

BAROSSA BIKE HIRE
HIRE TERMS & CONDITIONS
ACCEPTANCE OF RISK AGREEMENT & WAIVER RELEASE FOR SELF-GUIDED & GUIDED CYCLE TOURS

PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU

YOU ACKNOWLEDGE AND AGREE THAT BY SIGNING THIS TWO (2) PAGE DOCUMENT YOU ARE AGREEING TO THE FOLLOWING HIRE TERMS & CONDITIONS

NB : PAYMENT BY YOU (EITHER ONLINE OR PROCESSED MANUALLY BY BAROSSA BIKE HIRE) FOR YOUR ORDER, ALSO CONSTITUTES ACCEPTANCE OF THESE HIRE TERMS & CONDITIONS, WHETHER SIGNED OR NOT

The following Hire Terms & Conditions (“**Conditions**”) record the agreement between Barossa Bike Hire and you for the hiring of Equipment by you at your request. These Conditions constitute a legally binding contract between Barossa Bike Hire and you. We recommend that you read these Conditions carefully before signing them or confirming your order.

1. Definitions

In these Conditions

- 1.1 “**Agents**” means other places of business who act on behalf of, and with the authority of Barossa Bike Hire to provide Equipment to Customers for an agreed commission rate payable to the Agent and includes the employees and representatives of the Agent.
- 1.2 “**Agreement**” means these Hire Terms & Conditions (including Acceptance of Risk Agreement & Release), the Schedule and the Hiring Fees.
- 1.3 “**Barossa Bike Hire**” means Louis den Berger trading as Barossa Bike Hire, ABN 56 558 146 140 and includes its employees, representatives, contractors and Agents.
- 1.4 “**Customer**” is the person, firm, business or corporation named on the Schedule.
- 1.5 “**Equipment**” means any bicycle, helmet, lock and any other parts and accessories supplied by Barossa Bike Hire to the Customer.
- 1.6 “**Hiring Fees**” means the total amount payable by the Customer to Barossa Bike Hire for hiring of the Equipment or the provision of services by Barossa Bike Hire.
- 1.7 “**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 or the agreed Customer’s nominated delivery address.
- 1.8 “**Personal Injury**” is bodily injury and includes mental and nervous shock and death.
- 1.9 “**Recreational Services**” are services that consist of participation in (a) a sporting activity or similar leisure-time pursuit; or (b) any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.
- 1.10 “**Rider**” or “**Riders**” means all other persons using the Equipment hired by the Customer.
- 1.11 “**Schedule**” means the Hire Schedule annexed to this Agreement.
- 1.12 “**Tour**” or “**Tours**” means both self-guided or guided cycle tours and are operated by Barossa Bike Hire.

2. Authority of the Customer

2.1 The person signing this Agreement for and on behalf of the Customer and the Riders hereby covenants with Barossa Bike Hire that he or she has the authority of the Customer and the Riders to make the Agreement on behalf of both the Customer and the Riders and is empowered by the Customer and the Riders to bind the Customer and the Riders to this Agreement and hereby indemnifies Barossa Bike Hire against all losses, costs and claims incurred by Barossa Bike Hire 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 Barossa Bike Hire may require presentation of photographic identification as proof of age of the Customer or the Customer’s representative before or at the time of delivery. Barossa Bike Hire 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.
- 3.4 All participants on guided cycle Tours warrant that they are over 18 years of age and acknowledge that Barossa Bike Hire may require presentation of photographic identification as proof of age before accepting them as a participant on a guided cycle Tour.

4. Hire Period

- 4.1 The Hire Period shall commence from the time the Equipment is delivered to the Customer by Barossa Bike Hire or its Agent and will continue until the return of the Equipment to the designated place of hire or the agreed Customer’s nominated delivery address.
- 4.2 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless consented to by Barossa Bike Hire in writing before the Customer signs this Agreement.

5. Hiring Fees, Charges and Payment

- 5.1 The Customer agrees to pay the Hiring Fees to Barossa Bike Hire at or before the time of delivery, or as per payment terms advised at the discretion of Barossa Bike Hire either verbally or via written, E-mail or Tax Invoice advice, unless otherwise agreed in writing by Barossa Bike Hire before the Hiring Period commences.
- 5.2 Any quotation of Hiring Fees given by Barossa Bike Hire must be accepted by the Customer within thirty (30) days, otherwise Barossa Bike Hire has the right to vary the Hiring Fees at its discretion.
- 5.3 At the discretion of Barossa Bike Hire, 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 Barossa Bike Hire.

