

GENERAL TERMS AND CONDITIONS Caracola Art Studio

Definitions

1. Caracola Art Studio: Caracola Art Studio, established in Best, Noord Brabant, Chamber of Commerce no. 78115558.
2. Customer: the party which Caracola Art Studio has entered into an agreement with.
3. Parties: Caracola Art Studio and customer together.
4. Consumer: a customer who is an individual acting for private purposes.

Applicability

1. These terms and conditions will apply to all quotations, offers, activities, orders, agreements and deliveries of services or products by or on behalf of Caracola Art Studio.
2. Parties can only deviate from these conditions if they have explicitly agreed upon in writing.
3. The parties expressly exclude the applicability of supplementary and/or deviating general terms and conditions of the customer or of third parties.

Offers and quotations

1. Offers and quotations from Caracola Art Studio are without engagement, unless expressly stated otherwise.
2. An offer or quotation is valid for a maximum period of 2 weeks from its date, unless another acceptance period is stated in the offer or quotation.
3. If the customer does not accept an offer or quotation within the applicable time frame, the offer or quotation will lapse.
4. Offers and quotations do not apply to repeated orders, unless the parties have agreed upon this explicitly and in writing.

Acceptance

1. Upon acceptance of a quotation or offer without engagement, Caracola Art Studio reserves the right to withdraw the quotation or offer within 3 days after receipt of the acceptance, without any obligations towards the customer.
2. Verbal acceptance of the customer only commits Caracola Art Studio after the customer has confirmed this in writing (or electronically).

Prices

1. All prices used by Caracola Art Studio are in euros, are inclusive of VAT and exclusive of any other costs such as administration costs, levies and travel-, shipping- or transport expenses, unless expressly stated otherwise or agreed otherwise.
2. Caracola Art Studio is entitled to adjust all prices for its products or services, shown in its shop, on its website or otherwise, at any time.
3. Increases in the cost prices of products or parts thereof, which Caracola Art Studio could not foresee at the time of making an offer or the conclusion of the agreement, may give rise to price increases.
4. The consumer has the right to terminate an agreement as a result of a price increase as referred to in paragraph 3, unless the increase is the result of statutory regulation.
5. The price with regard to services is determined by Caracola Art Studio on the basis of the actual working hours.
6. The price is calculated according to the usual hourly rates of Caracola Art Studio, valid for the period in which he carries out the work, unless a different hourly rate has been agreed.
7. If the parties have agreed on a total amount for a service provided by Caracola Art Studio, this is always a target price, unless the parties have explicitly agreed upon in writing on a fixed price, which cannot be deviated from.
8. Caracola Art Studio is entitled to deviate up to 10% of the target price.
9. If the target price exceeds 10%, Caracola Art Studio must let the customer know in due time why a higher price is justified.
10. If the target price exceeds 10%, the customer has the right to cancel the part of the order that exceeds the target price by 10%.
11. Caracola Art Studio has the right to adjust prices annually.
12. Caracola Art Studio will communicate price adjustments to the customer prior to the moment the price increase becomes effective.

13. The consumer has the right to terminate the contract with Caracola Art Studio if he does not agree with the price increase.

Payments and payment term

1. Caracola Art Studio may, at the conclusion of the agreement, require a down payment of up to 50% of the agreed amount.
2. The customer must have paid the full amount within 7 days after delivery of the product.
3. Payment terms are considered as fatal payment terms. This means that if the customer has not paid the agreed amount at the latest on the last day of the payment term, he is legally in default, without Caracola Art Studio having to send the customer a reminder or to put him in default.
4. Caracola Art Studio reserves the right to make a delivery conditional upon immediate payment or to require adequate security for the total amount of the services or products.

Consequences of late payment

1. If the customer does not pay within the agreed term, Caracola Art Studio is entitled to charge an interest of 2% per month for non-commercial transactions and an interest of 8% per month for commercial transactions from the day the customer is in default, whereby a part of a month is counted for a whole month.
2. When the customer is in default, he is also due to extrajudicial collection costs and may be obliged to pay any compensation to Caracola Art Studio.
3. The collection costs are calculated on the basis of the Reimbursement for extrajudicial collection costs.
4. If the customer does not pay on time, Caracola Art Studio may suspend its obligations until the customer has met his payment obligation.
5. In the event of liquidation, bankruptcy, attachment or suspension of payment on behalf of the customer, the claims of Caracola Art Studio on the customer are immediately due and payable.
6. If the customer refuses to cooperate with the performance of the agreement by Caracola Art Studio, he is still obliged to pay the agreed price to Caracola Art Studio.

