

All bookings for Pedals Australia will be required in advance of the booking. Payment can be made online or via telephone. Transfer fees may be charged at the conclusion of your booking, depending on any changes or alterations to the original booking.

Pedals Australia is an entirely mobile service. You will need to nominate both pick-up and return locations, however this can be determined on the day and charged accordingly.

Please refer to our price guide for more information. For full terms and conditions, please see below:

## **Terms & Conditions**

### **Pedals Australia Pty Ltd**

#### **1. Definitions**

1. "Owner" shall mean Pedals Australia Pty Ltd [A.C.N. 604 977 200], its successors and assigns or any agent or other person acting on behalf of and with the authority of Pedals Australia Pty Ltd
2. "Hirer" shall mean the Hirer or any person acting on behalf of and with the authority of the Hirer.
3. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Hirer on a principal debtor basis.
4. "Equipment" shall mean Bikes and/or any other Equipment supplied on hire by the Owner to the Hirer (and where the context so permits shall include any supply of services) and is as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Hirer.
5. "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Hirer.
6. "Price" shall mean the cost of the hire of the Equipment as agreed between the Owner and the Hirer subject to clause 3 of the contract.

#### **2. Acceptance**

1. Any instructions received by the Owner from the Hirer for the hire of the Equipment and/or the Hirer's acceptance of Equipment supplied on hire by the Owner shall constitute acceptance of the terms and conditions contained herein.
2. Where more than one Hirer has entered into this agreement, the Hirer shall be jointly and severally liable for all the payments of the Price.

3. Upon acceptance of these terms and conditions by the Hirer the terms and conditions are irrevocable and can only be amended with the written consent of the Owner.

4. The Hirer undertakes to advise the Owner of any change in the Hirer's name, address and/or any other change in the Hirer's details.

### **3. Price and Payment**

1. At the Owner's sole discretion the Price shall be either:

a. as indicated on invoices provided by the Owner to the Hirer in respect of Equipment supplied on hire; or

b. the Owner's current Price, at the date of delivery of the Equipment, according to the Owner's current Price list, a copy of which is annexed hereto and marked "A"; or

c. the Owner's quoted Price (subject to clause 3.2) which shall be binding upon the Owner provided that the Hirer shall accept in writing the Owner's quotation within thirty (30) days.

2. The Owner reserves the right to change the Price in the event of a variation to the Owner's quotation.

3. At the Owner's sole discretion a deposit may be required.

4. At the Owner's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to the Owner.

5. Time for the payment for the Equipment shall be in advance via online payment on most occasions unless stated on the invoice or any other forms. If no time is stated then payment shall be fourteen (14) days following the date of the invoice.

6. At the Owner's sole discretion:

a. payment shall be due on delivery of the Equipment; or

b. payment shall be due before delivery of the Equipment.

7. The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.

8. Optional bike theft cover is available with the current excess being \_\_\_\_\_ dollars (\$XX)

9. Group bookings are only available if the Equipment is available and not already booked by another Hirer.

10. Group bookings are available at the price advertised on [www.pedalsbikes.com.au](http://www.pedalsbikes.com.au)

11. Payment will be made in advance online by PayPal, by credit card or Electronic Funds Transfer (EFT) or by any other method as agreed to between the Hirer and the Owner.

12. GST and other taxes and duties that may be applicable shall be added to the Price when they are expressly included in the Price.

#### **4. Hire Period**

1. The Equipment hire charges shall commence from the time the Equipment is collected by the Hirer from the location agreed to by the Owner or agent and the Hirer and will continue until the return of the Equipment to a location agreed to by the Owner or agent and the Hirer and/or the expiry of the Minimum Hirer Period, whichever lasts occurs.

2. If the Owner or agent agrees with the Hirer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment is physically provided to the Hirer, and continues until the Hirer notifies the Owner or agent that the Equipment is available for collection.

3. No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Owner confirms special prior arrangements in writing. In the Event of Equipment breakdown provided the Hirer notifies the Owner immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Hirer.

