



babyballet®

where little boys and girls love to dance

OUR TERMS AND CONDITIONS

1. DEFINITIONS

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

Child: the child to be enrolled to receive the Classes as set out in the Enrolment Form;
Classes: the dance class services that We are providing to the Child as set out in the Enrolment Form for each Dance Term;

Dance Term: each period during which a set of Classes will be provided to the Child, with the initial Dance Term being set out in the Enrolment Form;

Event Outside Our Control: is defined in clause 9.2;

Enrolment Form: the enrolment form setting out certain details about your order for Classes;

Start Date: the start date as set out in the Enrolment Form;

Terms: the terms and conditions set out in this document;

We/Our/Us: babyballet® Albany, Wairau Valley, Remuera & Epsom

1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

2. OUR CONTRACT WITH YOU

2.1 The Terms plus any other documents referred to in the Enrolment Form establish the contract between you and Us under which We will supply Classes to you. You acknowledge and agree that this contract is made between Us and you and not Us and your Child even if we provide the Classes to them.

2.2 When you accept (either electronically or by physically signing) and submit the Enrolment Form to Us, this does not mean We have accepted your Child's enrolment for Classes, it is simply a request for your Child to be considered for enrolment in the Classes. Our acceptance of the Enrolment Form will only take place as described in clause 2.3. If We are unable to provide you with the Classes (for example where your chosen Class is full), We will inform you of this and We will not process the Enrolment Form.

2.3 These Terms will become binding on you and Us when We issue you with a written acceptance of the Enrolment Form, at which point a contract will come into existence between you and Us.

2.4 If any of these Terms conflict with any term of the Enrolment Form, the terms in the Enrolment Form will take priority.

3. CHANGES TO YOUR ENROLMENT OR TERMS

3.1 We may revise these Terms from time to time in the following circumstances:

3.1.1 changes in relevant laws and regulatory requirements; or

3.1.2 if We change how We provide the Classes.

3.2 If We have to revise these Terms under clause 3.1, We will give you at least one month's written notice of any changes to these Terms before they take effect. If you are not happy with the changes, you can choose to cancel the contract in accordance with clause 10.

3.3 You may request a change to the Enrolment Form for Classes at any time before the start date for the Classes by contacting Us. If we accept a change to the Enrolment Form for Classes We will issue you with a written acceptance to confirm the change at which point the contract between you and Us will be deemed amended to reflect the change. Where a change affects the total price of the Classes, We will notify you of the amended price in writing. If you are not happy with the amended price, you can choose to cancel the Enrolment Form in accordance with clause 10.

4. PROVISION OF CLASSES

4.1 We will supply the Classes to you from the Start Date for the initial Dance Term and every subsequent Dance Term unless either you or Us terminates the contract in accordance with clause 10.

4.2 We will make every effort to complete the Classes on time on the dates set out in the Enrolment Form. However, there may be delays due to an Event Outside Our Control. See clause 9 for Our responsibilities when an Event Outside Our Control happens.

4.3 We will need certain information from you that is necessary for Us to provide the Classes, for example, information regarding your Child's health and personal circumstances. This information is requested within the Enrolment Form. You must keep this information up to date at all times as it is essential information We need to enable Us to effectively and safely carry out the Classes. If you do not, after being asked by Us, provide Us with this information, or you provide Us with incomplete or incorrect information, We may suspend the provision of the Classes to you by giving you written notice. We will not be liable for any delay or non-performance where you have not provided this information to Us after We have asked. If we suspend the provision of Classes to you under this clause 4.3, you do not have to pay for the Classes while they are suspended, but this does not affect your obligation to pay for any invoices We have already sent you for which Classes have been provided. If you have made any payment in advance for Classes that have not been provided to you, and We suspend the provision of Classes to you under this clause 4.3, We will refund these amounts to you.

4.4 If you do not pay Us for the Classes when you are supposed to as set out in clause 6.3, We may suspend the provision of the Classes to you with immediate effect until you have paid Us the outstanding amounts (except where

you dispute an invoice under clause 6.5). We will contact you to tell you this. This does not affect Our right to charge you interest under clause 6.4.

4.5 If your Child is unable to attend a Class due to illness or other reason, no refund for the missed Class will be made. However, if advance written notice that your Child will not be able to attend a Class is given We will attempt to find a space in another Class but this is subject to availability and Our discretion.

