Made4Kids - Terms and Conditions

Last updated: May 2024

M4K Inc. is a corporation incorporated under the laws of the Province of Alberta (“**M4K**”).

These Terms and Conditions (**“Conditions**”) shall govern all transactions between M4K, its affiliates, brands, and other related companies and its Customers for all its Services.

A. Definitions

In these Conditions, the following definitions apply:

**Business Day**: means a day on which banks are open for business in Canada.

**Customer**: means the Customer for whom M4K provides the Services.

**Customer Material**: all documents, information, items, and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to M4K in connection with the Services.

**Conditions:** these terms and conditions as amended from time to time which shall include any Waiver.

**Content:** the written, photographic, visual, audio, or video content provided by M4K pursuant to or via the Services.

**Fees**: the services fee payable by the Customer for the supply of the Services in accordance with the Fee Schedule.

**Fee Schedule**: the fees charged by M4K for the Services in effect from time to time.

**Force Majeure:** any event outside the control of the Parties, including but not limited to natural disaster, fire, flood, extreme weather event, pandemic or public health emergency, power disruption, strike, lockout or other industrial action, act of God, flood, war or threat of war, accidental or malicious damage, prohibition or restriction by any government or other legal authority, internet connectivity disruption, or computer system breach.

**Intellectual Property Rights**: any and all copyright, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, utility models, business methods, patents, patents pending, domain names, and all similar rights.

**Loss**: a loss, cost, damage, fine, charge, expense, claim or other liability (including legal fees on a solicitor and own client basis and other professional fees).

**Parties**: together, M4K and the Customer.

**Services:** the services supplied by M4K to the Customer as delivered on and through M4K’s online platform, including the Website, and more particularly described by the Customer’s Subscription, which as of the date of these Conditions predominantly include sports coaching and training but may vary from time to time.

**Subscription:** the specific service level, terms and/or parameters of participation in and subscription to the Services by a particular Customer which may include specific deliverables, scope, timelines, communication, fees, or other details which shall form part of the Services to be provided to the respective Customer.

**Wavier:** any parallel or distinct written release or waiver entered in to by the Customer in regard to the Services.

**Website**: the website located at [www.made4kidshockeytraining.com](http://www.made4kidshockeytraining.com) through which the Services are delivered.

B. The Conditions

1. The Conditions apply to all subscription to and use of the Services by the Customer to the exclusion of all other terms and conditions and supersede any previous terms, with the exception of any Waiver which shall be supplemental to and incorporated into these Conditions, and in the event of any inconsistency with any other terms, agreements, waivers, or releases that might apply, the Conditions shall prevail.
2. The Conditions replace any other earlier conditions and may be changed by M4K in writing at any time, including by placing amended conditions on the Website.
3. The Conditions constitute the entire agreement between the Parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance, or warranty made or given by or on behalf of M4K which is not set out in the Conditions.
4. Any coaching samples, videos, plans, descriptive matter, or advertising posted or otherwise issued by M4K are issued or published for the sole purpose of giving an approximation of the Services. They shall not form part of the Conditions or have any contractual force and are not intended as a representation of the specific deliverables or content to be delivered via the Services to a specific Customer.
5. Any registration for, request for and/or receipt of Services shall represent the Customer’s agreement to be bound by these Conditions.

C. Supply of Services

1. Unless otherwise agreed by M4K in writing, all Services shall be performed at the sole and unfettered discretion of M4K in accordance with these Conditions.
2. M4K shall provide the Services using commercially reasonable care and skill.
3. M4K shall use all reasonable endeavours to meet any performance timelines specified by or discussed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
4. The Customer shall, where necessary, be notified of the delivery or performance of Services by email or via notification message on the Website.
5. All Services shall be delivered to the Customer electronically through web-based software on the Website, or at the sole option of M4K, a mobile application (app) or third-party file sharing service, unless otherwise indicated in Customer’s specific subscription to the Services.
6. Without prejudice or limitation to the express agreement that time shall not be of the essence for the performance of the Services, for greater clarity, if M4K’s performance of its obligations under these Conditions are prevented or delayed by:
   1. any act or omission of the Customer, its agents, subcontractors, consultants, employees, or its affiliated entities;
   2. by the Customer or any associated recipient of the Service; or
   3. any Force Majeure,

then, without prejudice to any other right or remedy it may have, any time estimate, commitment or delivery date requested by the Customer shall be extended as reasonably required.

1. M4K shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, in accordance with any changes in their business plans or operations, or which do not materially affect the nature or quality of the Services, and it shall notify the Customer in any such event. Reasonable compensation or refund for fees shall be provided by M4K in the event such change materially diminishes the Services subscribed to or purchased by the Customer.