#### **5. Delivery of Equipment**

1. The Hirer takes possession of the Equipment at the Hirer's nominated location.

2. The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Hirer is unable to take delivery of the Equipment as arranged then the Owner shall be entitled to charge a reasonable fee for redelivery.

3. Delivery of the Equipment to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purposes of this agreement.

4. The Hirer shall be responsible for ensuring the Equipment is available for pick-up at the nominated time and location. If there are any delays due to free access not being available then the Hirer shall be responsible and shall reimburse the Owner for all lost hire fees associated with the Equipment being unavailable. The Hirer shall also be responsible for all other expenses and costs incurred by the Owner due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Owner or returned to the Owner or agent.

5. The failure of the Owner to deliver shall not entitle either party to treat this contract as repudiated.

6. The Owner shall not be liable for any loss or damage whatever due to failure by the Owner to deliver the Equipment (or any of them) promptly or at all.

## **6. Risk**

1. Mountain bike riding is considered a dangerous recreational activity therefore the Owner shall not accept any responsibility for any damages (howsoever arising) that occur during mountain bike riding. If the Hirer decides to use their own Equipment during a bike ride then they shall be solely liable for the maintenance of that Equipment and shall ensure the road worthiness of the Equipment and its suitability for use during the ride.

2. The Owner retains property in the Equipment nonetheless all risk for the Equipment passes to the Hirer on delivery.

3. The Hirer accepts full responsibility for the safe keeping of the Equipment and indemnifies the Owner for all loss, theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer. The Hirer accepts full responsibility for and shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the respect of any injury to persons or damage to property arising out of the use of the Equipment during the Hire period, however arising and whether or not arising from any negligence, failure or omission of the Hirer or any other persons.

## **7. Title**

1. The Equipment is and will at all time remain the absolute property of the Owner.

2. If the Hirer fails to return the Equipment to the Owner then the Owner or the Owner's agent may enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated as the invitee of the Hirer and take possession of the Equipment, without being responsible for any damage thereby caused.

3. The Hirer is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

## **8. Defects**

1. The Hirer shall inspect the Equipment on delivery and shall immediately notify the Owner of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Hirer shall afford the Owner an opportunity to inspect the Equipment within a reasonable time following delivery if the Hirer believes the Equipment is defective in any way.

If the Hirer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Owner has agreed in writing that the Hirer is entitled to reject, the Owner's liability is limited to either repairing or replacing the Equipment, except where the Hirer has hired Equipment as a consumer within the Trade Practices Act 1974 (C'With) or the Fair Trading Acts of the relevant states or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.

## **9. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **10. Warranty**

No Warranty is provided by the Owner in respect of the condition of the Equipment or its fitness for any particular purpose. The Hirer shall indemnify and hold harmless the Owner in respect of all claims arising out of use of the Equipment.

## **11. Hirer's Disclaimer**

The Hirer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Hirer by the Owner and the Hirer acknowledges that the Equipment is hired relying solely upon the Hirer's skill and judgement.

## **12. Hirer's Responsibilities**

1. The Hirer shall:

- a. follow all instructions from the Owner's tour guides (where applicable), ride within all sensible limits and keep a safe gap between themselves and other riders at all times. In the event the Hirer fails to comply with this clause then they agree that they do so at their own risk and responsibility;
- b. notify the Owner immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- c. satisfy itself at Commencement that the Equipment is suitable for its purposes;
- d. operate the Equipment safely, only for its intended use, and strictly in accordance with the road code or any other applicable laws, and using all relevant safety gear, and in accordance

with any instructions whether advised by the Owner or supplied with the Equipment. Bike helmets are mandatory as are Australian approved lights at night;

e. comply with all occupational health and safety laws relating to the Equipment and its operation;

f. on termination of the hire, the Hirer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Owner;

g. keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment ;

h. not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; comply with all permit requirements related to use of the Equipment in State Forests and National Parks.

