

# Bicycle Fix Darwin

## Bike Hire Agreement

Acceptance of risk and terms and conditions of Hire Agreement

1. Definitions
  - 1.1. "Agreement" means these Hire Terms & Conditions (including Acceptance of Risk Agreement & Release), the Schedule and the Hiring Fees.
  - 1.2. "Bicycle Fix Darwin" means Philip Rose Trading as Bicycle Fix Darwin: ANN 61 183 799 305
  - 1.3. "Customer" is the person, firm, business or corporation named on the Schedule.
  - 1.4. "Equipment" means any bicycle, helmet, lock and any other parts and accessories supplied to the Customer.
  - 1.5. "Hiring Fees" means the total amount payable by the Customer to Bicycle Fix Darwin for hiring of the Equipment or the provision of services
  - 1.6. "Hire Period" means from the time the Customer takes possession of the Equipment and continues until the Equipment is returned to the designated place of hire- 2/5 Caryota Crt Coconut Grove
  - 1.7. "Personal Injury" is bodily injury and includes mental and nervous shock and death.
2. Authority of the Customer
  - 2.1. 1 The person signing this Agreement for and on behalf of the Customer has the authority of the Customer and is empowered by the Customer and the Riders to bind the Customer and the Riders to this Agreement
  - 2.2. The person signing this Agreement hereby indemnifies Bicycle Fix Darwin against all losses, costs and claims incurred arising out of the person signing this Agreement not, in fact, having such power and/or authority.
3. Customer over 18 years
  - 3.1. The Customer or the person signing on behalf of the firm or corporation ("Customer's representative") warrants that they are over 18 years of age.
  - 3.2. Bicycle Fix Darwin may require presentation of photographic identification as proof of age of the Customer or the Customer's representative before or at the time of pick up. Bicycle Fix Darwin is under no obligation to deliver the Equipment if proof of age is refused.
  - 3.3. Should a Rider be under the age of 18 years, then the Customer agrees to take full responsibility for the child's safety, inspection of the child's Equipment, and operation of the Equipment.
4. Hire Period
  - 4.1. The Hire Period shall commence from the time the Equipment is agreed to be collected by Customer from Bicycle Fix Darwin and will continue until the return of the Equipment to Bicycle Fix Darwin
  - 4.2. No allowance whatsoever can be made for time during which the Equipment is not in use for any reason.
5. Hiring Fees, Charges and Payment
  - 5.1. The Customer agrees to pay the Hiring Fees to Bicycle Fix Darwin at the time of collection, or as per payment terms advised verbally or via written, E-mail or Tax Invoice advice, unless otherwise agreed in writing by Bicycle Fix Darwin before the Hiring Period commences.
  - 5.2. A deposit, bond and/or credit card details will be required for Equipment security as set out in the Schedule to this Agreement ("Security"). Such Security will be refunded or released upon return of the Equipment in a condition acceptable to Bicycle Fix Darwin.