Right of recovery of goods

1. As soon as the customer is in default, Caracola Art Studio is entitled to invoke the right of recovery with regard to the unpaid products delivered to the customer.
2. Caracola Art Studio invokes the right of recovery by means of a written or electronic announcement.
3. As soon as the customer has been informed of the claimed right of recovery, the customer must immediately return the products concerned to Caracola Art Studio, unless the parties agree to make other arrangements about this.
4. The costs for the collection or return of the products are at the expense of the customer.

Right of withdrawal

1. A consumer may cancel an online purchase during a cooling-off period of 14 days without giving any reason, provided that:
 - the product has not been used
 - it is not a product that can spoil quickly, like food or flowers
 - the product is not specially tailored for the consumer or adapted to its special needs
 - it is not a product that may not be returned for hygienic reasons (underwear, swimwear, etc.)
 - the seal is still intact, when the product is a data carrier with digital content (DVDs, CDs, etc.)
 - the product is not a (holiday)trip, a transportation ticket, a catering order or a form of leisure activity,
 - the product is not a separate magazine or a loose newspaper
 - the purchase does not concern an (assignment to) urgent repair
 - the consumer has not renounced his right of withdrawal
2. The cooling-off period of 14 days as referred to in paragraph 1 commences:
 - on the day after the consumer has received the last product or part of 1 order
 - as soon as the consumer has received the first the product of a subscription
 - as soon as the consumer has purchased a service for the first time
 - as soon as the consumer has confirmed the purchase of digital content via the internet
3. The consumer can notify his right of withdrawal via info@caracolarartstudio.com, if desired by using the withdrawal form that can be downloaded via the website of Caracola Art Studio, www.caracolarartstudio.com.

4. The consumer is obliged to return the product to Caracola Art Studio within 14 days after the notification of his right of withdrawal, after which period his right of withdrawal will lapse.

Reimbursement of delivery costs

1. If the purchase costs and any other costs (such as delivery costs) are eligible for reimbursement according to the law, Caracola Art Studio will refund these costs to the consumer within 14 days of receipt of the timely appeal to the right of withdrawal, provided that the consumer has returned the product to Caracola Art Studio in time.
2. The costs for return are only reimbursed by Caracola Art Studio if the complete order is returned.

Reimbursement of return costs

If the consumer invokes his right of withdrawal and returns the entire order on time, the costs for returning the complete order will be borne by the consumer.

Suspension of obligations by the customer

The customer waives the right to suspend the fulfillment of any obligation arising from this agreement.

Right of retention

1. Caracola Art Studio can appeal to his right of retention of title and in that case retain the products sold by Caracola Art Studio to the customer until the customer has paid all outstanding invoices with regard to Caracola Art Studio, unless the customer has provided sufficient security for these payments.
2. The right of retention of title also applies on the basis of previous agreements from which the customer still owes payments to Caracola Art Studio.
3. Caracola Art Studio is never liable for any damage that the customer may suffer as a result of using his right of retention of title.

Settlement

The customer waives his right to settle any debt to Caracola Art Studio with any claim on Caracola Art Studio.

Retention of title

1. Caracola Art Studio remains the owner of all delivered products until the customer has fully complied with all its payment obligations with regard to Caracola Art Studio under whatever agreement with Caracola Art Studio including of claims regarding the shortcomings in the performance.
2. Until then, Caracola Art Studio can invoke its retention of title and take back the goods.
3. Before the property is transferred to the customer, the customer may not pledge, sell, dispose of or otherwise encumber the products.
4. If Caracola Art Studio invokes its retention of title, the agreement will be dissolved and Caracola Art Studio has the right to claim compensation, lost profits and interest.

Delivery

1. Delivery takes place while stocks last.
2. Delivery takes place at Caracola Art Studio unless the parties have agreed upon otherwise.
3. Delivery of products ordered online takes place at the address indicated by the customer.
4. If the agreed price is not paid on time, Caracola Art Studio has the right to suspend its obligations until the agreed price is fully paid.
5. In the event of late payment, the customer is automatically in default, and hereby he cannot object to late delivery by Caracola Art Studio.

Delivery period

1. Any delivery period specified by Caracola Art Studio is indicative and does not give the customer the right to dissolution or compensation if this period is not met with, unless the parties have expressly agreed otherwise in writing.
2. The delivery period starts after the customer has signed the agreement to Caracola Art Studio and is confirmed in writing or electronically by Caracola Art Studio to the customer.
3. Exceeding the specified delivery period does not entitle the customer to compensation or the right to terminate the contract, unless Caracola Art Studio cannot deliver within [number of days late] or if the parties have agreed upon otherwise.

