

# terms & conditions

T&S Thurbon Pty Ltd trading as Bikescape  
ABN 81 079 885 288

## 1 Rental of Motor Cycle

- 1.1 The Renter hires the Motor Cycle referred to in Item 3 of the Rental Schedule and any accessories/equipment referred to in Item 7 of the Rental Schedule for the hire period referred to in Item 8 of the Rental Schedule.
- 1.2 The Renter will return the Motor Cycle to Bikescape NO LATER THAN the end of the hire period as referred to in Item 8 of the Rental schedule.
- 1.3 In the event of the late return of the motorcycle, a late fee will be charged in accordance with Clause 7.3 of the Terms and Conditions.

## 2 Rental Charge and Deposit

- 2.1 The Renter will pay to Bikescape the rental charge specified in Item 9 of the Rental Schedule for the specified hire period.
- 2.2 The Renter will provide the deposit referred to in Item 9 of the Rental Schedule by credit card acceptable to Bikescape. The deposit is refundable (by cheque or credit card) after return of the Motor Cycle and a reasonable time allowed for servicing and checking, subject to any deductions authorised by this Agreement.
- 2.3 The renter agrees to pay the other amounts set under Item 6 and Item 7, calculated in accordance with the price list, and any stamp duty, fees, outgoings, penalties, fines or costs imposed by any authority.

## 3 Service

- 3.1 Bikescape will service the Motor Cycle upon return of the Motor Cycle from the Renter and shall deduct from the deposit the cost of oil, repairs, replacement parts, or any other moneys owing under this Agreement.

## 4 Use of Motor Cycle

- The renter agrees
- 4.1 to keep and deliver up the Motor Cycle in good order and repair (reasonable wear and tear only excepted);
  - 4.2 not to attempt to sell, dispose of or encumber the Motor Cycle in any way;
  - 4.3 not to alter the Motor Cycle, including any identifying markings, without Bikescape's prior written consent;
  - 4.4 to allow inspection of the Motor Cycle at any reasonable time;
  - 4.5 to ride and operate the Motor Cycle in a skilful manner;
  - 4.6 not to authorise or permit the Motor Cycle to be ridden by any person other than the Renter or a person nominated by the Renter referred to in Item 2 of the Rental Schedule;
  - 4.7 not to part with possession of the Motor Cycle unless authorised in writing by Bikescape;
  - 4.8 not to permit the Motor Cycle to be operated in a careless or dangerous manner, in breach of any statutes, regulations or rules in relation to the use or riding of motor cycles, nor to operate or ride the Motor Cycle while under the influence of intoxicating liquors or illegal drugs;
  - 4.9 that the Renter or any other authorised rider will hold a motor cycle licence acceptable to the relevant traffic authorities and that the Renter and any other authorised rider is over 21 years of age;
  - 4.10 not to allow the Motor Cycle to be used or operated for or in conjunction with any illegal purpose or in any hill climbing tests, rally, reliability trial or contest, stationary revving or burn outs, and shall not convey any load greater than that for which the Motor Cycle and its luggage carriers were constructed;
  - 4.11 not to allow the Motor Cycle to be ridden or permit it to be ridden or otherwise used when it is in a damaged or unsafe condition and
  - 4.12 not to use the Motorcycle for any commercial purpose other than that expressly stated in writing in the Schedule overleaf

## 5 Damage

- 5.1 Where damage occurs to the Motor Cycle, mechanical difficulty arises, or the Motor Cycle is involved in an accident, the Renter will immediately notify Bikescape and will act in accordance with instructions given by Bikescape.

- 5.2 If mechanical damage is caused by the use, mis-use or abuse of the Motor Cycle, the Renter will remain liable for the hire charge for the remainder of the unexpired hire period together with all repair costs, replacement parts and costs for the cancellation or postponement of the hire of the Motor Cycle as a result of its unavailability. This will be calculated by determining the percentage usage, over 60 days immediately preceding the damage, and multiplying this by the number of days that the Motor Cycle is unavailable.

- 5.3 The Renter agrees to (and will procure any authorised rider to) provide all assistance reasonably required by Bikescape in relation to any accident in which the Motor Cycle is involved during the hire period, including the provision of statements, information and documents and will attend court to give evidence and meet with Bikescape's lawyers as required in relation to any legal action arising in connection with the hire of the Motor Cycle.

## 6 Renter's Responsibilities

- 6.1 The Renter acknowledges responsibility to maintain the engine oil at the required level and to maintain chain tension and lubrication, as specified in Item 5 of the Rental Schedule. The engine oil, chain tension and lubrication must be checked each time the bike is ridden. Failure to check these items specified will be treated as abuse under paragraph 5.2 of this Agreement.
- 6.2 The Renter acknowledges that the hire and use of the Motor Cycle is at the Renter's own risk and agrees that Bikescape is not liable for any loss or damage:
  - 6.2.1 to the Renter or any other person (including an authorised rider) for any property taken from the Motor Cycle or otherwise lost during the hire period;
  - 6.2.2 arising to the Renter or an authorised rider out of the breakdown of the Motor Cycle; or
  - 6.2.3 for any personal injury or property damage occasioned to the Renter or any other person from the use of the Motor Cycle howsoever occurring.
- 6.3 The Renter shall only drive the motorcycle on formed and sealed public roads in a safe and careful manner, and is to take all responsible care necessary.
- 6.4 The Renter shall be solely responsible for fines and penalties for speeding and/or reckless or careless driving or other violation of any statute, ordinance, by-law or regulation of any governmental authority when in use or operation of the motorcycle. An administration fee may be charged to the Renter for discharge of these fines.

