



## Terms and Conditions

1. These Terms and Conditions shall apply to all Services provided by the School in connection with any Agreement entered by the School with a Customer, Member or Student. These Terms and Conditions cannot be waived or varied without the written consent of the School.
2. **Definitions**
  - 2.1. **Business Day** means a day which is not a Saturday or Sunday or public holiday, in the Tweed Shire Council areas.
  - 2.2. **Credit** means the credit of any Fees provided by the School to the Customer, Member or Student at its sole discretion and in accordance with these Terms and Conditions.
  - 2.3. **Customer, Member or Student** means the individual who signs this Agreement and agrees to be bound by its terms and/or the parent or guardian if the individual is a minor, i.e. under 18 years of age and/or or any other individual having not reached the age of 18 years who participates in the provision of the Services by the School.
  - 2.4. **Dancebiz** means the online studio management system operated by the School through its website.
  - 2.5. **Direct Debit** means the authorised deduction of the Fees from the Customer, Member or Student's bank account in accordance with the completed Direct Debit Request and Service Agreement.
  - 2.6. **Direct Debit Agent** means Global Payments Australia 1 Pty Ltd known as Ezidebit.
  - 2.7. **Direct Debit Request and Service Agreement** means the document at **schedule A** to these Terms and Conditions.
  - 2.8. **Eisteddfod Classes** means all Dance, Acrobatics, Performing Arts and other classes offered from time to time by the School that require the Customer, Member or Student to participate in competitive environments and/or exams that are not Recreational Classes, certified Australian Government courses, pre-professional Dance courses or non-accredited part time course.
  - 2.9. **Fees** means the amount to be paid to the School by the Customer, Member or Student for the Services provided. Such Fees are calculated in accordance with the Fee Structure at **schedule B** hereto as amended or varied by the School from time to time and includes, but is not limited to all videography charges, choreography charges, uniform charges, costume charges, props, extra rehearsal fees, competition fees, fees and charges imposed by the Direct Debit Agent and all or any other charges associated with the provision of the Services by the School to the Customer, Member or Student.
  - 2.10. **GST** has the meaning given in section 195-1 of the *A new Tax System (Goods and Services Tax) Act (1999)* (Cth).
  - 2.11. **Premises** means the premises located at 1/23 Enterprise Avenue Tweed Heads South NSW 2486.
  - 2.12. **Privacy Laws** means the *Privacy Act 1988* (Cth).

- 2.13. **Recreational Classes** means all Dance, Acrobatics, Performing Arts and other classes offered from time to time by the School that are not Eisteddfod Classes, certified Australian Government courses, pre-professional Dance courses or non-accredited part time courses.
- 2.14. **Registered Email Address** means the email address provided by the Customer to the School through Dancebiz.
- 2.15. **Registered Classes** means the activities, classes and lessons offered by the School in which the Customer, Member or Student is registered through Dancebiz as attending for the specified Term.
- 2.16. **School** means Nicole Davis Pty Ltd, A.T.F. Dance Force Trust, T/as Dance Force including all of its servants, agents and employees.
- 2.17. **Services** means any Dance, Acrobatics, Performing Arts and related activities, lessons and classes offered and provided by the School at the Premises or at any other location to Customer, Member or Student and includes but are not limited to:
- 2.17.1. all Recreational Classes;
  - 2.17.2. all Eisteddfod Classes;
  - 2.17.3. CUA40113 Cert IV in Dance courses;
  - 2.17.4. pre-Professional in Dance courses;
  - 2.17.5. CUA30113 Cert III in Dance courses;
  - 2.17.6. non-accredited Part-time courses;
  - 2.17.7. all and any weekend and holiday programs offered by the School;
  - 2.17.8. all competitions and exams in which the Customer, Member or Student might be offered to attend; and
  - 2.17.9. any exhibition or concert organised by the school in which the Customer, Member or Student may participate.
- 2.18. **Term** means each calendar term as specified in the calendar contained at **schedule C** to these Terms and Conditions.
- 2.19. **Terms and Conditions** means these Terms and Conditions and any amendment or variation to them as agreed in writing by the School and any schedule or annexure to them.
- 2.20. **Timetable** means the Timetable at **schedule D** to these Terms and Conditions as amended or varied by the School from time to time.

