

Australian Crocodile Traders Terms and Conditions for Sale of Leather Products

1. General

- 1.1 ACT will supply to the Customer the Products in accordance with this Contract in consideration of payment of the Price by the Customer.
- 1.2 No terms and conditions of the Customer, howsoever and whenever provided, form part of this Contract (even if any representative of ACT signs those terms and conditions and/or annexes the terms and conditions to this Contract).
- 1.3 The Customer accepts these Terms each time the Customer places an order with ACT. Each Accepted Order will be a separate contract between the Customer and ACT for the supply of Products.

2. Customer obligations

- 2.1 The Customer must not alter or remove any label on the Products.
- 2.2 The Customer warrants that:
- (a) all information given by or on behalf of the Customer to ACT relating to its business was when given true and accurate;
 - (b) it will not make any representations, warranties or guarantees with respect to ACT or any Products that are misleading or incomplete; and
 - (c) it will not do anything that might reasonably be expected to prejudice the integrity, goodwill or reputation of ACT, the ACT Trademarks or the Products.
- 2.3 The Customer must at all times:
- (a) conduct itself in an ethical manner; and
 - (b) comply with any Law applicable to the purchase of Products and the conduct of its obligations under this Contract, including with respect to anti-corruption, discrimination and modern slavery.
- The Customer must not take any action that will, or would reasonably be expected to, cause ACT to be in violation of any such Laws.

3. Orders

- 3.1 The Customer may submit an order for Products by email, SMS or telephone call to ACT or by completing an order form which may be provided by ACT on request.
- 3.2 ACT is deemed to have accepted an order submitted by the Customer in accordance with clause 3.1 upon sending an acknowledgement and acceptance of the order to the Customer (**Accepted Order**).
- 3.3 ACT is not required to accept an order submitted by the Customer for Products.
- 3.4 From time to time, some Products may be out of stock or unavailable and ACT may not be able to fulfil all or part of the Customer's order.
- 3.5 ACT will advise the Customer whether the Products specified in the Customer's order are out of stock and will give the Customer an estimated delivery time. The Customer has the option not to proceed with the entire order if the Customer is not happy with the estimated delivery time and ACT will provide the Customer with a refund.

4. CITES documents

- 4.1 From time to time, some Products may be out of stock or any exotic skin Product (crocodile, alligator etc.) or Product with exotic skin components will have a CITES document included on delivery to, or collection by, the Customer. ACT will not be able to re-issue a lost CITES document under any circumstances.
- 4.2 ACT will include a copy of an export permit or personal baggage permit with any exotic skin Product or Product with exotic skin components if required by the Customer where the Customer is taking the Product overseas.

5. Payment and invoicing

- 5.1 The Customer must pay ACT the Price for the Products on the terms and conditions of this Contract.
- 5.2 ACT will provide an itemised invoice (in a form that will constitute a valid Tax Invoice) to the Customer:
- (a) if the Products are to be delivered to the Delivery Address of the Customer, on dispatch of the Products to the Customer; or
 - (b) if the Products are collected by the Customer from ACT, on collection of the Products by the Customer.
- 5.3 The Customer must pay any Tax Invoice within 30 days of receipt of such invoice, unless the Customer purchases the Products in-store in which case immediate payment is required.
- 5.4 Without limiting ACT's legal rights arising from any failure by the Customer to make a payment in accordance with this clause 5, ACT reserves the right, in its absolute discretion, to take any of the following actions against the Customer if the Customer fails to make such a payment in a further 30 days from the date payment became due:
- (a) refuse to deal further with the Customer;
 - (b) charge interest at a rate of 2% above the cash rate last published by the Reserve Bank of Australia per annum on all amounts payable by the Customer to ACT, calculated from and including the date on which the payment became due until but excluding the date on which the payment is made, which interest is payable on ACT making written demand to that effect;
 - (c) take all action necessary to recover all amounts payable by the Customer to ACT, including engaging a debt collector; and/or
 - (d) seek reimbursement from the Customer for the reasonable costs incurred by ACT in recovering all amounts payable by the Customer to ACT, including any costs associated with the engagement of a debt collector.
- 5.5 The exercise by ACT of any of the rights under clause 5.4 does not affect the Customer's obligations or any other rights or remedies ACT may have in relation to the default by the Customer under this Contract.

6. Delivery

- 6.1 This clause 6 applies if the Customer requests the Products be delivered by ACT to the Delivery Address.
- 6.2 ACT will select its own carrier to deliver the Products to the Delivery Address, unless the Customer requests ACT to use a carrier nominated by the Customer, in which case ACT will use the Customer's nominated carrier.
- 6.3 ACT will use reasonable endeavours to deliver the Products to the Delivery Address by the Delivery Date (if specified).
- 6.4 ACT will not be liable to the Customer for loss the Customer or any third party suffers as a result of any delay to deliver the Products for any reason or for lost or stolen Products left at the Delivery Address at the Customer's request.

