



# VAN CRONENBURG

## Additional & Extended General Terms & Conditions.

This Purchase Agreement (The "Agreement") is made by and between van Cronenburg, Inc, a New York corporation with offices at 1177 Avenue of the Americas, 7<sup>th</sup> Floor, New York, New York 10036 and 2039 Kala Bagai Way, #308, Berkeley, CA 94704 ("van Cronenburg") and the "Customer" and sets forth the terms and conditions under which Customer agrees to purchase and van Cronenburg agrees to sell the product (the "Product") in the quantity and condition as described on the signed van Cronenburg quotation. Any purchase order or other communication from Customer containing terms and conditions in addition to or inconsistent with these this Agreement will not be binding upon van Cronenburg, and such additional or inconsistent terms and conditions are hereby expressly rejected.

### 1. PAYMENT & INVOICING

Customer shall pay the entire purchase price indicated on the quotation (the "Total Price"). The Total Price shall be paid as follows: fifty (50) percent of the Total Price shall be paid upon receipt of the Deposit Invoice. This invoice will be sent after receiving written confirmation of the quotation by Customer to van Cronenburg. The sum of the remaining fifty (50) percent (or the "Balance") of the Total Price and the Shipping & Handling Cost ("Shipping & Handling") must be paid upon completion of the production of the Product and prior to the shipment of the Product to the Customer. All payments are nonrefundable. In no event shall van Cronenburg produce any Product until fifty percent of the Total Price is paid. In no event shall any Product be delivered to Customer until Customer has paid the Total Price in full, plus all taxes, shipping or any other charges related to the sale and delivery of the Products, unless otherwise discussed. Exceptions are subject to the sole discretion of van Cronenburg.

Payment shall be by check payable to van Cronenburg Inc., unless van Cronenburg approves any other form of payment. Such approval can be granted or denied in the sole discretion of van Cronenburg. All payments are to be addressed to van Cronenburg, Inc., 1177 Avenue of the Americas, 7<sup>th</sup> Floor, New York, NY 10036 or van Cronenburg, Inc., 2039 Kala Bagai Way, #304, Berkeley, CA 94704.

Any portion of the Total Price unpaid on any due date shall be considered delinquent and thereafter subject to a Late Payment Fee of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is less. This Late Payment Fee will accrue daily on all past due amounts.

### 2. DELIVERY, STORAGE & CANCELLATION

All shipments are international airfreight shipments per van Cronenburg's FedEx account, directly to the Customer, unless otherwise requested. Risk of loss shall pass to Customer upon delivery. All deliveries are documented in pictures to avoid any dispute afterwards. This documentation is available upon request. Suspected loss or damages during shipment should be reported to van Cronenburg immediately upon receipt and documented with pictures if possible. If the packaging suffers noticeable damage during shipment, upon receipt of the Products, van Cronenburg advises the Customer to not accept the delivery.

van Cronenburg reserves the right to make partial or installment deliveries. Defective delivery or non-delivery under this Agreement shall be a severable breach and shall not give Customer the right to treat the entire contract as breached.

Customer may choose to have an order stored at either the van Cronenburg foundry or the van Cronenburg office at the addresses mentioned above. However, because the Products are handmade and made-to-order, a stocking fee will apply for periods beyond 15 business days after the agreed upon ship date. These stocking fees will be revised and reported weekly and will be due prior to the eventual ship date.

Confirmed orders can be cancelled or revised within two (2) business days of confirming the order without incurring a restocking fee. After this time period, a restocking fee (and possible prototyping and study fee) will be charged to the Customer. Once an invoice has been sent by van Cronenburg, any cancellations or revisions shall be charged with a restocking fee as well.

Customer should unpack and inspect the Products immediately upon delivery. Within five (5) business days after delivery, van Cronenburg must be notified in writing if any of the goods are not in accordance with the written order, damaged, or defective. This should be documented in pictures.

### 3. LEAD-TIME AND RUSH ORDERS

As van Cronenburg provides handmade hardware requiring a very particular know-how and skills, lead-times can be subject to variations and van Cronenburg can never provide any hard dates. Typical lead-times are between 10 and 14 weeks.

For cabinetry orders, van Cronenburg can consider a rush order (2-4 weeks lead-time) upon request. Approval depends on both workload in the workshop and foundry and availability of product.