- 5.3. In the event that the Customer or the Riders immediately notifies Bicycle Fix Darwin of any Equipment failure or breakdown, then the Hiring Fees will not be payable during the time the Equipment is not working, except where the Equipment failure or breakdown is due to the misuse or negligence of the Customer or the Riders.
  - 5.4. Bicycle Fix Darwin will charge an Accessory Replacement Fee for any lost keys, locks, helmets, panniers, bags or other parts and accessories (excluding bikes – see this Clause 5.6 below for Repair and Replacement costs on bikes).
  - 5.5. Bicycle Fix Darwin will charge a Clean and Service Fee of \$150.00 for any Equipment returned with excessive mud on it that requires a full clean and degreasing to return the Equipment to the condition it was at the commencement of this Agreement.
  - 5.6. Bicycle Fix Darwin will charge, in its discretion, either the full Repair and/or Replacement Costs on all bikes not returned in the condition they were at the commencement of this Agreement due to damage caused directly or indirectly by the Customer or the Riders.
6. Customer Responsibilities
- 6.1. The Customer and the Riders accepts full responsibility for the Equipment hired from time of delivery until the Equipment is returned to Bicycle Fix Darwin.
  - 6.2. The Customer and the Riders must use the Equipment in a proper, safe and careful manner and only for the purpose for which the Equipment is designed.
  - 6.3. The Customer and the Riders must observe the instructions and directions of Bicycle Fix Darwin for use and safety of the Equipment.
  - 6.4. The Customer and the Riders are responsible for any damage to the Equipment during the hire period and agree to pay the full cost of any repairs required. If damage is deemed to be wilful, additional charges may be incurred for loss of income due to that Equipment being unavailable for hire.
  - 6.5. The Customer and the Riders have inspected the Equipment before using the Equipment and the Customer and the Riders accept the Equipment in its current state for the general use of cycling during the hire period.
  - 6.6. Before signing this Agreement, the Customer and the Riders have conducted a full safety check of the Equipment
  - 6.7. The Customer and the Riders will ensure and declare that, at all times the Equipment is used, Riders: (i) will wear a correctly fitted helmet in accordance with Australian law; (ii) are competent bike Riders and are familiar with riding; (iii) are medically and physically fit and able to participate and accept that Bicycle Fix Darwin will rely on this declaration as evidence of their ability to participate in such activities. (iv) will not put themselves or any other person or other road users in a life-threatening situation; (v) will respect all road users, give way to pedestrians and will obey the Australian Road Rules at all times; (vi) will keep left unless overtaking and only overtake when it is safe and in accordance with the Australian Road Rules; (vii) will use common-sense as per the Pre Hire Safety Check (Document: BFD PHSC)
  - 6.8. The riders will ride within your own limits and will not take any risks.
  - 6.9. No bike is to be ridden off tarmac or on off-road trails.
  - 6.10. DO NOT ride at night – as you may not be covered under any applicable public liability insurance.
  - 6.11. The Customer and the Riders must at all times lock the Equipment whenever it is not in use, or is out of their line of sight. The Equipment must be locked through the frame to something fixed.
  - 6.12. Equipment must be secured as above (6.10) in an off street location overnight out of sight of the general public.

7. Delivery and Pick-Up
  - 7.1. The Customer and/or the Riders take possession of the Equipment from Bicycle Fix Darwin 2/5 Caryota Crt Coconut Grove
  - 7.2. The Customer must ensure that the Equipment is returned to the place of hire at the end of the agreed Hire Period.
  - 7.3. The Equipment must not be transported by any vehicle to or from any place by the Customer or the Riders or anyone engaged by the Customer.
  - 7.4. The Customer or Rider must contact Bicycle Fix Darwin if equipment is not operational or cannot be returned to Bicycle Fix Darwin.
8. Alcohol consumption
  - 8.1. Cycling while intoxicated is an offence under the Road Traffic Act 1961.
  - 8.2. Bicycle Fix Darwin does not endorse drink-riding or the excessive consumption of alcohol.
9. Risk
  - 9.1. Cycling has inherent risks and dangers. It involves a degree of physical exertion and physical risk.
  - 9.2. There is a risk of Personal Injury to you and others.
  - 9.3. The Customer and the Riders will use the Equipment accepting full responsibility for this risk.
  - 9.4. The Customer and the Riders understand that consuming alcohol whilst cycling may impair judgment and may result in injury or death. The Customer and the Riders accept full responsibility for any injury, trauma, loss or damage to themselves or any other persons arising out of their consumption of alcohol during the Hire Period.
  - 9.5. The Customer and the Riders hereby release and indemnify Bicycle Fix Darwin against all and any claims, lawsuits, demands, liabilities, loss and damages (including indirect and consequential loss) costs, expenses, and interest, whether pursuant to common law or statute, in relation to property, death or Personal Injury, that the Customer or the Riders may suffer or incur arising from or in connection with your participation in hire and use of Equipment, but excluding any loss or damage resulting from the negligence, breach of duty or breach of care of Bicycle Fix Darwin.
10. Property
  - 10.1. All property in, and title to, the Equipment always remains with Bicycle Fix Darwin, however, nonetheless all risk for the Equipment passes to the Customer.
  - 10.2. The Customer does not acquire any title or interest in the Equipment. The Customer's interest in the Equipment is as bailee for Bicycle Fix Darwin only.
11. Loss or Damage to Equipment
  - 11.1. The Customer will immediately notify Bicycle Fix Darwin if any of the Equipment is lost, stolen, breaks down, is damaged or ceases to operate.
  - 11.2. If the Equipment breaks down or becomes unsafe to use for any reason (including flat tyre or mechanical failure), the Customer must immediately cease to use that Equipment and contact Bicycle Fix Darwin.
  - 11.3. Take all steps necessary to prevent damage to the Equipment and other property damage and Personal Injury.
  - 11.4. The Customer must not dismantle or repair, or attempt to dismantle or repair, the Equipment.
  - 11.5. The Customer accepts full responsibility for the safekeeping of the equipment.
12. Refunds & Cancellations
  - 12.1. Refunds are not available should you return the Equipment early.

