

## TERMS AND CONDITIONS

Welcome to Mel Born Movement!

In these terms, we also refer to Melissa Mazzarino ABN 95 592 159 958 operating as Mel Born Movement as “**our**”, “**we**”, or “**us**”.

### What are these terms about?

These terms apply when you sign up for our birth movement and childbirth education services through our website (or otherwise), being <https://www.melbornmove.com/> any other websites we operate with the same domain name and a different extension (**Website**) or otherwise engage our services in any way including in person.

### Key Words used in these terms

To make it easier for you to understand the terms where we provide you with Services, we've tried to keep these terms of use (**terms**) as simple as possible by using plain English.

When we use the terms “**Initial Consultation Session**”, “**Program**”, “**Program Sessions**” or “**Sessions**”, we mean our resources and any of the services provided during a booking (whether in person or online) (together, the **Services**).

We've also used a few other capitalised words and phrases as shorthand to refer to recurring concepts. Each of these are defined in bold and in brackets after the concepts are first mentioned.

### Acceptance of these terms

Before you sign up for our Services, or otherwise engage with the Services, please carefully read these terms. If you don't agree to these terms, we cannot provide the Services to you. By booking an Initial Consultation Session, or otherwise proceeding to engage with the Program Sessions, you agree to be bound by these terms.

You acknowledge and agree that these terms will apply to all future bookings of the Services without needing to be accepted again.

### MEDICAL EMERGENCIES

Mel Born Movement provides birth movement and childbirth education services and general information using evidence-based techniques. These services do not include emergency services. If you are experiencing an emergency, or if you suspect that you are experiencing an emergency, please contact 000.

If you are in doubt about the seriousness of your condition, the appropriateness or effectiveness of using our Services or believe that you, or anyone is in an urgent, dangerous or emergency situation, you should not use our Services and instead contact 000 immediately or seek appropriate medical services.

If you are experiencing from a mental health crisis, please contact Lifeline on 13 11 14. If you are unsure if our Services are safe for you, please seek medical advice.

### DISCLAIMER

Mel Born Movement is run by Melissa Mazzarino. Melissa provides birth movement and childbirth education services and general information using evidence-based techniques. Melissa is a qualified clinical registered Nurse-Midwife and Pilates instructor.

You understand that Melissa and Mel Born Movement are not acting in the capacity of a doctor, obstetrician or other licensed or registered professional, and that any advice given by Melissa and Mel Born Movement is not meant to take the place of advice by these professionals.

Before making any changes to your physical health, please seek medical advice to evaluate any risks. Individual results may vary and cannot be guaranteed.

- (a) **(Not a doctor)** Mel Born Movement does not provide medical advice, and none of its staff are registered medical practitioners.
- (b) **(Not medical advice)** Any recommendations or advice on the Website or in the Services are Mel Born Movement's solutions or remedies of what actions you may take and should not be taken as medical advice. If you have concerns about a medical or physical condition, we recommend you first seek the advice of your medical practitioner.
- (c) **(No responsibility)** To the maximum extent permitted by law, we accept no responsibility from any adverse effects from using the information on our Website or in the Services.
- (d) **(Personal Responsibility)** You are responsible for ensuring the Services are right for you. We make no representation or guarantee that our Services will be useful or relevant to you or that by applying any ideas, recommendations, methods or techniques in the Services you will achieve any particular outcomes. We are not responsible for any of your actions, decisions or choices and any methods and techniques implemented by you in relation to your physical or mental health or otherwise by you are done so at your own risk. By not seeking appropriate professional medical advice, you accept the risk that the information contained in our Services may not meet your specific needs, circumstances or goals. You understand that Melissa and Mel Born Movement are not acting in the capacity of a doctor, and as such cannot be responsible for any health issues that occur while you are using the Services and you release Mel Born Movement from all and any claims in relation to any issues that may occur.
- (e) **(Online services)** Where we provide you with online services, we will not be responsible for any technical or data issues.

If you are unsure about anything in our Services, or participating in our Services, we encourage you to seek medical advice or in an emergency call 000 in Australia, or contact your treating general practitioner, obstetrician or emergency department at a hospital.

## 1 SERVICES

### 1.1 SERVICES

Details of all our Services are available on our Website. Most of our Services are provided in person. We may provide some of our Services online (**Online Session**). If we choose to do so this will be discussed with you once you book the Services.