A rush order surcharge is then applicable, and is a percentage calculated between 15-25%, depending on scope and complexity of the order. Both acceptance of a rush order, as the cost of its surcharge, are at the sole discretion of the company.

Rush orders can be cancelled within 24 hours of approval. A restocking fee will apply.

#### 4. PRICE & TERM QUOTATIONS

Quotations made by van Cronenburg are valid for ninety (90) days from the date of the quote. After ninety (90) days, prices and terms are subject to change without any notice.

The examination of the quotation is at the sole responsibility of the Customer. Items not included in the quote and its pricing, are considered not to be delivered. Note that any manifest errors, due to flaws in data input or software processing and leading to unrealistic pricing or pricing totals, will be considered as an error and will be subject to correction at van Cronenburg's sole discretion.

#### 5. FORCE MAJEURE

van Cronenburg will not be liable for any delay or failure in performance of any order, in the delivery or shipment of any product or for any damages or losses suffered by Customer or any third party which are caused by, or in any manner arise from, directly or indirectly, any labor disturbances, embargos, riots, storms, fires, explosions, epidemics, pandemics, acts of God or public enemies, inability to obtain necessary labor or raw materials, accidents or breakdown to, or mechanical failure of, machinery or equipment, changes in economic conditions, delays or interruptions in transportation or any other causes beyond van Cronenburg's control. In the event of such delay, the applicable shipment date(s) will be postponed to compensate for such delay. If van Cronenburg's performance is rendered permanently impossible or impracticable, either Party may cancel the affected order(s) upon written notice to the other Party, and, upon such cancellation, van Cronenburg will have no liability and Customer will be liable only for the pro-rated or allocated portion of such order(s) completed.

#### 6. SALES TAX.

State or County sales tax might be applicable upon the purchase of the Product. This sales tax shall be paid by the Customer to van Cronenburg when applicable. Proof of exemption from Sales Tax can be proven with a resale certification sent to van Cronenburg.

#### 7. CONTRACT ACCEPTANCE

This Agreement is binding upon Customer at the time of the written confirmation and therefor acceptance of the quotation. This Agreement is binding upon van Cronenburg at the time van Cronenburg receives the confirmation of the quotation in writing and has received the deposit payment from the Customer due under this Agreement. Except as set forth herein, neither Customer nor van Cronenburg may terminate this Agreement without cause.

van Cronenburg reserves the right to suspend and/or terminate its obligations to produce or deliver Product under this Agreement should the Customer: (a) fail to pay amounts due under this Agreement when due, (b) refuse to accept delivery of the Product when ready, or (c) other material breach of this Agreement by Customer. If van Cronenburg terminates this Agreement pursuant to the terms described in this Item 6, or if Customer terminates this Agreement for any reason other than a material breach of this Agreement by van Cronenburg, Customer shall pay van Cronenburg: (a) any unpaid amount of the Total Price, and (b) any third party cancellation/termination charges or any out-of-pocket charges incurred by van Cronenburg related to such cancellation or termination.

#### 8. FINISHES & PATINAS

van Cronenburg cannot guarantee product finishes and will not repair nor replace finishes under any warranty. The van Cronenburg finishes are living finishes and are subject to 'wear and tear'. Various factors, including but not limited to, time, touch, acidity in touch and air, humidity in touch and air, climate, salt in air and exposure to any elements, will affect the ongoing aging process, resulting in changing color, sheen and texture. The term 'living finish' refers to what is also called 'patina'. The patina will continue to evolve at a natural rate based on aforementioned factors. Van Cronenburg considers this a normal process that enhances the naturally aging appearance of the Product. van Cronenburg products are made and finished by hand and slight variances in the products might occur, but these are normal and acceptable. van Cronenburg offers thorough quality control of the Product to the Customer and shall not deliver Products that appear unacceptable.

Care instructions for our Products are available upon request.

#### 9. PROPRIETARY RIGHTS

Any Custom Designs created by van Cronenburg at Customer's request and any special tools, devices and/or molds required to manufacture these Custom Designs, which have been designed, built and/or purchased by van Cronenburg shall remain solely van Cronenburg's property whether or not the Customer is charged with time and/or material in connection with creating the Custom Designs and/or fabricating the special tools, devices and/or molds required to manufacture Custom Designs. This provision shall apply regardless of whether: (a) van Cronenburg is solely responsible for the Custom Designs, (b) the Customer is solely responsible for the Custom Designs, or (c) both van Cronenburg and the Customer share responsibility for the Custom Designs.