### 3. Interpretation

- 3.1. This clause specifies the rules for interpreting these Terms and Conditions, except where the content makes it clear that the rule is not to apply.
- 3.2. A reference to:

- 3.2.1. the Customer, Member or Student or any party to another document or agreement, includes that Customer, Member or Student's executors, administrators, permitted substitutes and permitted assigns;
- 3.2.2. \$ is to Australian currency;
- 3.2.3. a singular word includes the plural and vice versa;
- 3.2.4. other grammatical forms of defined words or phrases have corresponding meanings;
- 3.2.5. an obligation on, warranty by, or right of:
  - 3.2.5.1. two or more persons; or
  - 3.2.5.2. a party that comprises two or more personsis the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- 3.2.6. reference to a clause, part of a clause, schedule or annexure is a reference to that clause, part of a clause, schedule or annexure of or to these Terms and Conditions and a reference to these Terms and Conditions; and
- 3.2.7. headings are for convenience only and do not affect interpretation.

#### **4. Acceptance**

- 4.1. The Customer, Member or Student is deemed to have accepted these Terms and Conditions if:
  - 4.1.1. the Customer, Member or Student executes these Terms and Conditions;
  - 4.1.2. the Customer, Member or Student executes the Direct Debit Request and Service Agreement;
  - 4.1.3. the Customer, Member or Student executes any other document appearing in a schedule to these Terms and Conditions;
  - 4.1.4. the Customer, Member or Student registers on Dancebiz; and/or
  - 4.1.5. by his or her conduct, the Customer, Member or Student attends at the School and participates in the Services provided by the School.
- 4.2. If one or more Customer, Member or Students have accepted these Terms and Conditions, those Customer, Member or Student's shall be jointly and severally liable for any and all payments of the Fees.
- 4.3. These Terms and Conditions are binding on the Customer, Member or Student once they are accepted. Any amendments to the Terms and Conditions set out herein can only be made upon written consent being obtained from the School.
- 4.4. If for any reason the School is unable to supply the Services, the Customer, Member or Student acknowledges and agrees that no action at common law arises against the School and that such conduct by the School does not amount to a repudiation of these Terms and Conditions or any agreement existing between the School and the Customer, Member or Student.

- 4.5. The School is not liable for any direct or consequential loss or damage arising from any failure of the School to supply the Services where such circumstances are beyond the reasonable control of the School.
- 4.6. In consideration of the Customer, Member or Student's acceptance of these Terms and Conditions, the School agrees to provide the Services for the Fees.
- 4.7. Unless otherwise to have deemed to occur by reason of clause 4.1.4 of these Terms and Conditions, upon being deemed to have accepted these Terms and Conditions, the Customer, Member or Student must and within five (5) business days;
  - 4.7.1. register their required details through Dancebiz and provide a Registered email address; and
  - 4.7.2. complete the Direct Debit Request and Service Agreement and provide it to the School.

## **5. Fees, Payment and Charges**

- 5.1. At its discretion, the School charges the Fees for each Term.
- 5.2. The School will issue a Tax Invoice to the Customer, Member or Student via the Registered Email Address, no less than seven (7) days prior to the commencement of each Term or within seven (7) days of the Customer, Member or Student completing their registration on Dancebiz.
- 5.3. The tax invoice will set out:
  - 5.3.1. the Fees payable by the Customer, Member or Student to the School for the Term;
  - 5.3.2. any additional charges that may become payable by the Customer, Member or Student to the School from time to time; and
  - 5.3.3. the anticipated date and amount of any Direct Debit for the Fees.
- 5.4. The Fees as set out in the tax invoice (issued in accordance with clause 5.2 and 5.3 herein) will be deemed due and owing by the Customer, Member or Student to the School upon the expiry of five (5) business days after issue of the tax invoice unless agreed in writing by the School.
- 5.5. In the event that the Customer, Member or Student chooses to discontinue participation in the Services or change their Registered Class(es) part way through a Term, the Fees as deemed due and payable in accordance with clause 5.4 herein remain due and payable and are not refundable.
- 5.6. The Customer, Member or Student acknowledges that the School uses the Direct Debit Agent for the purpose of payment and collection of the Fees and agrees to pay all Fees through the Direct Debit Agent unless otherwise agreed to in writing by the School.
- 5.7. Time for payment of the Fees by the Customer, Member or Student shall be of the essence.
- 5.8. GST may be applicable to the Fees unless they are expressly noted as being included in the Fees and/or tax invoice issued by the School to the Customer, Member or Student from time to time.

