

## STANDARD TERMS & CONDITIONS OF HIRE

### 1. DEFINITIONS

- 1.1 “**Supplier**” means C.L Rose trading as Sunset Motorcycle Hire WA.
- 1.2 “**Hirer**” means the person or organisation that agrees to hire a motorcycle and/or equipment.
- 1.3 “**Conditions**” means the standard terms and conditions of hire set out in this document.
- 1.4 “**Hire Period**” means the period for which it is agreed a motorcycle and/or equipment will be hired as detailed in the Order form on the reverse hereof or attached hereto;
- 1.5 “**Motorcycle**” means the motorcycle supplied by the Supplier and as detailed on the Order Form.
- 1.6 “**Equipment**” means the motorcycle wear and safety equipment supplied by the Supplier and as detailed on the Order Form.
- 1.7 “**Special Conditions**” means any particular terms and conditions contained and referred to in the Order form on the reverse hereof or attached hereto.

### 2. QUOTES, HIRING & ACCEPTANCE

- 2.1 All orders are subject to these terms and conditions (to which no variation or addition will be effective unless agreed in writing by the Supplier) which together with any special conditions detailed on the Order form on the reverse hereof or attached hereto, shall constitute an entire legally binding agreement between the parties for the hire of a motorcycle and/or equipment by the Supplier to the Hirer to the exclusion of all other representations, terms and conditions written or oral including any which the Hirer may purport to apply under any previous hire contract or similar document.

### 3. TERMS OF PAYMENT/ HIRE PERIODS

- 3.1 Hire is charged for the time the Hirer has possession of the motorcycle and/or equipment commencing from when the motorcycle and/or equipment is collected by the Hirer and ending when it is delivered back to the Supplier (inclusive of weekends and public holidays), not only the time during which the motorcycle and/or equipment is used and irrespective of whether the motorcycle and/or equipment is hired individually or together.
- 3.2 Payment in full for all hiring charges and any other amounts payable in accordance with these standard Terms and Conditions of Hire (which may be changed from time to time by the Supplier without notice) is required at the time hire commences. Any additional hire charges shall be paid by the Hirer at the time of delivery back to the Supplier. The Supplier may charge interest on all amounts not paid by the Hirer by the due date of payment at the rate per annum equal to 1% plus the Commonwealth Bank Business Unsecured Overdraft Indicator Lending Rate from and including the due date to the actual receipt of payment.
- 3.3 The minimum period of hire is half day and hire will be charged in half day blocks (ie 60% of a full day's hire) . Daily rates of hire is based upon the motorcycle and/or equipment being hired for a minimum hire period of twenty-four (24) hours. If used in excess of twenty-four (24) hours per day, the rate will be charged in half day or one day blocks as the case may be.

### 4. INSURANCE

- 4.1 The Supplier has some insurance cover for damage to the motorcycle. The excess of that insurance is \$3,000.00. Subject to clause 5, the Hirer will be responsible for any damage to the motorcycle regardless of the cause up to the excess amount. An initial deposit of \$[ ] per bike will be charged on the Hirer's credit card and refunded if no damage has been caused to the motorcycle. [initials]
- 4.2 The Supplier's insurance cover will be voided and the Hirer will be fully liable for all costs associated with any damage caused to the motorcycle; if the Hirer breaches this Agreement by careless, wilful or reckless driving including whilst the Hirer and/or rider is under the influence of alcohol or drugs; by submersing it in water, such as river crossing, including salt water; resulting from rider negligence; by riding off formed roads (eg cross country) or on roads which are not public or legal roads; the Hirer's licence being invalid, not current or not appropriately rated for the motorcycle, the motorcycle being unlocked and not alarmed when unattended, or by it being ridden in an unlawful manner.

## **5. MECHANICAL REPAIRS**

- 5.1 If the motorcycle requires a minor mechanical or electrical repair during the Hire Period, such as a broken light, the Hirer may have the repairs carried out up to the value of \$50.00 upon authorisation from the Supplier. The Hirer must keep all of such and give them to the Supplier upon return of the motorcycle to the Supplier or earlier.
- 5.2 The Supplier will reimburse the Hirer for the costs of such repairs provided the Hirer provides the Supplier with receipts from a bona fide motorcycle repairer and/or part supplier/dealer detailing the costs.

