not be suitable for other Babies and/or child/ren.

6.7 The Client and/or the Parent will at all times act reasonably and respectfully towards any employee or representative of With A Midwives Help.

7. Warranty and Limited Liability

7.1 The Client indemnifies With A Midwives Help and With A Midwives Help will not be liable for any damage, harm and/or loss which the Client and/or the Parent and/or the Baby incurs as a result of: -

7.1.1 Any action not taken in relation to the Client, medical or otherwise, due to With A Midwives Help not being authorised to act in accordance with this Agreement; and

7.1.2 The Client and/or the Parent not following the advice and/or recommendations of With A Midwives Help; and

7.1.3 The Client and/or the Parent not following the guidelines of the SIDS safe sleeping campaign as stipulated in clause 5.4 of this Agreement; and

7.1.4 With A Midwives Help taking any action in accordance with clauses 5.6 and 5.7 of this Agreement; and

7.1.5 Any person providing the Services having fraudulently represented to With A Midwives Help that they have undergone the required checks and obtained the authorisations as required in clause 7.6 of this Agreement.

7.2 To the full extent as permitted by law, all guarantees, representations, terms, conditions and warranties which are not expressly stipulated in the Agreement are excluded from operation within it. If With A Midwives Help is held liable for a breach of a guarantee, representation, term, condition or warranty imposed upon the Agreement, then With A Midwives Help's liability is, at With A Midwives Help's option, limited to performance of its obligations in accordance with this Agreement, or, if specific performance is not possible and/or practical, to procuring the Service be rendered and/or completed by a third party.

7.3 To the full extent as permitted by law, With A Midwives Help will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity cost, loss of data out of or in connection with the Services, whether at common law, equity, tort, or pursuant to statute.

7.4 The Client warrants that neither the Client nor the Parent will disclose any advice and/or techniques and/or information provided to them by With A Midwives Help during any given Session with any other person, unless: -

7.4.1 With A Midwives Help has consented to such disclosure; and/or

7.4.2 If such disclosure is made to a medical professional in the interest of providing the Baby with medical and/or other health related treatment; and/or

7.4.3 If such disclosure is necessary and in the best interest of the Baby; and/or

7.4.4 If such disclosure is required by law.

7.5 The Client and Parent warrant that, should any action be taken in accordance with clause 5.6 of this Agreement that the Client and/or Parent will provide their full cooperation to With A Midwives Help in relation to any investigation that may so ensue.

7.6 With A Midwives Help warrants that With A Midwives Help has required and obtained documentary evidence that, to the extent required by law, any employee and/or agent and/or representative who provides the Services at any given time has undergone the required statutory checks and obtained the necessary authorisations required when working with minor children.

8. Indemnity

8.1 The Client and the Parent indemnify and keeps indemnified With A Midwives Help and its directors, agents and employees against all actions, claims, losses, liabilities, costs or expenses (including reasonable legal costs or expenses) which may be brought against or suffered or incurred by any of them, arising directly or indirectly out of or in relation to injury to any person or as the result of a breach of this agreement by the Client and/or the Parent.

9. Intellectual Property Rights

9.1 With A Midwives Help owns or is the exclusive licensee of all Intellectual Property Rights in any materials created by With A Midwives Help for the purposes of supplying the Services.

9.2 With A Midwives Help authorises Clients and Parents to download and temporarily store one or more pages of the With A Midwives Help website for viewing on a personal electronic device, for non-commercial use.

10. Description of work

10.1 With A Midwives Help's Quotation is based on the initial request from the Client in relation to specific needs and/or conditions the Baby has, how many Sessions are required and the frequency of the Sessions. The Client acknowledges that it may become apparent, after commencement of the Services that additional Sessions may be required.

10.2 If With A Midwives Help considers additional Sessions may be necessary, With A Midwives Help will immediately notify the Client of the additional Services recommended and the estimated new Fee. The Client must notify With A Midwives Help within seven (7) days if it does not want With A Midwives Help to provide the additional Services, but the Client will remain liable to pay With A Midwives Help for all Services supplied up to that date and as agreed in this Agreement.

11. Termination

11.1 Either party may terminate the Agreement by giving the other party seven (7) days written notice.

11.2 With A Midwives Help may immediately, without notice, terminate this Agreement, if the Client and/or the Parent -

11.2.1 acts in a way which is criminal, offensive, rude and/or generally unacceptable towards any employee and/or representative of With A Midwives Help;

11.2.2 cancels and/or does not attend more than two (2) Sessions without giving notice as provided for in this Agreement or without giving any form of notice

11.3 If the Client terminates the Agreement for any reason whatsoever, the Client must immediately pay With A Midwives Help all amounts owing to With A Midwives Help and for all Services set out in this Agreement.

11.4 In relation to Sessions booked and cancelled with short notice, With A Midwives Help -

11.4.1 Reserves the right to terminate and/or accept termination of this Agreement by the Client and/or Parent upon receiving less or no notice as required by this clause 11; and

11.4.2 With A Midwives Help also reserves the right to charge the Client/Parent an additional fee and/or penalty in relation to such a termination of this Agreement and rescheduling of the Session and/or Services, as required.

12. Default

12.1 Invoices issued by With A Midwives Help shall be due and payable within seven (7) days from the date of the invoice ("**Default Date**"). Without prejudice to any other rights of With A Midwives Help, the Client may be charged account keeping fees of \$25.00 calculated monthly on any payment in arrears.