If Customer requests van Cronenburg to make a Custom Design, Customer warrants that no third party has any patent, copyright, trademark, or other right in or with respect to any Custom Designs, and that there are no obligations (including royalty obligations), covenants or restrictions from third parties affecting the use, disclosure, enforcement, transfer and/or licensing of the Custom Design. Customer shall indemnify, defend and hold van Cronenburg harmless from all loss, cost, damages and expenses (including without limitation reasonable attorney's fees) arising of Customer's breach of the representations and warranties contained in this paragraph.

This Agreement shall not be in any way construed as a license or grant of any rights in any of van Cronenburg's intellectual property, including without limitation trade names, trademarks, service marks, patents or patents pending.

#### 10. LIMITED WARRANTY & LIMITATION OF LIABILITY

Van Cronenburg warrants a limited guarantee for its brass products for five (5) years, to be free from defects in material and workmanship. Additionally, the internal mechanisms, including all locks, latches, etc., are guaranteed for one (1) year from the date of sale.

At van Cronenburg's sole discretion, its only obligation will be to repair or replace the defective Products or parts, upon presentation and after careful review. Customer must provide proof of purchase dated within the warranty period.

Finishes are not subject to any warranty. van Cronenburg assumes no liability for any labor charges regarding the removal or installation of its Products, nor does van Cronenburg cover any freight, postage or any expense relative to the Product.

Damages caused by accident, misuse, abuse, or improper installation are not covered by this warranty. If a problem occurs after the expiration of the warranty period, in most cases van Cronenburg will, on the basis of good will, remedy the problem. This 'good will' is at the sole discretion of van Cronenburg.

THIS LIMITED WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

van Cronenburg's liability with respect to any claim by Customer or any third party arising out of or in any way relating to any Product sold by van Cronenburg to Customer (including without limitation such Product's further sale, use or transportation) will be limited solely to the cost of such product and any such claim must be filed within 60 days after the delivery of such product. VAN CRONENBURG WILL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS OR OTHER LOSSES OF CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR IN ANY WAY RELATING TO THE SALE, USE OR TRANSPORTATION OF SUCH PRODUCT.

#### 11. NON-DISCLOSURE

The Customer agrees not to use or disclose any information to a third party that the Customer now has or may acquire concerning designing, manufacturing, molding or any other processes or procedures van Cronenburg uses in its design and/or manufacturing of the Product. If the Customer violates any of the terms provided, Customer shall pay van Cronenburg actual and/or consequential damages arising out of such breach.

#### 12. GOVERNING LAW

All transactions between the parties shall be governed and construed in accordance with the laws of the State of New York without reference to the principles of conflicts of laws.. Each of the Parties hereby irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the federal and state courts of New York County, New York for any action or proceeding arising out of or relating to the sale of van Cronenburg's products to Customer, (b) waives any objection to the laying of venue of any such action or proceeding in such courts and (c) waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. For the avoidance of doubt, the Parties expressly opt out of the United Nations Convention on Contracts for the International Sale of Goods.

Customer shall pay all costs and expenses, including without limitation, reasonable attorney's fees, incurred by van Cronenburg in enforcing this Agreement or incurred with respect to a breach by Customer of any of the representations, warranties, of covenants of Customer set forth in this Agreement.

#### 13. ENTIRE AGREEMENT

Van Cronenburg's quotation, invoices, these Terms and Conditions, and van Cronenburg's order acknowledgement constitute the entire agreement between the Parties with respect to the sale of van Cronenburg's Products to Customer, superseding all prior representations, agreements or understandings, written or oral, between the Parties with respect to such sale. These Terms and Conditions cannot be amended orally or by any course of conduct by either Party, but may only be amended by a written agreement executed by the Parties. The failure by van Cronenburg to (a) enforce any provision hereof will not be construed as a waiver of such provision or of van Cronenburg's right to enforce such provision and (b) object to provisions contained in any purchase order or other communication from Customer will not be construed as a waiver of these Terms and Conditions nor an acceptance of any such Customer provisions.

No terms and conditions contained in any form or otherwise submitted to van Cronenburg may modify or alter these Terms and Conditions, or become a part of any agreement and any acceptance by Customer is limited to these Terms and Conditions. To the extent these terms and conditions are interpreted to be an acceptance by van Cronenburg of an offer by Customer, the acceptance is conditioned upon Customer's assent to all of these Terms & Conditions.