2. Immediately on request by the Owner the Hirer will pay:

a. the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Owner;

b. all costs incurred in cleaning the Equipment;

c. all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;

d. the cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's agent;

e. the cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer.

### 13. Cancellation

1. The Owner may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Owner shall repay to the Hirer any sums paid in respect of the Price. The Owner shall not be liable for any loss or damage whatever arising from such cancellation.

2. The Owner reserves the right to charge a cancellation fee of forty-five dollars (\$45) for bikes ordered by individuals but not picked up.

3. For group bookings cancellations received;

- a. more than seven (7) days in advance of the hire/tour shall not incur a cancellation fee.
- b. within one (1) to seven (7) days of the hire/tour shall incur a cancellation fee of fifty percent (50%) of the Price.
- c. One hundred percent (100%) of the Price will be applicable if no advice of cancellation is received.

#### 14. Default & Consequences Of Default

- 1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 2. If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in pursuing the debt including legal costs on a solicitor and own client basis and the Owner's collection agency costs.
- 3. Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), the Owner may suspend or terminate the supply of Equipment to the Hirer and any of its other obligations under the terms and conditions. The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.
- 4. If any account remains overdue after thirty (30) days then an amount of the greater of \$50 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 5. Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed in addition to and without prejudice to any other remedies the Owner may have and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:
  - a. any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to meet its payments as they fall due; or
  - b. the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

#### 15. Security and Charge

1. Despite anything to the contrary contained herein or any other rights which the Owner may have howsoever:

a. where the Hirer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Hirer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Owner or the Owner's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Hirer and/or the Guarantor acknowledge and agree that the Owner (or the Owner's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met;

b. should the Owner elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Hirer and/or Guarantor shall indemnify the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis;

c. the Hirer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Owner or the Owner's nominee as the Hirer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

## **16. Privacy Act 1988**

1. The Hirer and/or the Guarantor/s agree for the Owner to obtain from a credit reporting agency a credit report containing personal credit information about the Hirer and Guarantor/s in relation to credit provided by the Owner.

2. The Hirer and/or the Guarantor/s agree that the Owner may exchange information about the Hirer and the Guarantor/s with those credit providers either named as trade referees by the Hirer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Hirer; and/or

(b) to notify other credit providers of a default by the Hirer; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or

(d) to assess the credit worthiness of the Hirer and/or Guarantor/s.

3. The Hirer consents to the Owner being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).

4. The Hirer agrees that personal credit information provided may be used and retained by the Owner for the following purposes and for other purposes as shall be agreed between the Hirer and Owner or required by law from time to time:

(a) the provision of Equipment on hire; and/or

(b) marketing of services by the Owner, its agents or distributors in relation to the Equipment; and/or

(c) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to provision of Equipment on hire; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Hirer; and/or

(e) enabling the daily operation of Hirer's account and/or the collection of amounts outstanding in the Hirer's account in relation to the hire of the Equipment or Transfers.

5. The Owner may give information about the Hirer to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Hirer; and/or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Hirer.

6. The Hirer consents to the Owner retaining personal information such as name, address, e-mail and phone number for the purpose of receiving marketing information and news from Pedals Australia, only when the Hirer opts-in to receiving this information. The Hirer can unsubscribe from receiving this information at any time.

## **17. General**

1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

2. These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

3. The Owner shall be under no liability whatever to the Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions.

4. In the event of any breach of this contract by the Owner the remedies of the Hirer shall be limited to damages. Under no circumstances shall the liability of the Owner exceed the Price.

5. The Hirer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Hirer by the Owner.

6. The Owner may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.

7. The Owner reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Owner notifies the Hirer of such change.

8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

9. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

10. Although not deemed an offence in Victoria, Pedals Australia encourages Hirers not to drink excessively when cycling. Other penalties can apply for causing a disturbance or for not obeying all other road rules. Pedals Australia can provide a pick up service within a reasonable time should the Hirer consumed an excessive amount of alcohol. Anything over 0.05 can be deemed as excessive.