7. Defective Products

- 7.1 If the Customer considers, acting reasonably, any of the delivered Products to be Defective, the Customer must provide written notice to ACT of such suspected defect within 48 hours of receipt of the Defective Products, together with photographs of the Defective Products (**Defect Notice**).
- 7.2 The Customer must notify ACT within a reasonable period of identifying any Latent Defects (**Latent Defect Notice**).
- 7.3 Following receipt by ACT of a Defect Notice or Latent Defect Notice within the specified period:
- (a) ACT may request access to the Delivery Address to inspect the Defective Products (and the parties shall, acting reasonably, agree a time for such inspection to take place); and/or
 - (b) ACT may instruct the Customer to return the Defective Products to ACT for inspection.
- 7.4 Following inspection of the Defective Products, if ACT (acting reasonably) considers the Products to be Defective, ACT will:
- (a) for a minor Product defect, repair, replace or refund the Defective Product, at ACT's discretion; or
 - (b) for a major Product defect, replace or refund the Defective Product at the Customer's discretion.
- 7.5 ACT will not be liable to rectify any defect in a Product if, in ACT's reasonable opinion:

- (a) the defect is the result of or related to the Product being altered or modified without ACT's authorisation; or
- (b) the defect is the result of or related to the handling, storage or use of the Product other than in accordance with ACT's instructions.

7.6 All costs involved in returning the Defective Product to ACT is ACT's responsibility.

7.7 The benefits provided to the Customer under this clause are in addition to other rights and remedies available to the Customer under applicable Law.

7.8 To the maximum extent permitted by Law and subject to this clause 7 and clause 10, ACT is not liable for any loss or damage however arising as a result of a Defective Product.

8. Title and risk

- 8.1 Title in the Products remains with ACT and does not pass to the Customer until the Price for the Products is paid to, and received in full by, ACT in cleared funds.
- 8.2 The risk of loss or damage to the Products passes to the Customer at the time of collection of the Products by the Customer from ACT or on delivery of the Products by ACT to the Delivery Address (as the case may be).

8.3 ACT warrants that:

- (a) it has complete ownership of the Products free of encumbrances and will deliver the Products to the Customer on that basis; and
- (b) the Customer will be entitled to clear and complete possession of the Products.

9. Intellectual property

9.1 The Customer acknowledges and agrees that, as between the parties, ACT owns the ACT IP. Except as expressly stated in this Contract, nothing in this Contract grants any right in the ACT IP to the Customer.

10. Product warranties

10.1 The Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Products repaired if the Products fail to be of acceptable quality and the failure does not amount to a major failure.

10.2 Subject to clause 10.1, ACT excludes to the fullest extent permitted by Law, all implied terms and warranties, whether statutory or otherwise, relating to the subject matter of this Contract.

11. Confidentiality, privacy and credit reporting

11.1 The terms of this Contract are confidential to the parties and must not be disclosed directly or indirectly, in whole or in part, by any party other than:

- (a) to enforce this Contract;
- (b) as required by Law; or
- (c) to its insurers, legal advisers or auditors, in each case on a confidential basis.

11.2 ACT may collect Personal Information from third parties such as any person the Customer authorises to place an order for Products on the Customer's behalf.

11.3 ACT may disclose Personal Information to its contractors and service providers such as web hosting providers, IT systems administrators, couriers, payment processors, debt collectors and professional advisors, and to its related bodies corporate.

11.4 The Customer agrees that ACT may use and disclose Personal Information for direct marketing purposes, unless the Customer opts out (which the Customer can do at any time in accordance with our Privacy Policy or by writing to ACT's Privacy Officer at accounts@australiancrocodile.com).

11.5 ACT stores Personal Information in France and may disclose Personal Information to its related body corporate in France.

11.6 If the Customer does not provide Personal Information as requested, ACT may not be able to provide the Customer with the Products or establish a commercial credit account.

11.7 ACT may collect, use and disclose Credit Information. ACT collects and uses Credit Information for the additional purposes of:

- (a) assessing applications for commercial credit;
- (b) establishing and managing the relationship with the Customer;
- (c) exercising its rights and obligations;
- (d) performing any administrative operation; and
- (e) collecting payments.