### 1.2 ELIGIBILITY

- (a) By booking the Services via the Website or otherwise engaging us to provide you with the Services, you:
  - (i) agree to be bound by these terms;
  - (ii) are authorised to use the credit or debit card to purchase the Services, where applicable;
  - (iii) represent and warrant that you are over the age of 18 years and accessing the Services for yourself.

### 1.3 INITIAL CONSULTATION

- (a) We require you to complete a 60-minute consultation prior to booking a Program to see if the Services are suitable for you (**Initial Consultation Session**).
- (b) After the Initial Consultation Session, we will notify you if we agree that the Services are right for you and you may decide to purchase further Services i.e. a Program as set out on our Website.
- (c) We retain the right, at our absolute discretion, if we deem after the Initial Consultation Sessions that our Services are not suitable for you, to not provide you with further Services.
- (d) Due to late stage pregnancy related risks, we are unable to offer Initial Consultation Sessions to those over 34 weeks gestation.

## 2 PROGRAM FORMAT

- (a) Our Program is comprised of 6 x 60-minute Program Sessions which you may book using the Booking App as set out in clause 3.
- (b) Our Program Sessions are group classes. To ensure adequate instruction and supervision, there is a maximum of 6 Clients per Mat Work Session and a maximum of 3 Clients per Apparatus Session.

## 3 BOOKING A SESSION

- (a) We use a third-party booking service called Cliniko to allow you to make bookings for the Services (**Booking App**).
- (b) To engage us to perform the Services, you must book Sessions with us via the Booking App (**Booking Request**).
- (c) By using the Booking App, you agree that Cliniko's terms and conditions and policies apply to our provision of the Booking App to you, and your use of the Booking App, which can be accessed [here](#).
- (d) We accept no responsibility for any failure of the Booking App that limits or otherwise affects your ability to make a Booking. However, if you do encounter any issues, please contact us and we will work with Cliniko to resolve the issue.

## 4 BOOKING POLICY

- (a) After making a Booking Request, you will be sent an email confirming your Session details, as well as a reminder for your Session 48 hours in advance via email and text.
- (b) If you cannot attend a Session, we ask that you please give us at least 48 hours' notice.
- (c) If you provide at least 48 hours' notice to cancel the Initial Consultation Session, you will not be charged a cancellation fee and your Fee will be refunded in full.
- (d) If you cancel the Initial Consultation Session with less than 48 hours' notice, you will be charged a cancellation fee, being 100% of the Fee for that booking to reflect our pre-estimated genuine losses as a result of you cancelling the Initial Consultation Session at late notice.
- (e) If you provide at least 48 hours' notice to cancel a Program Session, you may redeem that Program Session at another time by submitting another Booking Request.
- (f) If you cancel a Program Session less than 48 hours' notice before the Program Session time, you acknowledge and agree that that cancelled Program will be considered as redeemed to reflect our pre-estimated genuine losses as a result of you cancelling the Program Session at late notice.

## 5 ATTENDING SESSIONS

### 5.1 IN PERSON SESSION

Unless stated in writing otherwise, our Services are conducted in person, and we will provide you with the address in which they shall be conducted prior to the booking date.

### 5.2 ONLINE SESSION

- (a) If the Services are provided online (**Online Session**), they will be delivered electronically and accessed via the third-party app we use from time to time (**App**).
- (b) There will be no additional fees payable to us for using the App, other than any fee applicable to downloading any applications from any app store.
- (c) The App we use is a third-party app and is subject to additional terms and conditions. By using the App you will be bound by this clause and the Third Party Terms in clause 10.
- (d) The App is powered by a third-party platform and the terms and conditions of that third party may apply to your use of the App to the extent applicable to you.

- (e) To the maximum extent permitted under applicable law and our agreement with our app provider, we will not be liable for any acts or omissions of that third party, including in relation to any fault or error of the App or any issues experienced in using the App including downtime and the App not functioning adequately.
- (f) You agree that it is your responsibility to check that the computer and internet service being used to access the Services is adequate to access the Online Session.
- (g) We will not be liable to you if the Services may not be provided as a result of any technical issues including but not limited to:
  - (i) the operation of the internet, including but not limited to viruses;
  - (ii) any firewall restrictions that have been placed on your network or the computer you are using to access the Online Session;
  - (iii) failures of telecommunications links and equipment; and
  - (iv) software and browser incompatibility.

