

# Terms of use and services agreement

[Last updated 7 January 2021]

Thank you for taking the time to read our terms of use and services agreement. This document sets out important terms about the services and products we provide, your rights and obligations when using our website and services and what we are each responsible for.

In this agreement, the following terms have the following meanings:

'website' means our website at <https://www.dancecart.com.au> and includes our social media pages, blog and app (if available).

'we', 'us', 'ours', or 'Dance Cart', means Dance Cart Pty Ltd ABN 54 620 202 342 of Geebung, Queensland, including our officers, employees, successors and assigns.

'you' or 'yours' means you as a user of our website or services.

By using this website, you will be automatically bound by the terms of use relating to our website, including our privacy policy, disclaimer and any other legal notice displayed on our website (as available). We encourage you to carefully read and understand these terms before using the website or any of our services. If you don't agree, your remedy is to stop using our website.

For the terms of use relating to our website, we may update our terms from time to time and the new provisions will apply from the date they are updated and linked from the website.

When you commit to a booking or purchase of our services or materials (for example by purchasing an on-line program or booking an in-school program for an upcoming term), you will become automatically bound by these terms. You do not need to sign this agreement for the terms to be binding on you. We may make changes to these terms however the terms that applied at the time you made your booking or payment will continue to apply to the services we are providing you. If you make a subsequent booking or payment for services, and we have updated these terms in the meantime, the new terms will then apply so please check for any updates.

We have included a 'last updated' date at the top of this agreement to help you keep track of any changes.

## **Feedback, comments or complaints**

If you have any questions, please contact Amy Kirwan or use the contact details on our website and we will usually respond to all enquiries within two business days.

## **Use of our website and consents**

While the contents and materials in our programs are age-appropriate and suitable for children, our website is designed to be used only by adults.

To access our services (for example, to book a class or purchase class material), you will need to complete our online (or in person) forms. If you are a parent and any consent is needed for your child, for example, consent to participate in a dance class or consent to have their image appear on our website, you agree the consent will be given only by the legal guardian or parent of the child. If you are a school or an outside of school care provider, you agree to obtain all necessary consents from the legal guardian or parent of the student(s).

## **Classes**

### **In School Programs**

Details of the programs we offer within schools are detailed on our website, together with the inclusions of each program. Please contact us so we can discuss your needs and ensure the program you are interested in is suitable for your needs.

**Terms for in-school programs:**

- Fees are payable per student
- All correspondence regarding changes to bookings, invoices, questions and concerns must be communicated to us in writing
- Timetables will be discussed with you and finalised in the term prior to the program's commencement (other than for term 1 where this discussion may occur at the beginning of term 1). Once the timetable has been accepted by you, we may not be able to make any changes as we also have other commitments. We will consider your change if it is possible however there are no guarantees
- An invoice for the full term will be sent to you via email after the first lesson of the term. Unless we have agreed alternative arrangements with you in writing, total payment must be made within 4 weeks of the program commencement
- We will invoice you based on the numbers of students confirmed during the first lesson of the term
- Our fees are calculated on the number of students agreed at the first lesson and are payable for the entire term based on this number. If a student is absent from one or more lessons, a refund or credit will not be issued
- If a scheduled lesson falls on a public holiday, a replacement lesson will not be organised unless it results in the number of lessons falling below the minimum number we have agreed to provide for the term. In this scenario, we will arrange an alternative suitable day and time to deliver the lesson
- If a scheduled lesson falls on a day that you have organised another school event (sports carnival, excursion etc), a replacement lesson will not be guaranteed
- If we have to cancel a lesson due to weather or illness (this does not often happen), we will arrange a replacement lesson with you
- We have limited teaching resources and only accept the number of confirmed bookings that we are able to service. For this reason, if you cancel our services after we have accepted your booking, we may, at our discretion, charge you a cancellation fee of up to 30% of your booking. This fee covers the cost of staff and resources should a replacement booking for that term not be found. The less notice you give to us, the more likely you will incur a cancellation fee. If you incur a cancellation fee, we will issue an invoice for the cancellation amount on or around the beginning of week 1 of the relevant term. The invoice will be payable within 14 days of the invoice date
- The intellectual rights in all curriculum documents, lesson plans and resources remain our property and you do not have the right to copy, distribute or share our intellectual property without our express consent in writing. This applies even if we create a document specifically for you

**On-line dance programs**

For schools that are unable to access our in-school programs due to remoteness, student numbers, timetabling issues or budget, we now have online programs available to allow schools to deliver our dance programs themselves using their own teachers and our online content and footage. Our online programs allow schools to meet dance curriculum needs, offer control and flexibility, make it easy for teachers, engage the students and include a portal to share some content with parents.