D. Customer Obligations

1. The Customer shall:
   1. (a) communicate and co-operate with M4K in all matters relating to the Services; and
   2. (b) provide M4K in a timely manner such information, photos, or videos as it may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and
   3. comply with these Conditions.
2. The Customer will not:
   1. make any of the Services available to any third-party;
   2. share access to the Services, including login credentials, with any third-party;
   3. sell, resell, license, sublicense, distribute, make available, rent, or lease any of the content, information or other deliverable provided by M4K via the Services;
   4. use the Services to store or transmit infringing, libelous, offensive or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
   5. use the Services to store or transmit Malicious Code;
   6. interfere with or disrupt the integrity or performance of the Services or third-party data contained therein;
   7. attempt to gain unauthorized access to the Services or related systems or networks;
   8. permit direct or indirect access to or use of the Services to access or use any of our intellectual property except as permitted under these Terms and Conditions;
   9. copy the Services, Content, source code, or any part, feature, function, or user interface thereof;
   10. frame or mirror any part of the Services;
   11. access any of the Services in order to build a competitive product or service or to benchmark with another product or service; or
   12. reverse engineer the Services.
3. Any use of the Services in breach of the Conditions by the Customer, that in the judgment of M4K threatens the security, integrity, or availability of the Services, may result in immediate suspension or termination of the Services to the Customer.

E. Prices

1. In consideration of the provision of the Services by M4K, the Customer shall pay the Fees as set out on the Website as selected and subscribed to by the Customer.
2. M4K may at any time modify its Fees for Services with or without notice to the Customer effective the Customer’s subsequent billing period. For greater clarity, the Fees agreed under any subscription to the Services shall not be binding upon M4K for any future services whatsoever.
3. The Fees do not include any goods and services tax (GST), value added tax (VAT), government tax or duty which will be charged and payable in addition to the Fees at the time when payment for the Services is delivered.
4. The Customer acknowledges that where Services are provided in Alberta, Canada these will be subject to any good services or other place-of-supply rules as appropriate.

F. Payment

1. Upon subscription by the Customer to the Services, M4K shall be entitled to collect the Fees for the ensuing billing period and any other applicable taxes.
2. Subsequent billing will be processed on the first day of each new billing period in accordance with the Fee Schedule in effect from time to time, which remains subject to change in accordance with these Terms.
3. All payments by the Customer for the Services will be made by credit card and processed by a third-party payment processor at the sole discretion of M4K.
4. If the Customer fails to make a payment in accordance with these Conditions and continues to use, participate in, or benefit from the Services, without affecting any of its other rights and remedies M4K may:
   1. suspend the Services;
   2. use or set off any payments the Customer has made against any sums due as M4K may decide; or
   3. charge interest on the amount not paid at an annual rate of 2% above the Bank of Canada's prime rate, calculated and compounded monthly until payment is received in full.
5. The Customer is not entitled to withhold payment or use any amounts as a set off against any amount or Services M4K may owe the Customer.

H. Changes to the Services

M4K may, from time to make, make changes to the scope of the Services, including the availability and/or response times of coaches, volume of communication included, nature of the feedback included, resources included, or in any other manner whatsoever. In the event such changes materially affect the Services for which the Customer has subscribed, the Customer may cancel future use of the Services upon request with effect as of the start of the next billing period.

1. Cancellation
2. The Customer may cancel their subscription to the Service without paying a cancellation fee or other liability at any time with effect as of the next billing period. Cancellation during any unexpired billing period shall not be eligible for a refund or any portion of the current billing period.

J. Intellectual Property Rights

1. All Intellectual Property Rights in relation to content created, delivered, transmitted, or in any way communicated by M4K arising from or in relation to the performance of the Services for the Customer, including but not limited to written content, audio, videos, graphics, photographs, images and other deliverables of any kind (“M4K IP”) shall be vested in and be the exclusive property of M4K.
2. During the continuous, fully paid Subscription to the Services, the Customer shall be granted a non-exclusive, personal, revocable, perpetual, non-sub-licensable, non-transferable, non-commercial license to use M4K IP.
3. Except as permitted by the foregoing license, no distribution, publication, duplication, derivative use, exploitation, modification, or other use whatsoever shall be made of M4K IP.
4. All Intellectual Property Rights in Customer Material shall remain the property of and vested in Customer or their respective owner(s).
5. In relation to any third-party photographs, video or imagery provided to the Customer pursuant to the provision of the Services, M4K shall make commercially reasonable efforts to seek to obtain a licence for commercial use of such content however the Customer agrees and acknowledges any such third-party IP shall not be subject to the foregoing license and shall not be used by the Customer in any manner apart from personal reference.
6. M4K reserves the right to impost the visual credit and/or branding on any M4K IP and to the use for self-promotion any work carried out for the Customer including M4K IP.