- 5.4 A credit card surcharge may be charged for all credit card transactions. GST and any other taxes (if applicable) shall be added to the Hiring Fees or any other fees under this Agreement, except where they are expressly included in the Hiring Fees or other fees payable.
- 5.5 In the event that the Customer or the Riders immediately notifies Barossa Bike Hire 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.
- 5.6 Barossa Bike Hire will charge an **Accessory Replacement Fee** for any lost keys, locks, helmets, baskets or other parts and accessories (excluding bikes – see this Clause 5.8 below for Repair and Replacement costs on bikes).
- 5.7 Barossa Bike Hire 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.
- 5.8 Barossa Bike Hire 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.
- 5.9 Any Hiring Fees or any other fees under this Clause 5 that remain outstanding and payable shall incur interest at the rate of 2.5% per calendar month and such interest shall compound monthly at such a rate until payment is made in full.
- 5.10 The Customer and the Riders will indemnify Barossa Bike Hire for all sums owing, including any interest and fees, and legal costs incurred in recovering any monies owed by the Customer and the Riders under this Agreement (on a full indemnity basis).

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 Barossa Bike Hire.
- 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 Barossa Bike Hire for use and safety of the Equipment.
- 6.4 The Customer and the Riders are responsible for any damage to the Equipment during participation on a self-guided or guided cycle Tour 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 self-guided and guided cycle Tours.
- 6.6 Before signing this Agreement, the Customer and the Riders have conducted a full safety check of the Equipment, including as a minimum checking: (i) everything is tightened – lift front wheel 5cm then let bounce to ground - Look, listen and feel for anything loose; (ii) tyres inflated & sound – put one hand on saddle and one hand on handlebar intersection, bounce your weight on the bike looking at tyres’ deflection; spin wheel slowly and look for cuts in tread and sidewall; (iii) wheels true – spin wheel and check brake clearance and side to side wobble; (iv) brakes – squeeze brake levers. Is brake quick release closed? Is the straddle cable engaged and secure? Are brake shoes contacting with wheel rim? Can you apply full braking force on levers without touching the handlebar? (v) Helmet – does your helmet fit snugly when secured? Does the Helmet meet all required Australian Safety Standards? (vi) Bell – Ensure the bell is working. It is an important safety device.
- 6.7 The Customer and the Riders will ensure and declare that, at all times the Equipment is used, either on a self guided or guided cycle Tour, that the Customer and the 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 in a Tour and understand and accept that Barossa Bike Hire 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 and care when operating the Equipment; (viii) will ride within your own limits and will not take any risks; (ix) **DO NOT ride at night – as you may not be covered under any applicable public liability insurance.**

6.8) 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.

7. Delivery and Pick-Up

7.1 The Customer and/or the Riders take possession of the Equipment at the place of hire or the Customer's nominated delivery address.

7.2 Delivery of the Equipment to a third party nominated by the Customer is deemed to be delivery to the Customer of the Equipment for the purposes of this Agreement.

7.3 The Customer must ensure that:

(i) the Equipment is returned to the place of hire at the end of the Hire Period; and
(ii) Barossa Bike Hire has free and uninterrupted access to the delivery address to deliver, inspect, dismantle, collect and remove the Equipment at all times between delivery and collection or return of the Equipment. The Customer must ensure that access to the delivery address is unrestricted. Dogs or dangerous animals must be restrained at all times Barossa Bike Hire is present.

7.4 The Equipment must not be transported by any vehicle to or from any place of hire by the Customer or the Riders or anyone engaged by the Customer or the Riders for this purpose.

8. Alcohol consumption – Self-Guided & Guided Cycle Tours

8.1 South Australia considers cycling while intoxicated to be an offence under the *Road Traffic Act 1961* and it is the Customer and the Riders responsibility to monitor and regulate their alcohol consumption. Barossa Bike Hire does not endorse drink-riding or the excessive consumption of alcohol.

8.2 All participants on guided cycle Tours will, at all times, observe the instructions and directions of the tour guide and acknowledge that the decisions of the tour guide are final.

8.3 The Customer and the Riders participating in guided cycle Tours understand that any inappropriate behaviour, as determined by the sole and absolute discretion of the tour guide, may result in any, or all, of the following occurring:

(i) the Customer and the Riders being asked to disembark the Tour;
(ii) the complete termination of the Tour;
(iii) and furthermore, if this occurs, the Customer and the Riders acknowledge that there will be no refund of any fees paid by them to Barossa Bike Hire.

9. Photography and Imagery

9.1 All photography or imagery (digital or otherwise) taken by Barossa Bike Hire during the Hire Period or Tour become the property of Barossa Bike Hire and may be used for advertising purposes on social or print media, our website and in printed or digital promotional materials, unless the Customer or Riders expressly advise Barossa Bike Hire in writing that this is not to occur. Furthermore, the Customer or Riders also waive their rights to any royalties or compensation for the use of their photos or images in perpetuity.