12.2 If With A Midwives Help does not receive any balance outstanding for the Services ("**Outstanding Balance**") on or before the Default Date, With A Midwives Help may, without prejudice to any other remedy it may have, forward the Client's outstanding account to a debt collection agency, or its lawyers, for further action. The Client acknowledges and agrees that:

12.2.1 After the Default Date, the Outstanding Balance shall include, but not be limited to, all applicable fees and charges under this Agreement;

12.2.2 With A Midwives Help may, in its discretion, calculate interest at the rate of two percentum (2%) higher than the rate being fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983 (Vic) for all monies due by the Client to With A Midwives Help;

12.2.3 In the event of the Client being in default of the obligation to pay and the overdue account is then referred to a debt collection agency and/or law firm for collection and the agency charges commission on a contingency basis, the Client shall be liable to pay as a liquidated debt, the commission payable by With A Midwives Help to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

Added Commission = Original Debt x 100 [100 - Commission % charged by the agency (including GST)]

12.2.4 In the event where With A Midwives Help or With A Midwives Help's agency refers the overdue account to a lawyer the Client shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on an indemnity

13. Set-Off

13.1 The Client shall have no right of set-off in any suit, claim or proceeding brought by With A Midwives Help against the Client for default in payment.

13.2 The Client acknowledges that With A Midwives Help can produce this clause in bar of any proceeding for set-off.

14. Insurance

14.1 With A Midwives Help will take out and maintain all insurance it considers appropriate in respect of the supply the Services, and all other insurances required by law.

15. General provisions

15.1 A notice given under the Agreement must be in writing and sent to the recipient at the address provided by the said recipient or such other address as notified from time to time.

15.2 If the performance of the Agreement or any obligation under it is prevented, restricted or interfered with by reason of an act of God, fire, lightning, flood or other natural disaster, subsidence, power or gas shortage, inability or delay in obtaining any local government approvals, consents or permits or because of any industrial dispute of any kind or any other cause, whether similar or not to the foregoing, outside of the affected party's control, the affected party, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention, restriction or interference.

15.3 This Agreement contains the entire agreement between the parties and can only be amended, supplemented, or waived in writing signed by both parties. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights shall not be deemed a continuing waiver or modification of the Agreement.

15.4 The Agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

15.5 If any clause or part of the clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the agreement is not affected.

15.6 With A Midwives Help may license or sub contract all or any of its obligations and all rights without the Client's and/or the Parent's consent.

16. Dispute resolution

16.1 The Client and/or the Parent -

16.1.1 must discuss all matters of concern regarding the Services with With A Midwives Help or its nominee only;

16.1.2 Must not discuss disputes or other matters of concern with any person external to With A Midwives Help, other than the Client's professional advisors; and

16.1.3 Agrees that if a matter of concern is unresolved, it must then be subjected exclusively to the dispute resolution procedures set out in this Agreement.

16.2 Mediation before Legal Proceeding

The Client and/or the Parent and With A Midwives Help agree that if a dispute arises between them in relation to this Agreement, they will not institute legal proceedings in a Court or Tribunal until the mediation procedures in this Agreement have been followed in good faith and expeditiously.

16.3 Notice of Dispute

If a dispute arises, either Party may notify the other Party of the existence of the dispute within ten (10) business days of the dispute occurring in writing and provide written details of the dispute.

16.4 Negotiation

The Parties must meet within three (3) days of a notice of dispute being given by one Party to the other. The Parties must endeavour to resolve the dispute by negotiation at the meeting.

16.5 Refer to Mediation

The Parties must refer the dispute to mediation if they are unable to resolve the dispute by negotiation with two (2) weeks of the date of a meeting as contemplated in clause 16.4 of this Agreement or of the date of the notice of the dispute if such a meeting was not held.

16.6 Appointment of Mediator

A mediator must be chosen and appointed jointly by the Parties. The costs of the mediator will be paid equally by With A Midwives Help and the Client. If the Parties are unable to agree on a mediator, then either Party may request the President of The Institute of Arbitrators (Victoria) to appoint a mediator.

16.7 Role of Mediator

The Parties must appoint the mediator on the following terms:

16.7.1 The mediator will assist the Parties to resolve the dispute by agreement;

16.7.2 The mediator has no power to make a binding decision for the Parties; and

16.7.3 The mediator will not express any opinion or give any advice.

16.8 Costs

The costs associated with the agreed dispute resolution process will be borne equally by the parties.

PRIVACY POLICY

With A Midwives Help is committed to protecting your privacy and the responsible handling of your personal information. With A Midwives Help is bound by the *Privacy Act 1988* ("**Privacy Act**") and the National Privacy principles which govern the use, handling and disclosure of personal and sensitive information.

Collecting Information

Personal information is information or opinion from which an individual's identity may be ascertained. The nature of personal information collected by With A Midwives Help generally comprises an individual's name and contact details (including address, phone, fax and e-mail). Information provided by third parties may also be obtained in order for us to best provide you with the Services. We will not collect personal or sensitive information unless it is absolutely necessary in order to provide the Services to you. We will destroy personal information when it is no longer required for such functions and activities.

Use of Cookies

We may employ cookies on our website to track your access and use of the website. Any personal information collected will only be used by us in accordance with our privacy policy.

Access and Changes to this Policy

You have a right to access all personal information we hold about you. To ask for access to your information or if you have a complaint concerning your information privacy please contact With A Midwives Help by email: info@withamidwiveshelp.com.au. We reserve the right, at our discretion, to modify or remove portions of this Privacy Policy at any time. We encourage you to check our website periodically.