**Terms for on-line dance programs:**

- Payment in full for the on-line program(s) is/are required up front prior to log-in access being provided

- We do not offer refunds on amounts paid if your school is subsequently unable to deliver the program due to staff shortages, your internal IT issues or any other internal or external complications you encounter that are not directly caused by us
- You remain solely responsible for the safety and wellbeing of your students and staff in relation to delivery and participation in our on-line program(s).
- You are responsible for the provision of a safe environment and any IT equipment required for students to view and participate in the on-line program
- While the on-line program content is designed to meet Australian National curriculum, a registered teacher will still be required to supervise the students to ensure the students are participating at an acceptable level to meet the national curricular requirements
- Our intellectual property rights in our on-line program are a valuable asset of our business and we take active steps to protect our intellectual property rights. Your purchase of our on-line program is a purchase made by your school, for use by your school only. We grant to your school and the permanent teachers and support staff at your school a non-exclusive, revokable license to use our on-line program resources only within your school, in the manner the resources are intended to be used, for the benefit of students enrolled in your school and in accordance with these terms
- You may not use our on-line resources to deliver our program to participants that are not enrolled as students at your school
- You may not provide log-in details for our online program to any person outside of your school, parents of students at your school or student teachers or other visiting, transient or temporary teaching or administrative staff within your school. If log-in details are intentionally or inadvertently shared in this manner, you agree to promptly change the log-in password for your account. It is your responsibility to monitor who has access to the log-in information
- If we find you are in breach of these terms, we reserve the right to discontinue your access to our on-line program and there will be no refund given to you in these circumstances
- The parent portal is a tool we provide for your use, it is provided on an 'as is where is' basis and we accept no responsibility for any use you make of the portal or the content you share there. It remains your responsibility to ensure you have obtained all necessary consents, upload only appropriate content, and monitor and manage use of the portal

### **Face to Face classes**

Face to face classes open to the public are offered at the times and location identified on our website, see <https://www.dancecart.com.au/dancecartkids/>. These classes cater for specific age groups and there is information on the website about the inclusions and costs.

### **Terms for face-to-face classes:**

- Fees are payable by term
- Once the term commences, fees are generally non-refundable if your child misses a class or does not complete the full term
- As we only run 1 class a week for each age group, make-up classes are not available if your child misses a class.
- If there are local, State or Federal restrictions placed on us that prevent in-person classes from operating, we reserve the right to continue delivering the classes via Zoom or similar electronic video link in

- When registering your child, you agree to provide true, correct and complete information and to keep this information up-to-date
- Please do not bring your child to class if they are unwell
- You also agree to respect the privacy of other participants in the class and, unless advised otherwise by us, you agree you will not take photo or video footage of other students

### **External programs**

We have programs available for vacation care and outside of school hours care centres. Please contact to discuss a program suitable for your centre. In general, we offer a 2 hour dance experience with a cost per student (minimum numbers apply or a fixed fee is applied)

#### **Terms for external programs:**

- Fees are payable per student
- All correspondence regarding changes to bookings, invoices, questions and concerns must be communicated to us in writing
- Bookings, themes and timings will be discussed with you at the time of booking and, once accepted by you, we may not be able to make any changes as we also have other commitments. We will consider your change if it is possible however there are no guarantees
- We have limited teaching resources and only accept the number of confirmed bookings that we are able to service. For this reason, if you cancel our services after we have accepted your booking, we may, at our discretion, charge you a cancellation fee of up to 30% of your booking. This fee covers the cost of staff and resources should a replacement booking for your booking time slot not be found. The less notice you give to us, the more likely you will incur a cancellation fee. If you incur a cancellation fee, we will issue an invoice for the cancellation amount within 14 days of your cancellation. The invoice will be payable within 14 days of the invoice date
- We will invoice you based on the higher of the numbers of students expected to be participating in the program or the number of students actually participating in the program on the day. This could result in a 'top up' invoice. We may charge an additional fee if the number of participating students is significantly different to the estimated number of students advised at the time you booked
- If you need to reschedule your time-slot (for example you have an unexpected closure on the day we were due to arrive), a replacement time-slot is not guaranteed and there will be no refund provided if we are unable to provide an alternative time-slot
- If we have to cancel your time-slot due to weather or illness (this does not often happen), we will arrange a replacement time-slot with you.
- The intellectual rights in all curriculum documents, lesson plans and resources remain our property and you do not have the right to copy, distribute or share our intellectual property without our express consent in writing. This applies even if we create a document specifically for you.