10. Risk

10.1 Cycling has inherent risks and dangers. It involves a degree of physical exertion and physical risk. You may be riding on roadways with other road users such as cars, motorbikes, pedestrians, other cyclists, or uneven or unfamiliar surfaces, where there is a risk of Personal Injury to you and others.

10.2 The Customer and the Riders will use the Equipment provided by Barossa Bike Hire at their own risk.

10.3 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 before, during or after participating in any self-guided or guided cycle Tours.

10.4 The Customer and the Riders hereby release and indemnify Barossa Bike Hire and its Agents, employees and contractors from and 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 a Tour and/or the hire and use of Equipment, but excluding any loss or damage resulting from the negligence, breach of duty or breach of care of Barossa Bike Hire.

11. Property

11.1 All property in, and title to, the Equipment remains with Barossa Bike Hire at all times, however, nonetheless all risk for the Equipment passes to the Customer on delivery.

11.2 The Customer does not acquire any title or interest in the Equipment. The Customer's interest in the Equipment is as bailee for Barossa Bike Hire only.

11.3 The Customer and the Riders are responsible for the security of their own personal possessions at all times and Barossa Bike Hire will not be liable for replacement of any personal possessions.

12. In the Event of Loss or Damage to Equipment

12.1 The Customer will immediately notify Barossa Bike Hire if any of the Equipment is lost, stolen, breaks down, is damaged or ceases to operate.

12.2 If the Equipment breaks down or becomes unsafe to use for any reason (including fire, adverse weather conditions, mechanical failure), the Customer must immediately cease to use that Equipment and take all steps necessary to prevent damage to the Equipment and other property damage and Personal Injury.

12.3 The Customer must not dismantle or repair, or attempt to dismantle or repair, the Equipment without Barossa Bike Hire's prior consent.

12.4 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Barossa Bike Hire for all loss, theft or damage to the Equipment except where such loss, theft or damage is due to the negligence of Barossa Bike Hire.

13. Refunds & Cancellations

13.1 Refunds are not available should the weather impede the use of the Equipment (or your ride) or you return the Equipment early.

13.2 Barossa Bike Hire may cancel delivery of the Equipment at any time before the Equipment is delivered by giving notice in writing to the Customer. On giving written notice, Barossa Bike Hire shall repay to the Customer any sums paid in respect of the Hiring Fees and release any security given.

13.3 Barossa Bike Hire is not liable for any loss or damage, howsoever, arising from the cancellation.

13.4 In the event that the cancellation is due to the Customer:

(i) Barossa Bike Hire 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 or accepted for delivery by the Customer or the Customer's Representative;

(ii) For bookings where cancellations are received more than thirty (30) days in advance of the Hire Period, the Customer shall receive a full refund of the Hiring Fees;

(iii) For bookings where cancellations are received eight (8) to thirty (30) days in advance of the Hire Period, the Customer shall incur a cancellation fee of 50% of the Hiring Fees;

(iv) For bookings where cancellations are received seven (7) days or less of the Hire Period, the Customer shall incur a cancellation fee of 100% of the Hiring Fees.

13.5 All cancellation fees become immediately due and payable upon cancellation.

14. Exclusion of Implied Terms

You acknowledge that where you are a consumer of Recreational Services, as defined by the Australian Consumer Law, the Fair Trading Act (SA) 1987, 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 Barossa Bike Hire flowing from them, are expressly excluded to the full extent possible by law. To the extent of any liability arising, the liability of Barossa Bike Hire will, at its discretion, be limited to the resupply of the services or payment of the cost of having the services supplied again.

15. Acknowledgment and Waiver

WARNING: Recreational Services—Exclusion, restriction or modification of rights under the Australian Consumer Law (SA)

Your rights: Under sections 60 and 61 of the Australian Consumer Law (SA), 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. Further information about your rights can be found at www.ocba.sa.gov.au.

16. Miscellaneous

16.1 This Agreement represents the entire agreement between Barossa Bike Hire and the Customer. No additional terms and conditions proposed by the Customer apply to this Agreement unless agreed in writing by Barossa Bike Hire.

16.2 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.

16.3 The Customer may not assign, sub-contract or transfer the benefit of this Agreement to another party without the prior consent of Barossa Bike Hire.

16.4 This Agreement is governed by the laws of South Australia and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of South Australia. The Customer and the Riders will not object to Barossa Bike Hire using the jurisdiction of South Australia for the recovery of any outstanding amount/s.

Agreement to Exclude, Restrict or Modify Your Rights I agree that the liability of Barossa Bike Hire 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.

PRINT YOUR NAME ("Customer")

SIGNATURE

DATE / /