12.2. Bicycle Fix Darwin reserves the right to charge a cancellation fee of 100% of the Hiring Fees for cancellations without notice from the Customer and any Equipment orders by the Customer not picked up by the Customer.

12.3. For bookings where cancellations are received more than seven (7) days in advance of the Hire Period, the Customer shall receive a full refund of the Hiring Fees.

12.4. For bookings where cancellations are received between seven days and 24 hours in advance of the Hire Period, the Customer shall incur a cancellation fee of 50% of the Hiring Fees.

### 13. Exclusion of Implied Terms

13.1. You acknowledge that you are a consumer of Recreational Services, as defined by the Australian Consumer Law and any other applicable Australian legislation. Certain terms and rights usually implied into a contract for the supply of goods or services may be excluded. You acknowledge that these implied terms and rights and any liability of Bicycle Fix Darwin flowing from them, are expressly excluded to the full extent possible by law. To the extent of any liability arising, the liability of Bicycle Fix Darwin will, at its discretion, be limited to the resupply of the services or payment of the cost of having the services supplied again.

### 14. Your Rights

14.1. Under Australian Consumer Law, if a person in trade or commerce supplies you with services (including Recreational Services), there is: (a) a statutory guarantee that those services will be rendered with due care and skill; and (b) a statutory guarantee that those services, and any product resulting from those services, will be reasonably fit for the purpose for which the services are being acquired (as long as that purpose is made known to the supplier); and (c) a statutory guarantee that those services, and any product resulting from those services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wishes to achieve (as long as that wish is made known to the supplier or a person with whom negotiations have been conducted in relation to the acquisition of the services). Excluding, restricting or modifying your rights: Under section 42 of the Fair Trading Act 1987, the supplier of Recreational Services is entitled to ask you to agree to exclude, restrict or modify his or her liability for any Personal Injury suffered by you or another person for whom or on whose behalf you are acquiring the services (a third-party consumer). If you sign this Agreement, you will be agreeing to exclude, restrict or modify the supplier's liability with the result that compensation may not be payable if you or the third-party consumer suffer Personal Injury. Important: You do not have to agree to exclude, restrict or modify your rights by signing this Agreement. The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by signing this Agreement. Even if you sign this Agreement, you may still have further legal rights against the supplier. A child under the age of 18 cannot legally agree to exclude, restrict or modify his or her rights. A parent or guardian of a child who acquires Recreational Services for the child cannot legally agree to exclude, restrict or modify the child's rights.

### 15. Miscellaneous

15.1. This Agreement represents the entire agreement between Bicycle Fix Darwin and the Customer.

15.2. No additional terms and conditions proposed by the Customer apply to this Agreement unless agreed in writing by Barossa Bike Hire.

15.3. If any part of this Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

- 15.4. The Customer may not assign, sub-contract or transfer the benefit of this Agreement to another party.
- 15.5. 15.4 This Agreement is governed by the laws of The Northern Territory and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Northern Territory.
- 15.6. I agree that the liability of Bicycle Fix Darwin and its employees and management for any Personal Injury that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) that results from the supply of the Recreational Services is excluded.