5. IF THERE IS A PROBLEM WITH THE CLASSES

5.1 In the unlikely event that there is any defect with the Classes please contact Us and tell Us as soon as reasonably possible and give Us a reasonable opportunity to resolve or fix the defect. We will use every effort to resolve or fix the defect as soon as reasonably practicable. You will not have to pay for Us to resolve or fix a defect with the Classes under this clause 5.1.

5.2 As a consumer, you have legal rights in relation to Classes not carried out with reasonable skill and care, or if the materials We use are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

6. PRICE AND PAYMENT

6.1 The price of the Classes will be set out in the Enrolment Form. Our prices may change at any time, but, if they change, (i) no change would take effect prior to the start of the next Dance Term; and (ii) We would try to give as much advance notice of the price change as possible in advance of the change taking effect.

6.2 Our prices include GST. However, if the rate of GST changes between the date of the Enrolment Form and the date of delivery or performance, We will adjust the rate of GST that you pay, unless you have already paid for the Classes in full before the change in the rate of GST takes effect.

6.3 We will ask you to make payment in advance per Dance Term for all Classes in that Dance Term. Your rights to a refund on cancellation are set out in clause 10. You must pay each invoice in full, in cleared funds promptly after receipt of each invoice and always prior to the start of each Dance Term by such method as We may notify to You.

6.4 If you do not make any payment due to Us by the due date for payment, We may charge interest to you on the overdue amount at the rate of 3% a year above the base lending rate of BNZ from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount.

6.5 However, if you dispute an invoice in good faith and contact Us to let Us know promptly after you have received an invoice that you dispute it, clause 6.4 will not apply for the period of the dispute.

6.6 We will invoice you in advance of each Dance Term for the Classes to be held during that Dance Term.

7. RENEWALS AND NEW TERMS

7.1 At the end of each Dance Term We will let you know the dates, prices and availability for the next Dance Term including any other key information.

7.2 Upon the expiration of each Dance Term, your Child will be automatically provisionally enrolled in the next Dance Term and We will notify you of this by issuing you with an invoice to cover the charges for the Classes for the next Dance Term. You may terminate this contract and avoid your Child being enrolled in the next Dance Term by requesting this in writing to Us at least 10 days prior to the start of the next Dance Term. Please note that spaces for Classes are allocated on a "first come, first served" basis and We cannot guarantee your Child's space in a new Dance Term until payment in full cleared funds has been received by Us in accordance with clause 6.3.

8. OUR LIABILITY TO YOU

8.1 If We fail to comply with these Terms, We are responsible for loss or damage you suffer that is a foreseeable result of Our breach of the Terms or Our negligence, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of Our breach or if they were contemplated by you and Us at the time we entered into this contract.

8.2 We only supply the Classes for domestic and private use. You agree not to use the Classes for any commercial, business or re-sale purpose, and We have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

8.3 We do not exclude or limit in any way Our liability for:

8.3.1 death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;

8.3.2 fraud or fraudulent misrepresentation;

8.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

8.3.4 breach of the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1985 (description, satisfactory quality, fitness for purpose and samples).

9. EVENTS OUTSIDE OUR CONTROL

9.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.



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9.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation illness or unavailability of teachers, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.

9.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:

9.3.1 We will contact you as soon as reasonably possible to notify you; and

9.3.2 We will attempt to make reasonable adjustments to the timetable, location and teachers in order to provide the Classes;

9.3.3 If we cannot make reasonable adjustments, Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our provision of Classes to you, We will restart the Classes as soon as reasonably possible after the Event Outside Our Control is over.

9.4 You may cancel the contract if an Event Outside Our Control takes place or reasonable adjustments made are materially detrimental to you and you no longer wish Us to provide the Classes. Please see your cancellation rights under clause 10. We will only cancel the contract if the Event Outside Our Control continues for longer than 4 weeks in accordance with Our cancellation rights in clause 11.

10. YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND

10.1 You may terminate the contract between you and Us with immediate effect by giving Us written notice:

10.1.1 at any time before the Start Date;

10.1.2 if We breach the contract in any material way and We do not correct or fix the situation within 30 calendar days of you asking Us to in writing;

10.1.3 if We go into liquidation or a receiver or an administrator is appointed over Our assets;

10.1.4 if We change these Terms under clause 3.1 to your material disadvantage;

10.1.5 if We are affected by an Event Outside Our Control as set out in clause 9.