## **6. ACCIDENTS AND DAMAGE**

- 6.1 If the Hirer has an accident the Hirer must immediately notify the Supplier.
- 6.2 If the motorcycle is damaged and unable to be ridden whether for mechanical or legal reasons the Hirer must immediately notify the Supplier and the Hirer will not arrange for or allow the motorcycle to be removed from the place of damage, but for any movement required to make any road or property safe, without the Supplier's express authority. The Supplier will be under no obligation to pay any costs incurred by the Hirer or caused by his/her acts or omissions or negligence.
- 6.3 The Supplier will not be under any obligation to arrange or provide the Hirer with any alternative transport or any accommodation or be liable for such or any other costs caused by any accident or mechanical breakdown.
- 6.4 In the event of an accident the Hirer must stop to render assistance and establish if anyone is hurt; if an injury has occurred, must report the accident to the Police as soon as practicable but within 12 hours; exchange his/her name and address details with the other party.

## **7. HIRER'S OBLIGATIONS/WARRANTIES**

- 7.1 The Hirer shall:
- (a) Prior to the use of the motorcycle and/or equipment determine the condition and suitability of the motorcycle and/or equipment hired for the purpose required.
  - (b) Use the motorcycle and/or equipment in a proper manner and only for the purpose and within the capacity for which it was designed acknowledging that the Supplier can give no warranty as to the said capacity, not permit any other person to ride the motorcycle nor sub-let or hire the motorcycle to any other person, take all reasonable care in handling and parking the motorcycle, not ride the motorcycle on beaches, through salt water, on unsealed roads, private roads, or any racing track or venue, securely lock the motorcycle whenever it is left unattended using the additional locks provided by the Supplier, check the motorcycle's engine oil daily and top up as necessary, check tyre pressures in accordance with the manufacturer's guidelines stated on the tyres.
  - (c) Confirm the Hirer/rider is aged twenty-three (23) years or twenty-five (25) years as the case may be (depending on the motorcycle hired), wear suitable clothing and protective equipment including a helmet as legally required at all times when riding and is familiar with, understands and will comply with Western Australia's driving rules and in particular will adhere to any and all maximum speed limits.
  - (d) Accept full responsibility for the safe keeping of the motorcycle and/or equipment, and except as specified hereafter, indemnify the Supplier for all loss, theft of or damage to the motorcycle and/or equipment however caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributed to any negligence, failure or omission of the Hirer.
  - (e) Pay to the Supplier all hire and related charges and other costs as stipulated in accordance with the Supplier's Terms of Payment.
  - (f) On or before the expiry date of the hire deliver the motorcycle and/or equipment back to the Supplier's premises.
  - (g) Not operate the motorcycle, or permit it to be operated, in circumstances that constitute an offence by the rider;
  - (h) Not operate the motorcycle, or permit it to be operated, in any race, speed test, rally or by contest, or to propel or tow any other vehicle;
  - (i) Not operate the motorcycle, or permit it to be operated, in breach of any legislation or by-laws relating to road traffic, nor ride it or cause it to be used above the 26th Parallel.
  - (j) Keep one copy of this agreement available throughout the Hire Period for producing on demand to any Police Officer.
  - (k) Wear an approved motorcycle rider's helmet at all times, and where the helmet and motorcycle clothing/equipment is not supplied by the Supplier the Hirer warrants that the helmet and/or motorcycle clothing/equipment used by the Hirer meets the relevant Australian standards, the proof of which shall be the Hirer's. In the event that the Supplier is not satisfied that the Hirer's helmet and/or motorcycle clothing/equipment meets the relevant Australian standards, the Supplier reserves the right not to hire the motorcycle to the Hirer.

## **8. LIABILITY LIMITS**

- 8.1 In no circumstances shall the Supplier be liable for any direct or indirect or consequential loss (including loss of profits and goodwill) suffered by the Hirer for any breach of the Supplier's obligations other than to the extent expressly accepted in this Agreement. Without limiting the comprehensive nature of this provision, the Supplier shall not be liable for any loss of or damage to any property however caused.
- 8.2 The Hirer accepts full responsibility for, and indemnifies and will keep the Supplier indemnified against all claims in respect of any injury to persons, loss or damage to property, arising out of the delivery, storage, possession or use of the motorcycle and/or equipment during the hire period however arising, whether from the negligence of the Hirer or Supplier or otherwise.
- 8.3 The Supplier's total aggregate liability, if any, to the Hirer for any claim in Contract, tort, negligence or otherwise arising out of or in connection with the hire of the motorcycle and/or equipment shall be limited to the charges paid by the Hirer in respect of the hire of the motorcycle and/or equipment which are the subject of any such claim.
- 8.4 All conditions, terms, representations and warranties relating to the hire of the motorcycle and/or equipment provided by the Supplier under this Agreement, whether imposed by statute or operation of law or otherwise that are not expressly stated in these terms and conditions, including, without limitation, the implied warranty of satisfactory quality, non-infringement of third parties' rights and fitness for a particular purpose, are hereby excluded.
- 8.5 The Hirer is liable to pay for:
- (a) fuel topped up to return the tank to full at the completion of the Hire Period at the rate of \$2.50 per litre;
  - (b) any parking or traffic fines accrued during the Period of Hire;
  - (c) the replacement cost of any lost or damaged keys;
  - (d) the cost of repairing any punctures or replacing damaged tyres and belt drivers;
  - (e) an amount equal to all other costs, expenses, claims, demands and penalties incurred or otherwise resulting from the use of the motorcycle and accessories by the Hirer or by any other person during the period during which the motorcycle is with the Hirer, beginning at the time of delivery of the motorcycle to the Hirer and ending at the time when the motorcycle is returned to the Supplier;
  - (f) the full hire charge applicable for the duration of the hire as documented on the Hire/Order Form , notwithstanding any early return of the motorcycle;
  - (g) all charges under this clause on demand, such demand for payment usually being made at the expiration of the term of the hire but some demand may be made later to cover costs and expenses which are subsequently determined;
  - (h) any part or component of the motorcycle removed from it during the Hire Period or missing from it at the conclusion of the Hire Period.