#### **Payment terms and refund policy**

You can book and purchase our on-line program through our website or by contacting our office directly. Our in-school and external programs will be invoiced to you. Payment is accepted via PayPal, direct deposit to our bank account, or by cash payment (as one payment for the entire term) prior to attending a face-to-face class with your child.

If you purchase our pre-recorded program, we will only refund your purchase price if there is a major problem with the product (for example, if the digital files are damaged and cannot be played). You will not be entitled to refund if you simply change your mind. You will also not be entitled to a refund if you are unable to deliver the

program to your students through no fault of ours (for example, if your school has a forced closure or you do not have the teaching resources to assist with delivery of the program to the students).

If money owing to us remains unpaid, you agree, in addition to the amount due, you will also pay for any costs and disbursements incurred by us in pursuing the debt (including legal costs on a solicitor and own client basis, debt collection costs and court recovery action if required).

### **Posts to our website and social media**

**For parents/guardians:** If you provide consent for us to use images or recordings of you or your child, you consent to us posting these images and recordings to our website and the social media accounts linked to our business. Your consent may be provided when you complete our registration form.

**For schools and after school care providers:** It is your responsibility to obtain the parent/guardian consent for all children to participate in our programs (both as delivered by us or our digital programs). Unless you advise us otherwise, we will assume you have obtained the relevant consents.

We will separately arrange media consent and our consent forms will allow us to post images and recordings to our website and the social media accounts linked to our business (if applicable). In saying that, you may always request that we do not take any video or photos of students by sending us an email using our contact details above and this will over-ride any consents we hold.

### **For all users of our services:**

You acknowledge that once videos or photos ('footage') are posted on the internet, we cannot control comments about or use of the footage by others, and we cannot retrieve all copies of the footage if it is shared or downloaded.

You warrant that you hold the necessary rights and interests to use any material you add to our social media pages (your content) and that no part of your content infringes any third party rights, including copyright, trademark rights and privacy.

You understand that once you post content on social media, that information becomes public.

By submitting your content to our social media pages, you irrevocably grant to us a perpetual, world-wide, non-exclusive, royalty-free, sub-licensable and transferable license and right to use your content for our business purposes including marketing or providing services to you, now or in the future, and on the same or a different platform. We will not use your content for any other purpose. You indemnify us against any claims made for breach of third party rights in respect of your content.

At our sole discretion we may remove or disable your content if we believe your content to be in violation of our terms and conditions. We are not obligated to return any of your content to you under any circumstances.

### **Copyright, Trademarks and other Intellectual Property**

Dance Cart owns the intellectual property rights in the contents of our website, our on-line programs, our resources and any material we offer via the website or in person (or alternatively, we have permission to use or display the material on this website) (collectively called our 'IP'. You may not use, copy, display, distribute, modify, translate, reformat, incorporate into other works, promote, create derivative works, or in any way exploit or allow others to exploit any of our IP in whole or in part except as expressly authorised by us.

The name of our business, our services, materials and class designs are owned by us, whether registered or not. Our trademarks belong to us. Please consider our rights and contact us if you are uncertain about whether you have permission to use our business name, services, materials and class designs.

You agree not to change or delete any copyright or proprietary notice from any of our materials, resources, content or website.

Except as otherwise expressly granted to you in writing, we do not grant you any other express or implied right or license to our website content, material, or our intellectual property.

### **Third party intellectual property rights**

If you believe that there is material on our website that infringes third party intellectual property rights, please contact us at [admin@dancecart.com.au](mailto:admin@dancecart.com.au) with sufficient information to enable us to determine who is the owner of the intellectual property is and to determine if there is an infringement or not. If we form the reasonable belief that there has been an infringement, then we will remove it from our website.

Be aware that you may be subject to liability if you knowingly make any misrepresentations when providing information to us.

### **Accessing our website**

Although we aim for continuous accessibility to our website, this can be dependent upon third party services. As a result, the website may be inaccessible from time to time. Our website is provided to you on an 'as available' basis. We may need to restrict access to our website, for example, during website maintenance or because of suspected misuse. If, for any reason, our website is unavailable, we are not liable to you for any loss or damage incurred.

### **No unlawful or prohibited use**

As a condition of your use of this website, you warrant that you will not use this website for any purpose that is unlawful or prohibited by these terms and conditions. You must not use this website in any manner which could damage, disable, overburden, or impair this website or interfere with any other party's use and enjoyment of this website. You agree not to hack into areas of this website that are not intentionally made available to you.