## 6 YOUR OBLIGATIONS

### 6.1 PROVIDE INFORMATION AND LIAISON

- (a) You agree to provide us with all documentation, information and assistance reasonably required us to perform the Services.
- (b) You agree to attend any scheduled Sessions. If you cannot attend any scheduled Sessions you must give us the required notice as above.
- (c) As part of your Session and in the lead up to your Session, you will be required to provide us with relevant personal information and health information including details of your pregnancy which includes any related conditions and risks. All of this information will be stored in accordance with clause 8 of this agreement. You agree that you are required to provide this information and that withholding such information will impact the Services.
- (d) You agree that in order for us to provide the Services, any information you provide to us as a part of the Services should be complete, true and correct and you acknowledge that your breach of this clause may negatively impact our ability to provide you with the Services.

### 6.2 ACCESS AND ATTENDANCE

- (a) Where the Services are being provided via an Online Session, you must ensure that you have access to a computer and a stable internet connection to be able to receive the Services.
- (b) Irrespective of whether the Services are being provided in person or online, you must ensure that you arrive to the scheduled Session on-time. You acknowledge and agree that we may not be able to adjust our appointment times if you are late, so you will not be provided any additional time.

### 6.3 COMPLIANCE WITH LAWS

You warrant that by receiving or requesting the Services, or during receiving or requesting the Services, you will not:

- (a) breach any applicable laws, rules and regulations (including any applicable privacy laws and any relevant industry codes) (**Laws**);
- (b) do anything which may cause Mel Born Movement to breach any Law;
- (c) breach the direction of any government department or authority; or
- (d) infringe the Intellectual Property Rights or other rights of any third party or breach any duty of confidentiality.

## 7 PAYMENT

- (a) You must pay any fees in the amounts set out on our Website or as otherwise agreed in writing with you (**Fees**).
- (b) Initial Consultation Session Fees are due at the time of booking the Initial Consultation Session.
- (c) Program Fees are due prior to the commencement of each Program and Program Sessions will not commence until full payment is received.
- (d) Unless otherwise agreed in writing:
  - (i) if we issue an invoice to you, payment must be made within 7 days of receipt; and
  - (ii) in all other circumstances, you must pay for all Services on Mel Born Movement providing you with the Services.
- (e) (**GST**) Unless otherwise indicated, amounts stated on the Website include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice to you.
- (f) (**Card surcharges**) We reserve the right to charge credit card surcharges in the event that payment of the Fees are made using a credit, debit or charge card (including Visa, MasterCard or American Express).
- (g) (**Online payment partner**) We may use third-party payment providers such as (**Payment Providers**) to collect payments for the Services. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider and, to the maximum extent permitted by law, we will not be liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.
- (h) (**Late payment**) If you fail to pay any amounts due to us under an invoice by the specified due date, we retain the right, without limiting any other rights under these terms, to charge you interest at a rate of 10% per annum on the outstanding amount. However, before applying this interest, we will provide you with a written notice giving an additional 7 days to complete the payment. If payment is still not received by the end of this 7-day grace period, interest will accrue from the expiration of that period until the date the full payment is received by us.
- (i) (**Refunds**) Given the nature of the services, we generally don't offer refunds for Services and any refunds we issue will be solely at our discretion. Please let us know if you have any issues with our Services or if you believe there are extenuating circumstances that you think should entitle you to a refund and we'll consider your situation.

## 8 COLLECTION NOTICE AND PRIVACY

- (a) We will collect personal information about you in the course of providing you with our Services, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy.
- (b) Our Privacy Policy  
[https://www.melbornmove.com/files/ugd/0bd51e\\_f18ff1a0ebeb4a6faaf9a565b8714593.pdf](https://www.melbornmove.com/files/ugd/0bd51e_f18ff1a0ebeb4a6faaf9a565b8714593.pdf)  
contains more information about how we use, disclose and store your information and details how you can access and correct your personal information.
- (c) By agreeing to these terms, you agree to be bound by the clauses outlined in our Privacy Policy.

## 9 INTELLECTUAL PROPERTY

### 9.1 OUR IP

- (a) Intellectual Property Rights in the Services and any other related information or materials (**materials**) are owned or licensed by us. Except as permitted under applicable laws, no part of the material can be reproduced, adapted, distributed, displayed, transmitted or otherwise exploited for any commercial purposes without our express written consent.
- (b) You will not under these terms acquire Intellectual Property Rights in any of Our IP.