## 7 Insurance

- 7.1 The Motor Cycle referred to in Item 3 has a level of insurance referred to in Item 4.
- 7.2 Irrespective of the level of insurance that applies to this agreement, the "at fault rider" has no cover for damage or personal injury to himself.
- 7.3 The insurance stated at Item 4 of the Rental Schedule is void and does not apply where the Renter has breached this agreement.
- 7.4 Until a claim has settled by payment to Bikescape, the excess will be payable by the Renter regardless of fault.

## 8 Late Return

- 8.1 Where the Renter fails to return the Motor Cycle by the end of the specified hire period, Bikescape may without affecting any other rights, notify the Police or any other relevant authority of the failure and take such action or proceedings as considered necessary for recovery of possession of the Motor Cycle.
- 8.2 The Renter agrees to indemnify Bikescape for all costs incurred by Bikescape in connection with the recovery of the Motor Cycle. Bikescape may enter any premises where it believes the Motor Cycle may be located. In such event the Renter releases Bikescape from any liability or damage incurred in retaking or attempting to retake the Motor Cycle.
- 8.3 A late fee will be charged in the event of early collection or late return of the Motor Cycle. This fee shall be equal to the half day hire for the Motor Cycle if the Motor Cycle is returned up to half a day late. If the Motor Cycle is returned more than half a day late, the fee shall be equal to a full day hire for each day or part day until its return.

## 9 Cancellation

- 9.1 A cancellation or postponement of any booking may result in the loss of any moneys held for the booking.

## 10 Withdrawal of Motor Cycle

- 10.1 Bikescape may repossess the Motor Cycle at any time without demand upon Bikescape becoming aware that the Renter is in breach of any term or condition of this Agreement or that the Motor Cycle is damaged in any way or that continuing use of the Motor Cycle would be likely to adversely affect the Motor Cycle or its performance.

## 11 Unconditional Obligation

- 11.1 The Renter's obligation to pay rental charges, service fees, and any other moneys under this Agreement is absolute and unconditional. Without limitation, the Renter's payment obligations will continue notwithstanding any defect in, breakdown, accident, loss, theft or damage to the Motor Cycle.

## 12 Condition of Motor Cycle

- 12.1 The Renter acknowledges having examined the Motor Cycle at the commencement of the hire period and agrees that the condition of the Motor Cycle is as set out in Item 6

## 13 Exclusion of Warranties

- 13.1 To the full extent permitted by law, all express and implied terms, conditions and warranties (other than the ones set out in this Agreement) are excluded.
- 13.2 Bikescape is not liable for any damage, injury or loss to any person or property arising from the possession, operation or use of the Motor Cycle.
- 13.3 Whether or not Division 2 of part V of the Trade Practices Act, 1974 or any law to a similar effect applies, Bikescape's liability for anything in relation to the Motor Cycle and its use, including damage or economic loss, is limited to the maximum extent permitted by law. In any event Bikescape's liability is limited, at its option, to the replacement or cost of replacement of the Motor Cycle.

## 14 Indemnities

The Renter indemnifies Bikescape against:

- 14.1 any loss of or damage to the Motor Cycle, however arising;
- 14.2 liability for any death, injury or damage to any person or property arising directly or indirectly from the Motor Cycle or its use; and
- 14.3 any loss or liability incurred by Bikescape resulting from possession, use or operation of the Motor Cycle by the Renter.

## 15 Interest

- 15.1 Where any moneys are required to be paid by the Renter to Bikescape, and such moneys exceed the deposit, then Bikescape is entitled to charge interest at a daily rate of fourteen (14) per cent per annum on all amounts due. Bikescape will be entitled to recover from the Renter all expenses on an indemnity basis incurred in recovering any outstanding moneys from the Renter.

## 16 Severance

- 16.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable, such provision shall be severed and the remaining provisions shall continue unaffected.

## 17 Governing Law

- 17.1 This Agreement and all transactions under this Agreement are governed by the laws of New South Wales. Bikescape and the Renter agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

## 18 Waiver

- 18.1 No waiver by Bikescape of any default, breach or repudiation by the Renter will affect Bikescape's rights in respect of any further or continuing default, breach or repudiation.

## 19 Interpretation

In this Agreement:

- 19.1 the singular includes the plural and vice versa;
- 19.2 "person" includes a firm, body corporate, unincorporated association or any other body or entity;
- 19.3 a reference to either party includes that party's legal personal representatives, successors and permitted assigns;
- 19.4 headings are inserted for convenience only and do not affect interpretation;
- 19.5 and where the context permits, "Motor Cycle" includes any accessories or equipment referred to in Item 7 of the Rental Schedule.