You expressly agree not to:

- Access, view, copy, download, broadcast or communicate any of our information unless specifically authorised by us to do so
- Engage in any unlawful or immoral acts, or acts in relation to our content or programs
- Decompile, reverse engineer, or try to copy or imitate this website, course material, our on-line programs or any underlying content
- Use our website or services in a manner that could cause harm to any person or harm to our business or our business reputation

### **Security**

We make efforts to maintain the security of our website. However, we do not guarantee the security of the website, any contents or materials, our records, or your content. We disclaim all liability for any computer virus or technological problems that we do not intentionally cause or that are beyond our control. You are encouraged to install and maintain up-to-date security software on your computer.

### **Links disclaimer**

Our website may contain links to other websites (linked sites). The linked sites are not under our control and we are not responsible for the contents of a linked site. We are not responsible for any form of transmission received from any linked site. Links are provided to you only as a reference, and the inclusion of any link does not imply our endorsement of the website, or any association with its operators.

### **General disclaimer**

We aim for our website content to be accurate and up to date but do not accept any responsibility for errors or omissions, this includes where a price has been advertised in error. We may amend our website content at any time without notice.

Subject to any other clause in these terms, to the maximum extent permitted by applicable law, anything contained on our website is provided 'as is' without warranty or condition of any kind.

### **Health and safety disclaimer**

We make reasonable endeavours to ensure the safety of participants during classes we deliver in person. In saying that, you acknowledge that dance can be a strenuous activity and carries an inherent risk of injury. You undertake to notify us of any reason your child or student may be at a greater risk of injury. We do not take any responsibility for the safety of any activities undertaken outside our direct control.

You should be mindful of the excitable nature of children and the possibility that children may accidentally run into each other, fall over while dancing or clown around or exhibit similar or likely behaviours during a class, which could cause themselves or other children injury.

If your students watch our pre-recorded classes, it is your sole responsibility to ensure that they undertake the activities in a safe environment and in a safe manner. We recommend that you:

- Remove all sharp objects from the room including being mindful of table corners
- Ensure there is enough space to carry out the activities
- Never leave the students to follow the digital program unsupervised
- Consider if there are any special circumstances or need of your individual or group of students that require additional support including an additional support person or soft surfaces

We will not be liable for any loss, damage or injury of any kind sustained by you, your child, your staff or your students whilst participating in our class or programs or any activities associated with our classes or programs.

You release us from any and all liability for any loss, damage or injury suffered by you, your child, your staff or your students as a result of participating in our class or programs or any activities associated with our classes or programs

### **Indemnity**

Except to the extent that we have been negligent, you agree to indemnify and defend us from any claims, damages, liabilities, costs, or expenses (including without limitation court costs, collection costs, and reasonable legal fees) related to:

- Any loss, damage or injury of any kind sustained by you, your child your staff or your students whilst participating in our classes or programs, either in-person or via on-line delivery,
- Any content you post via our social media or other platforms,
- Your unauthorised use of our website, social media channels, or services or class materials included in our programs or advertised or available on our website, or
- Your breach of these terms and conditions.

**Limitation of liability**

We will not be liable to you or any other person or entity for any damages whatsoever arising as a result of your use of our website in any way, subject to the requirements of Australian Consumer Law.

Where warranties cannot be excluded under the Australian Consumer Law (ACL), you are entitled:

- To cancel our services,
- To a replacement or refund for a major failure, and compensation for any other reasonably foreseeable loss or damage, and
- To have the materials repaired if the materials are not of acceptable quality and the failure does not amount to a major failure.

Notwithstanding the above, to the fullest extent permitted by law, you agree the total aggregate liability to us for any claim(s) by you in respect of any service or material we provide to you, together with any other claim arising out of this agreement, is limited to the total amount actually paid by you to us for that service or material (even where this amount was zero). This limitation of liability shall survive any termination or expiration of this agreement or your use of this website or the services or materials found on this website.

**Applicable law**

This agreement is governed by the laws of Queensland, Australia and you consent to the exclusive jurisdiction and venue of courts in this State in all disputes arising out of or relating to the use of our website.

You may provide notice to us through the contact us page or otherwise by email sent to [admin@dancecart.com.au](mailto:admin@dancecart.com.au) . We may provide notice to you via email or other electronic means.

Use of this website is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph. If you are resident in a jurisdiction where the use of this website is unauthorized, it is your responsibility to stop using this website.

**Relationship**

You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of these terms and conditions or your use of our website.

Our performance of this agreement is subject to existing laws and legal process. Nothing contained in this agreement can be used to inhibit our right to comply with governmental, court and law enforcement requests or requirements relating to your use of this website, or with regard to information provided to or gathered by us with respect to your use.

**Validity**

If any part of these terms and conditions is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the terms and conditions will continue in effect.

These terms and conditions together with our privacy policy and disclaimer form the entire agreement between you and us in respect of your use of our website.

End.