K. Copyright

Except as stated above, M4K warrants that the Services, all delivered M4K IP, and all rights thereto are owned by it and shall not violate any copyright, patent, trademark, trade secret or any other proprietary right of any third party.

L. Liability

1. M4K shall not be liable in contract, tort, or otherwise for the Customer’s modification to or departure from the recommendations, advice, coaching, and M4K IP provided by M4K in the performance of the Services or for any inaccuracy in any aspect of the performance of the Services, including M4K IP, resulting from or contributed to by, without limitation, inaccurate information provided by the Customer.
2. M4K specifically disclaims any and all warranties, including any implied warranty of fitness for a particular purpose or merchantability in relation to the Services.
3. The Customer agrees to indemnify M4K in respect of any Losses arising out of or in connection with any claim that any M4K IP based upon Customer supplied information, as well as any document, information, or Customer Materials provided by the Customer to M4K relating to the Services infringe any third-party Intellectual Property Rights.
4. These liability provisions shall survive termination or completion of the Services and any Subscription.

M. Limitation of Liability

1. The Services and resources provided by M4K are solely for educational purposes and should not be considered as medical advice, diagnosis, or treatment. It is recommended that you seek guidance from a healthcare professional before beginning any exercise, sports, or training activities or program, particularly if you have pre-existing health conditions or injuries. M4K is not responsible for any injuries, damages, or losses that may arise from your use or misuse of the information, exercises, or programs provided through the Services or publicly on the Website.
2. The Customer’s participation in the Services is at their own risk and the Customer expressly agrees and acknowledges:
   1. Participation in the Services and the sports to which they pertain, have inherent risks ranging from minor to serious injury, which include but are not limited to training injuries, repetitive stress injuries, sprains/strains, fall-related injuries, head injuries, fractures, broken bones, facial injuries, dental injuries, and mental health implications consequent of competition or direct feedback coaching.
   2. Engaging in the Services and related activities may involve risk of serious injury which might result from personal actions, inactions, or negligence, and also from the actions, inactions, or negligence of others or the conditions of the premises or of any equipment used in such activities. Further, that there may be other risks not known or not reasonably foreseeable at this time. The risks may include but are not limited to: nature of the activities recommended by or related to the Services, latent or apparent defects of conditions in equipment or property supplied by or recommended by M4K, employees or agents of M4K, personal physical condition, acts of omissions, conditions of facilities and surrounding grounds or terrain related to or recommended by or related to the Services and accidents connected with their use; first aid emergency treatment or other services resulting from or contributed to by the Services.
   3. To accept and assume all the risks existing in the Service and the sports to which they pertain.
   4. That participation in the Services and the sports to which they pertain is purely voluntary and to assume all the foregoing risks and accept personal responsibility for the damages following such injury.
   5. To wear all appropriate safety equipment while participating in the Services and the sports or activities to which they pertain.
   6. To maintain adequate insurance to cover any injury or damage caused or suffered by the Customer while participating in the Services or bear the cost of such injury or damage.
   7. To assume and bear the risk and costs of any present or later arisen medical or physical conditions which could affect or interfere with safe participation in the Services.
3. Except as otherwise expressly stated herein, on behalf of themself, their children, my parents, my heirs, assigns, personal representatives the Customer voluntarily releases, waives, forever discharges, and agrees to indemnify and hold harmless M4K and each of their respective directors, officers, agents, and employees, and affiliates from any and all liability for any and all claims, demands of causes of action which are in any way connected with my Subscription to and participation in the Services and the sports to which they pertain.
4. Except as otherwise expressly stated herein, all conditions, warranties and representations, expressed or implied, by statute or otherwise, in relation to the performance or non-performance of any Services are hereby excluded to the full extent permitted by law.
5. Unless otherwise agreed in writing, all photographs, graphics, videos, illustrations, descriptions, specifications, technical data, advertising and other similar information issued by M4K or contained in any of its literature, website, or other publication are presented solely as a means of approximating the Services and shall not form a part of any binding terms or parameters of such Services unless specifically stated by M4K as part of the Customer’s Subscription.
6. Subject to the terms of this Clause M, M4K’s total liability in contract, tort, including without limitation negligence, breach of statutory duty, or misrepresentation, or for any other reason whatsoever under or in connection with the Services and/or these Condition shall not exceed the lesser of an amount equal to the amount actually paid pursuant to the Customer’s Subscription or $1,000.00 CAD.
7. M4K is not liable, whether in contract, tort, including without limitation negligence, breach of statutory duty, or misrepresentation, or for any other reason whatsoever under or in connection with the Services and/or these Condition for:
   1. economic loss;
   2. loss of profit;
   3. loss of revenue;
   4. loss of business;
   5. loss of opportunity;
   6. loss of anticipated savings;
   7. business interruption;
   8. wasted expenditure; or
   9. loss of goodwill;

in each case whether direct or indirect, or for any indirect, special, or consequential loss or damage, howsoever arising.

1. Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of any liability which cannot be excluded or limited by operation of law.

N. Termination

1. Without limitation to any rights otherwise stated in these Conditions, M4K may, at its sole and unfettered discretion, suspend performance of any Service and/or terminate any Subscription effective immediately upon written notice to the Customer following the occurrence of:
   1. the Customer’s breach of any obligation under these Conditions or any Subscription;
   2. the Customer’s notice of winding up or dissolution;
   3. the Customer’s ceasing or suspending business or payment of any of debts or failure to pay any debts as they become due;
   4. the Customer indicating their intention to postpone or cancel the Services; or
   5. any other reason at the reasonable discretion of M4K.

O. Post Termination

On termination of these Conditions for any reason:

1. Any accrued rights, remedies, obligations, and liabilities as at termination shall not be affected, including the right to claim damages in respect of any breach of the Conditions which exist at or before the date of termination; and
2. Clauses which expressly or by implication have effect after termination shall continue in full force and effect, including but without limitation: confidentiality, limitation of liability, notices, governing law, and jurisdiction.

P. Non-Solicitation; No Hiring

1. Customer or any affiliated or associated third party, shall not solicit or hire, directly or indirectly, any of M4K’s employees, independent contractors, or agents without M4K’s express approval, in writing in advance.
2. In the event the foregoing non-solicitation term is breached or found by a court of competent jurisdiction to be unenforceable, and any of M4K’s employees, independent contractors or agents are hired or employed by the Customer or any affiliated or associated third party, whether directly or indirectly, M4K shall be deemed agent and facilitator of the transaction and be entitled to compensation in the amount of thirty percent (30%) of the employee’s, independent contractor’s or agent’s annual total salary or other compensation, before tax, which shall be promptly reported to M4K and an invoice issued to the Customer for immediate payment.

R. Relationship of the Parties

The relationship of M4K, including its officers, directors, employees, independent contractors, and agents, and the Customer shall be that of independent contractor and no employment, partnership or joint venture relationship is intended or implied, unless otherwise set forth in a separate written agreement.

S. Force Majeure

1. Neither the Customer nor M4K shall bear any liability be deemed to be in breach of the Condition by reason of any delay in performing, or failure to perform, any obligations under the Services if such delay or failure was beyond that party’s reasonable control including, without limitation, any Force Majeure.
2. If the Customer or M4K claim to be unable to perform any obligation in relation to the Services, for any reason set forth herein, that party shall immediately notify the other party of the nature and extent of the circumstances in question.
3. This condition shall cease to apply when any such circumstances have ceased to have effect on the performance of the Services. If any circumstance described herein continues for more than three (3) months or is reasonably foreseeable to continue for such period of time, the other party shall be entitled to terminate the provision of the Services upon written notice and subject to all post-termination obligations set out in Clause O hereto.

T. Notices

1. Any notice given under these Conditions must be in writing and addressed to:
   1. the Customer via email at the account customarily used or listed on its account with M4K, or via regular mail at its registered office, principal place of business or any other address it has notified M4K in writing; or
   2. M4K at the registered office set out below, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service or commercial courier to:

216, 14032 23 Avenue

Edmonton, Alberta T6R 3L6

Canada

1. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Section 1 above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; if sent via email (where permitted), on the day of transmission.
2. The notice provisions set out at 1 and 2 above shall not apply to the service of any proceedings or other documents in any legal action, which such service shall be governed by the applicable rules of civil procedure.

U. Enforceability

1. If at any time:
   1. Any of these conditions are found to be wholly or partly illegal, invalid, or unenforceable, then such illegality, invalidity or enforceability will not affect the other remaining conditions in any way; and
   2. Any of these conditions are found to be wholly invalid or unenforceable but would be valid or enforceable if some part of the condition were deleted, narrowed or read-down, then the condition in question shall apply with such modification as may be necessary to preserve its validity and enforceability.

V. Variation

Except as set out in these Conditions, no variation of the Conditions, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by M4K or published on the Website. M4K may modify these Conditions at any time without notice.

W. General

1. These Conditions, the Services, 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 laws of the Province of Alberta, Canada. The parties irrevocably attorn to the jurisdiction of the courts of Alberta in Edmonton, which will have exclusive jurisdiction over any matter arising out of the Conditions or the Services.
2. No failure or delay by either party in exercising any right under these Conditions will constitute a waiver of that right.
3. The Conditions may be entered into and accepted electronically by specific expression of acceptance, such as a confirmation button or check box, or via electronic document delivery and execution including but not limited to digital signature and/or PDF.