11.8 ACT may collect or disclose the Credit Information about the Customer or its partners/directors from or to other credit providers and trade references listed in the "Application for Credit Account" or in reports provided by a credit reporting body. ACT may do so for the purposes of:

- (a) assessing the application for commercial credit and collecting overdue payments;
- (b) notifying other credit providers and trade references of a default by the Customer;
- (c) ascertaining the status of credit provided to the Customer by ACT where the Customer is in default with other credit providers; and
- (d) assessing the creditworthiness, credit standing or credit capacity of the Customer or its partners / directors.

11.9 ACT exchanges Credit Information with its agents, contractors, external advisors and mercantile agents to accomplish ACT's purposes as set out above. ACT stores Credit Information in France and may disclose Credit Information to its related body corporate in France.

11.10 ACT aims to ensure that the Personal Information and Credit Information it holds about its customers and any relevant personnel is accurate, complete, relevant, up-to-date and not misleading. ACT's Privacy Policy which has been provided with the Customer's commercial credit application form (where relevant) and can be provided upon request sets out more information about:

- (a) how to obtain access to the Personal Information, Credit Information and credit eligibility information held by ACT;
- (b) how to seek correction of the Personal Information, Credit Information and credit eligibility information held by ACT;
- (c) how to complain about a suspected breach of privacy by ACT; and
- (d) how ACT will deal with such complaints.

Please contact ACT's Privacy Officer at accounts@australiancrocodile.com in relation to any queries about the manner in which Personal Information and Credit Information is handled by ACT.

11.11 By submitting an order for Products and / or an "Application for Credit Account", the Customer agrees to ACT collecting, using, storing and disclosing Personal Information and Credit Information in accordance with this clause 11 and the Privacy Policy.

11.12 The Customer must ensure that any relevant Customer's personnel who deal with ACT or whose Personal Information or Credit Information is made available to ACT are aware of and have agreed to the terms of this clause 11 and the disclosure and use of their Personal Information and (if applicable) their Credit Information in accordance with this Contract and otherwise in accordance with the Privacy Act.

12. Liability

12.1 Subject to clause 10.1, the Customer agrees that ACT's maximum liability arising from any Product purchased by the Customer is the Price of the Product.

12.2 To the greatest extent permitted by Law, except for fraud or a breach of clause 11, neither party is liable to the other party or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:

- (a) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
- (b) the parties or any other person previously were notified of the possibility of the loss or damage.

13. Termination

13.1 Either party may terminate this Contract:

- (a) immediately by written notice if the other party breaches this Contract and fails to remedy such breach within 7 days of receiving notice of such breach; and
- (b) to the greatest extent permissible by Law, immediately by written notice if the other party is bankrupt or otherwise subject to an insolvency event (including the appointment of any controller, receivers, managers, or if the party is unable to pay its debts when they become due).

13.2 Termination or expiry of this Contract for any reason will not affect any rights accrued by either party prior to termination or expiry.

14. Dispute

14.1 If either party has a complaint or a dispute with the other party about a matter arising under or in relation to this Contract, it should contact the other party:

- (a) setting out the details of the complaint or dispute;
- (b) providing any supporting material relating to the complaint or dispute; and
- (c) specifying that party's desired outcome for the complaint or dispute.

14.2 When a complaint or dispute is notified under clause 14.1, the parties must attempt, in good faith, to resolve the dispute through consultation for a period of 15 Business Days from the date of receipt of the notice of dispute. If the parties are not able to resolve a dispute within this period, either party may commence judicial proceedings.

15. GST

15.1 In this clause 15:

- (a) terms or expressions which have a defined meaning in the GST Act have the same meaning as in the GST Act; and
- (b) any reference to a party includes the representative member of a GST group of which that party is a member.

15.2 Unless otherwise expressly stated, all consideration to be paid or provided under this Contract is expressed exclusive of GST.

15.3 If GST is payable on any supply made under this Contract, the recipient must pay to the supplier an additional amount (**GST Amount**) equal to the GST payable on that supply at the same time as the consideration for the supply is to be paid or provided.

15.4 Clause 15.3 does not apply to the extent that:

- (a) the consideration for the supply is stated to include GST; or
- (b) GST on the supply is reverse charged and payable by the recipient.

15.5 The recipient need not pay the GST Amount until it has received a tax invoice or adjustment note, as the case may be.

15.6 If an adjustment event arises in relation to a supply made under this Contract, the GST Amount must be adjusted to reflect that adjustment event. A corresponding payment must be made by the supplier to the recipient or by the recipient to the supplier, as the case may be.

15.7 If this Contract requires an amount to be calculated by reference to another amount (**Reference Amount**) that will be:

- (a) received for a taxable supply; or
 - (b) paid for a creditable acquisition,
- then the Reference Amount must be reduced so as to exclude any part of the Reference Amount paid or received on account of GST, as the case may be.