- 5.9. The School shall be entitled to charge interest on any Fees that are due and payable by a Customer, Member or Student and outstanding from a previous Term at a rate of 7.5% per annum.
- 5.10. The Customer, Member or Student shall be liable for, and shall indemnify the School for all legal costs (on a solicitor and own client basis) or any other associated charges or fees payable by the School in relation to the recovery of any sum due and payable to it by the Customer, Member or Student in relation to the provision of the Services and/or the Fees.
- 5.11. Without limiting any other right or remedy that the School may have at law, if at any time the Customer, Member or Student is in breach of any obligation under these Terms and Conditions (including those relating to payment of the Fees) the School may suspend or terminate the supply of the Services to the Customer, Member or Student and any of its other obligations under these Terms and Conditions upon the provision of 14 days' notice to the Customer, Member or Student. If such suspension or termination occurs, the School will not be responsible or liable for any loss suffered by the Customer, Member or Student by reason of the school exercising its rights under this clause.
- 5.12. The School may amend or vary the Fees at its sole discretion.
- 5.13. The Customer, Member or Student can request changes or amendments to its Registered Classes prior to the commencement of the Term without penalty or charge.
- 5.14. The Customer, Member or Student acknowledges and agrees that any Credit will be given solely at the School's discretion. Credit will be issued as School credit only and will not be refunded or redeemed for cash. Any Credit unallocated will expire after 12 months from date of issuance. If an accounting error were to occur and the Customer, Member or Student's account was overcharged, the school will process a refund via an electronic funds transfer (EFT) to the Customer, Member or Student's preferred bank account.

## **6. Security and Charge**

- 6.1. Notwithstanding anything to the contrary contained herein or any other rights which the School may have at law or otherwise:
- 6.1.1. where the Customer, Member or Student is the owner of real property or any other asset capable of being charged (**Assets**), the Customer, Member or Student agrees to mortgage and/or charge all of their joint and/or several interest in the Assets in favour of the School to secure all amounts and other monetary obligations payable under these Terms and Conditions;
  - 6.1.2. the Customer, Member or Student acknowledges and agrees that the School shall be entitled to lodge where appropriate, a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met; and
  - 6.1.3. should the School elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer, Member or Student shall indemnify the School for and against all loss, damage, costs and disbursements including legal costs on a solicitor and own client basis arising in respect of the same.

## **7. Customer, Member or Student Warranties**

- 7.1. The Customer, Member or Student warrants that:
- 7.1.1. it is authorised to accept these Terms and Conditions;
  - 7.1.2. all information provided by them to the School is honest and to the best of its knowledge, truthful in every way;
  - 7.1.3. they have not relied on any representation made to it by the School or any other person prior to or when entering into these Terms and Conditions;
  - 7.1.4. they have read and understood these Terms and Conditions before accepting the same;
  - 7.1.5. they will pay the Fees as and when they fall due in accordance with clause 5 herein;
  - 7.1.6. they have disclosed all pre-existing medical conditions to the School and they have not at any time suffered any blackout, convulsion, seizure, fainting and are not presently receiving treatment for any illness, disorder or injury which would render it unsafe for the Customer, Member or Student to participate in the Services; and
  - 7.1.7. they will comply with any rules, regulations or policies that may be implemented by the School from time to time.

## **8. The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)**

- 8.1. These Terms and Conditions do not have the effect of contracting out of any provisions of the FTA (where applicable provisions apply) in any of the States and Territories of Australia and/or the CCA except to any extent where such is permitted by the FTA and/or the CCA.
- 8.2. Whereby the Customer, Member or Student purchases, as a consumer (as that term is defined in the FTA and/or the CCA), the Services – the Terms and Conditions contained herein shall be subject to any laws or legislation which govern the rights of any consumer and such shall not affect the consumer’s statutory rights.

## **9. Privacy Laws**

- 9.1. The Customer, Member or Student hereby acknowledges that their statutory rights to privacy have been drawn to their attention. The school understands the importance of, and is committed to complying with the Privacy Laws. The School only collects information that is necessary to effectively manage payments of the Fees and its general operations of business relating to the provision of the Services. The School is committed to protecting the security of that information. In the event of non-payment of the Fees, the School may contact outsourced services that involve disclosing the Customer, Member or Student’s information to other organisations (including legal advisors and collection agents) and the Customer, Member or Student hereby consents to the same.

## **10. Authority and Consent**

- 10.1. If during the provision of the Services to the Customer, Member or Student, the Customer, Member or Student suffers an injury or illness, the Customer, Member or Student consent to the School staff applying ice, bandages and any other minor first aid treatment and to an ambulance being called at its discretion.

- 10.2. The Customer, Member or Student agrees and consents to the School taking photographs, video, audio and testimonial material of the Customer, Member or Student during the Services (including classes, competitions and any other School events) and further agrees and consents to these materials may be used for publication on any social media platform, display, promotion and/or advertising material, or being sold for profit and the Customer, Member or Student hereby waives the right to receive any compensation, monetary or otherwise, to which they may otherwise be entitled for appearing in any such material.