## **9. THE SUPPLIER'S OBLIGATIONS**

The Supplier:

- (a) will supply the motorcycle in safe, legally-compliant and roadworthy condition;
- (b) provides no warranties, except to the extent required by law, to the Hirer in respect of the motorcycle, equipment or accessories and excludes all implied warranties where that is lawful;
- (c) for the sake of clarity, accepts no responsibility or liability, except for its obligations under this Agreement, for any costs, expenses, damages (including any damages for loss of enjoyment) or any other liabilities resulting from any damage to the motorcycle and equipment and accessories (whether accidental or otherwise), breakdown or any other failure of the motorcycle or accessories, irrespective of whether the Supplier was in any way negligent;
- (d) will not be liable to the Hirer nor to anyone claiming through or under the Hirer for any indirect, special or consequential damages arising in any way out of any matter covered by this Agreement;

- (e) will not be responsible for any damage or injury to any person or property caused by the Hirer's use of the motorcycle or of entering into this Agreement. [initials]

## **10. TERMINATION, CANCELLATION OR RESCHEDULING OF SERVICES**

- 10.1 In the event the Hirer wishes to terminate this Agreement during the Hire Period as detailed in the Order form on the reverse hereof no refund will be given.
- 10.2 Without prejudice to any other remedies available to the Supplier and notwithstanding any period of hire specified, the Supplier may terminate this hire agreement without notice, if the Hirer shall commit any breach of the hire agreement or do or permit to be done any act or thing whereby the Supplier's rights in or to the motorcycle and/or equipment may be prejudiced.
- 10.3 Upon termination of this hire agreement the Supplier shall be entitled to take possession of the motorcycle and/or equipment and for this purpose the Hirer irrevocably appoints the Supplier as its agent and authorises the Supplier to enter on any land or premises owned by or under the control of the Hirer upon which the motorcycle and/or equipment is then situated and agrees to indemnify the Supplier in respect of any claims, damages and expenses arising out of any action taken under this condition.

## **11. SAFETY/RISK**

- 11.1 The Hirer acknowledges that there is risk involved in motorcycle riding which risks, include but are not limited to, motor vehicle / motorcycle accidents, personal injury, including loss of life, damage to the motorcycle and injury to others and that the Hirer rides the motorcycle at his/her own risk.
- 11.2 The Supplier reserves the right to withdraw his services ie the hire of the motorcycle from the Hirer if in his opinion the Hirer's use of it is likely to endanger the Hirer or others.

## **12. GENERAL**

- 12.1 To avoid any doubt, this Agreement:
- (a) is governed in all respects by the laws of the State of Western Australia and the parties submit to the exclusive jurisdiction of the Courts of Western Australia;
  - (b) authorises the Supplier to debit the Hirer's credit card with any charges arising out of the Agreement;
  - (c) makes the Hirer liable for full payment of the Period of Hire even in the event that he/she returns the motorcycle early; and
  - (d) is reliant on the Hirer's warranty that his/her drivers licence, detailed above, is legally enforceable and current in the country of issue and has not been revoked, cancelled or expired in any way and is rated for the type and size of motorcycle hired.
- 12.2 Deposits and cancellations will be determined at time of booking.
- 12.3 The Supplier will not be held responsible for the motorcycle not being available for the Period of Hire at time of booking if such unavailability is the result of unforeseen circumstance at the time the booking was made.
- 12.4 Minimum age of hirer is 25 years, except for motorcycles of up to 250cc, when the minimum age of the hirer is 23 years.

I have read and agree to the above terms and conditions. [initials]