15.8 If these Terms require a party to reimburse or indemnify another party for a cost or expense, the amount of the cost or expense must be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified is entitled for that cost or expense.

16. Force majeure

16.1 If ACT is delayed or hindered in or prevented from performing any of its obligations under the Accepted Order by reason of any event or circumstance beyond its reasonable control, ACT will have no liability to the Customer in respect of such non-performance and the time for performing the same will be extended until the event or circumstance has ceased.

17. General

17.1 Unless otherwise specified, all payments to be made to ACT must be in AUD.

17.2 This Contract is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

17.3 A failure, delay, relaxation or indulgence by ACT in exercising any power or right conferred on ACT by this Contract does not operate as a waiver of the power or right. A single or partial exercise of such power or right does not preclude a further exercise of it or the exercise of any other power or right under this Contract. A waiver of a breach does not operate as a waiver of any other breach.

17.4 Any provision of this Contract (or any part thereof) which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Contract in any other case, without invalidating or affecting the remaining provisions of this Contract or the validity of that provision in any other jurisdiction.

17.5 ACT and the Customer agree that they are independent contractors and will always represent themselves to any third parties only as an independent contractor. The parties are not, and nothing in this Contract shall be interpreted such that the parties are, fiduciaries, agents, partners, joint venturers, co-owners or otherwise participants in a joint or common undertaking. The employees or agents of one party are not, and shall not be construed to be, employees or agents of the other party, and such other party will not be liable for, have any obligations to, and may not be bound by such employees and agents of the first party. No act or assistance given by either party to the other pursuant to this Contract will be construed to alter the relationship of independent contractors.

17.6 This Contract contains the entire understanding between the parties and supersedes all prior communications and agreements between the parties, including any prior written or verbal undertakings or statements. The parties acknowledge that, except as expressly stated in this Contract, they have not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Contract.

17.7 Except as expressly permitted by this Contract, neither party may assign or novate any rights or obligations under this Contract without the prior written consent of the other party.

17.8 This Contract cannot be amended or varied except in writing signed by the parties.

17.9 This Contract will be governed by and construed with reference to the laws of the Northern Territory and the parties submit to the non-exclusive jurisdiction of that Territory.

18. Definitions

In this Contract:

Accepted Order has the meaning given to that term in clause 3.2.

ACT means Australian Crocodile Traders Pty Ltd ABN 71 064 045 521.

ACT IP means all Intellectual Property Rights in:

- (a) all technology, specifications, trade secrets, information, records, techniques, processes, documentation and other proprietary information that is identified or identifiable in a tangible form relating to ACT or Products;
- (b) the ACT Trademarks; and
- (c) the ACT Materials.

ACT Materials means all materials, manuals, inserts, instructions, guides or other documentation provided by ACT to the Customer in relation to ACT or the Products.

ACT Trademarks means any and all names (including business names), marks, brands or logos, whether or not registered, which ACT owns or is licensed to use and which relate to, or are used by, ACT.

Business Day means a day which is not a Saturday, Sunday or public holiday in Darwin, Northern Territory.

Credit Information has the meaning given to that term in section 6N of the Privacy Act.

Contract means the contract between ACT and the Customer comprising the Accepted Order and these Terms.

Customer means the party purchasing the Products from ACT.

Defective means any Products that are damaged, deficient or faulty.

Delivery Address means the address agreed between ACT and the Customer in the Accepted Order (which may include a post office or PO Box).

Delivery Date means the delivery date agreed between ACT and the Customer in the Accepted Order.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, inventions, designs, copyright, trade marks, brand names, product names, domain names, rights in circuit layouts, plant breeder's rights, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals, divisions and extensions of these rights.

Latent Defect means any damage or defect in a Product which existed as at the time of delivery, but which damage or defect was not reasonably possible to identify on inspection at that time.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a government agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a government agency that have the force of law.

Personal Information has the meaning given to that term in the Privacy Act.

Price means the prices for the Products as agreed between ACT and the Customer in the Accepted Order, which is inclusive of all:

- (a) costs and charges that the Customer will pay for the Products including all charges for packing, insurance, transportation and delivery of the Products; and
- (b) charges for tax and duties (including GST).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means all laws relating to the privacy, confidentiality or use of any information about individuals, including the Privacy Act.

Products means the leather products which are set out in any catalogue, brochure, order form, or website of ACT and may include leather belts, keyrings, souvenirs and other leather products.

Tax Invoice has the meanings given to that expression in the GST Act.

Terms means the terms and conditions set out in this document.