## **11. Liability and Indemnity**

- 11.1. The Customer, Member or Student shall indemnify the School and keep it indemnified against all liability, loss, damage, cost and expense, suffered by the Customer, Member or Student howsoever arising and including by reason of any injury or death unless the same is caused by the negligence, misconduct, or wilful default the School or by any officer, employee or agent of the School.
- 11.2. Except where otherwise provided for in these Terms and Conditions and to the extent permitted by law, the School shall not be liable for any loss or damage suffered by the Customer, Member or Student arising from or in relation to:
- 11.2.1. any act or omission of the Customer, Member or Student or any person acting or purporting to act on behalf of the Customer, Member or Student;
  - 11.2.2. any riots, civil commotions, strikes, lockouts, lockdowns, stoppage or retain of labour from whatsoever cause including pandemic, epidemic or otherwise;
  - 11.2.3. any fire, flood, storm, war, explosion or theft; and/or
  - 11.2.4. any cause which the School could not avoid and the consequences whereof it could not be prevented by the exercise of reasonable diligence.
- 11.3. The School shall not be liable to the Customer, Member or Student for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer, Member or Student arising out of a breach/es of these Terms and Conditions by the School.
- 11.4. The Customer, Member or Student acknowledges and accepts that the Services provided by the School involve physical activity and hereby agrees to release the School from any responsibility for any injury and/or death sustained as a result of their participation in the Services whether on the Premises or otherwise.

## **12. Discretion**

- 12.1. The School reserves to attend to the following at its sole discretion and without notice to the Customer, Member or Student:
- 12.1.1. engage employees or sub-contractor/s to assist it with the provision of the Services
  - 12.1.2. add, remove, or change ownership, curriculum, hours, rules, regulations, policies and/or move the Premises; and
  - 12.1.3. reject or expel any Customer, Member or Student at any time without explanation.

**13. Attendance and Termination**

- 13.1. These Terms and Conditions remain binding on the Customer, Member or Student and are continuing until they are terminated in accordance with this clause;
- 13.2. Failure by a Customer, Member or Student to participate in his or her Registered Classes does not signify and imply notification to terminate these Terms and Conditions or any Agreement that exists between the Customer, Member or Student and The School in relation to the same.
- 13.3. It is the sole responsibility of the Customer, Member or Student to attend their Registered Classes throughout the Term. The School does not offer make up lessons for missed classes (this includes non-attendance for minor injuries).
- 13.4. If the Customer, Member or Student is to sustain a major injury, a medical certificate will be required to be sent to the account manager via email ([accounts@danceforceoz.com.au](mailto:accounts@danceforceoz.com.au)) and the Customer, Member or Student's account will be adjusted accordingly and any Credit will be issued solely at the School's discretion.
- 13.5. The Customer, Member or Student may terminate its obligations under these Terms and Conditions upon the giving of 14 days' notice in writing to the School. If notice is provided during the Term, such notice is subject to clause 5.5 herein.
- 13.6. The School may terminate its obligations under these Terms and Conditions upon the giving of 14 days' notice in writing to the Customer, Member or Student.

**14. Miscellaneous**

- 14.1. Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to the School and/or the Customer, Member or Student.
- 14.2. Any notice served by email shall be deemed to have been given on the date and at the time it is received into the recipient's inbox.
- 14.3. The defences and limits of liability provided for in these Terms and Conditions shall apply in any action against the School whether founded in contract, tort or otherwise.
- 14.4. If any provision of these Terms and Conditions are invalid, void, illegal or enforceable it is severed and the remainder of these Terms and Conditions have full force and effect. This clause has no effect if the severance materially alters the nature or intended effect of these Terms and Conditions.
- 14.5. The Customer, Member or Student agrees that the School may review these Terms and Conditions at any time. If following such review there is to be a change to these Terms and Conditions, then that change will take effect from the date on which the School notifies the Customer, Member or Student of such change. The Customer, Member or Student shall be under no obligation to accept such changes except where the School supplies further Services to the Customer, Member or Student and the Customer, Member or Student accepts such Services.
- 14.6. The rights and remedies provided for in these Terms and Conditions are in addition to all other rights and remedies given by law independent of these Terms and Conditions except to the extent that those other rights and remedies are expressly excluded by these Terms and Conditions.



- 14.7. The law of New South Wales governs these Terms and Conditions.
- 14.8. The School and the Customer, Member or Student submit to the non-exclusive jurisdiction of the Courts of New South Wales and the Commonwealth of Australia and any court that may hear appeals from any of those Courts.

**Statement of Understanding**

I, the Customer, Member or Student have read, or have had read to me the above conditions and having understood the same, I consent to the activities proposed.