10.2 If you terminate the contract in any of the circumstances outlined in clause 10.1 and you have made any payment in advance for Classes that have not been provided to you (or made available to you), We will refund these amounts to you. If you have not paid for any Classes provided to you (or made available to you) before the date of termination We will still be entitled to charge you for these Classes.

10.3 Once We have begun to provide the Classes to you, you may cancel the contract at any time by providing Us with at least 30 calendar days' notice in writing (the "Notice Period"). We will charge you for any Classes already provided and those Classes made available to you (whether or not attended) during the Notice Period. Any advance payment you have made for Classes following the Notice Period not provided to you will be refunded to you.

10.4 Notwithstanding clause 10.3, if you pay by direct debit you must give ten (10) days notice in advance of the next Dance Term for cancellation of any classes.

10.5 If a direct debit can not be processed, due to insufficient funds or changes to your bank account, We will charge an administration fee of \$5.

11. OUR RIGHTS TO CANCEL AND APPLICABLE REFUND

11.1 If We have to cancel any Classes before the Classes start, due to an Event Outside Our Control or the unavailability of key personnel or key materials without which We cannot provide the Classes We will promptly contact you.

11.2 If We have to cancel any Classes under clause 11.1 and are unable to provide reasonable alternatives in accordance with clause 9.3.2 and you have made any payment in advance for Classes that have not been provided (or made available) to you, We will refund these amounts to you.

11.3 Once We have begun to provide the Classes to you, We may cancel the contract at any time by providing you with at least 30 calendar days' notice in writing. If you have made any payment in advance for Classes that are not provided (or made available) to you before the contract terminates, We will refund these amounts to you.

11.4 We may cancel the contract at any time with immediate effect by giving you written notice if:

11.4.1 you do not pay Us when you are supposed to as set out in clause 6.3. This does not affect Our right to charge you interest under clause 6.4; or

11.4.2 you breach the contract in any other material way and you do not correct or fix the situation within 30 calendar days of Us asking you to in writing.

11.5 If We terminate the contract under clause 11.4, you will not be entitled to a refund of any payment made in advance.

12. INFORMATION ABOUT US AND HOW TO CONTACT US

12.1 We are a company registered in New Zealand. Our company registration number is 7861092 and Our registered office is at 15 Bartlett Drive, Silverdale 0932, Auckland. Our registered GST number is 131-068-735

12.2 We are a licensee of babyballet New Zealand. Your contract is with Us and not Babyballet New Zealand.

12.3 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephoning 0223224020 or by e-mailing Us at hello@babyballet.co.nz

12.4 If you wish to contact Us in writing, or if any clause in these Terms requires you to give Us notice in writing (for example, to terminate the contract), you can send this to Us by e-mail, by hand, or by pre-paid post to hello@babyballet.co.nz / 15 Bartlett Drive, Silverdale 0932, Auckland. We will confirm receipt of this by contacting you in writing. If We have to contact you or give you notice in writing, We will do so by e-mail, by hand, or by pre-paid post to the address you provide to Us in the Enrolment Form.

13. HOW WE MAY USE YOUR PERSONAL INFORMATION

13.1 We will use the personal information you provide to Us, including your Child's personal information to:

13.1.1 provide the Classes and process your payments for the Classes; and
13.1.2 inform you about similar products or services that We or babyballet® New Zealand provide, but you may stop receiving these at any time by contacting Us.

13.2 We may also share personal information with Babyballet Franchising Limited, Babyballet New Zealand and Babyballet Limited to enable them to effectively and efficiently manage the Babyballet franchise. Neither Us nor Babyballet Franchising Limited, Babyballet New Zealand nor Babyballet Limited will provide your personal information to any other third party.

14. OTHER IMPORTANT TERMS

14.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.

14.2 You may only transfer your rights or your obligations under these Terms to another person if We agree in writing.

14.3 This contract is between you and Us. No other person shall have any rights to enforce any of its terms.

14.4 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

14.5 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive any of Our rights, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.

14.6 These Terms are governed by New Zealand law. You and We both agree to submit to the non-exclusive jurisdiction of the New Zealand courts.