### 9.2 DEFINITIONS

For the purposes of this clause 9:

- (a) **“Our IP”** means all materials owned or licensed by us and any Intellectual Property Rights attaching to those materials.
- (b) **“Intellectual Property Rights”** means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of this agreement.

## 10 CONFIDENTIALITY

Except as contemplated by this agreement, we will not permit any of our officers, employees, agents, contractors or related companies to use or to disclose to any person any information of or provided by you to us during a Session or in connection with our Services that is by its nature confidential information, is designated by you to be confidential, or that ought to be understood as being confidential.

This clause does not apply to:

- (a) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
- (b) information disclosed or provided to a third party with your consent;
- (c) information disclosed where failure to do so may put you or another person at serious risk;
- (d) information required to be disclosed by any law; or
- (e) information disclosed by us to our employees, cloud storage providers or agents for the purposes of performing the Services or our obligations under this agreement.

## 11 THIRD PARTY TERMS

- (a) To provide you with the Services, we may use goods or services provided third parties (including third party platforms) who have their own terms and conditions and policies (**Third Party Terms**), including [Cliniko](#).
- (b) Provided we have notified you or given you a copy of the Third Party Terms, you agree to the Third Party Terms that apply to your use of the Services.
- (c) To the maximum extent permitted under applicable law and our agreements with any applicable third parties, we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms, including in relation to any fault or error of the Services.
- (d) You have the right to reject any Third Party Terms but if you do, we cannot provide you with the Services and you will need to cancel in accordance with this agreement.

## 12 NOTICES

- (a) A notice or other communication to a party under these terms must be:

- (i) in writing and in English; and
  - (ii) delivered to the other party via email, to the email address most regularly used by the parties to correspond regarding the subject matter of these terms as at the date of these terms (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that the email was not delivered to the other party's Email Address, notice will be taken to be given:
- (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
  - (ii) when replied to by the other party,
- whichever is earlier.

### 13 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

### 14 LIABILITY

#### 14.1 LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 14.1(a), the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the value of the Fees paid for the Services.
- (b) Clause 14.1(a) does not apply to your liability in respect of loss or damage sustained by us arising from your breach of clause 6.3.

#### 14.2 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by us, except:

- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

### 15 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

## 16 TERMINATION

### 16.1 TERMINATION FOR CONVENIENCE

Either party may terminate this agreement for convenience by providing 10 Business Days' notice to the other party.

### 16.2 TERMINATION FOR BREACH

- (a) Either party may terminate this agreement immediately by written notice if there has been a Breach of this agreement.
- (b) A "**Breach**" of this agreement means:
  - (i) a party considers the other party is in breach of this agreement and notifies that other party;
  - (ii) the other party is given 10 Business Days to rectify the breach; and
  - (iii) the breach has not been rectified within 10 Business Days or another period agreed between the parties in writing.

### 16.3 EFFECT OF TERMINATION

Upon termination of this agreement:

- (a) any Fees paid are non-refundable;
- (b) each party must comply with all obligations that are by their nature intended to survive the end of this agreement; and
- (c) each party must stop using any materials that are no longer owned by, or licensed to, them when this agreement is terminated.

## 17 GENERAL

- (a) (**Governing law & jurisdiction**) These terms are governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these terms. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (b) (**waiver**) No party to these terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (c) (**severance**) Any term of these terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these terms is not limited or otherwise affected.
- (d) (**joint & several liability**) An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.
- (e) (**assignment**) You cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior written consent of the other party. We can assign the rights or novate these terms in whole or part without your consent, on notice which may be communicated electronically on the website or by email.
- (f) (**costs**) Except as otherwise provided in these terms, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing these terms.
- (g) (**entire agreement**) These terms embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of these terms.
- (h) (**interpretation**) In these terms, the following rules of interpretation apply
  - (i) (**singular and plural**) words in the singular includes the plural (and vice versa);



- (ii) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (iii) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (iv) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (v) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (vi) **(these terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these terms, and a reference to these terms includes all schedules, exhibits, attachments and annexures to it;
- (vii) **(document)** a reference to a document (including these terms) is to that document as varied, novated, ratified or replaced from time to time;
- (viii) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (ix) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (x) **(adverse interpretation)** no provision of these terms will be interpreted adversely to a party because that party was responsible for the preparation of these terms or that provision.