Actual delivery

The customer must ensure that the actual delivery of the products ordered by him can take place in time.

Transport costs

Transport costs are on behalf of the customer, unless the parties have agreed upon otherwise.

Packaging and shipping

1. If the package of a delivered product is opened or damaged, the customer must have a note drawn up by the forwarder or delivery person before receiving the product. In the absence of which Caracola Art Studio may not be held liable for any damage.
2. If the customer himself takes care of the transport of a product, he must report any visible damage to products or the packaging prior to the transport to Caracola Art Studio, failing which Caracola Art Studio cannot be held liable for any damage.

Insurance

1. The customer undertakes to insure and keep insured the following items adequately against fire, explosion and water damage as well as theft:
 - goods delivered that are necessary for the execution of the underlying agreement
 - goods being property of Caracola Art Studio that are present at the premises of the customer
 - goods that have been delivered under retention of title
2. At the first request of Caracola Art Studio, the customer provides the policy for these insurances for inspection.

Storage

1. If the customer orders products later than the agreed delivery date, the risk of any quality loss is entirely for the customer.
2. Any extra costs as a result of premature or late purchase of products are entirely at the customer's expense.

Guarantee

1. When parties have entered into an agreement with services included, these services only contain best-effort obligations for Caracola Art Studio, not obligations of results.
2. The warranty relating to products only applies to defects caused by faulty manufacture, construction or material.
3. The warranty does not apply in the event of normal wear and tear and damage resulting from accidents, changes made to the product, negligence or improper use by the customer, or when the cause of the defect cannot clearly be established.
4. The risk of loss, damage or theft of the products that are the subject of an agreement between the parties, will pass on to the customer when these products are legally and/or factually delivered, at least are in the power of the customer or of a third party who receives the product for the benefit of the customer.

Exchange

1. Exchange is only possible if the following conditions are met:
 - exchange takes place within 30 days after purchase upon presentation of the original invoice
 - the product is returned in the original packaging or with the original (price) tags still attached to it

- the product has not been used
2. Discounted items, non-shelf articles such as food, custom made items or specially adapted articles for the customer and Custom artwork cannot be exchanged.

Performance of the agreement

1. Caracola Art Studio executes the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. Caracola Art Studio has the right to have the agreed services (partially) performed by third parties.
3. The execution of the agreement takes place in mutual consultation and after written agreement and payment of the possibly agreed advance by the customer.
4. It is the responsibility of the customer that Caracola Art Studio can start the implementation of the agreement on time.
5. If the customer has not ensured that Caracola Art Studio can start the implementation of the agreement in time, the resulting additional costs and/or extra hours will be charged to the customer.

Duty to inform by the customer

1. The customer shall make available to Caracola Art Studio all information, data and documents relevant to the correct execution of the agreement to in time and in the desired format and manner.
2. The customer guarantees the correctness, completeness and reliability of the information, data and documents made available, even if they originate from third parties, unless otherwise ensuing from the nature of the agreement.
3. If and insofar as the customer requests this, Caracola Art Studio will return the relevant documents.
4. If the customer does not timely and properly provides the information, data or documents reasonably required by Caracola Art Studio and the execution of the agreement is delayed because of this, the resulting additional costs and extra hours will be charged to the customer.

Duration of the agreement

1. The agreement between Caracola Art Studio and the customer is entered into for the duration of 1 months, unless it results otherwise from the nature of the agreement or if the parties have expressly agreed otherwise in writing.
2. If a fixed-term contract has been entered into, it will be tacitly converted into an open-ended contract at the end of the term, unless 1 of the parties terminates the contract with due observance of a notice period of 232 month(s), or if a consumer terminates the agreement with due observance of a notice period of 1 month / the agreement ends at the end of the fixed term.
3. If the parties have agreed upon a term for the completion of certain activities, this is never a strict deadline, unless specified explicitly otherwise in writing. If this term is exceeded, the customer must give Caracola Art Studio a written reasonable term to terminate the activities, before it may either terminate the contract or claim damages.

Intellectual property

1. Caracola Art Studio retains all intellectual property rights (including copyright, patent rights, trademark rights, design and design rights, etc.) on all designs, drawings, writings, data carriers or other information, quotations, images, sketches, models, scale models, etc., unless parties have agreed otherwise in writing.
2. The customer may not copy or have copied the intellectual property rights without prior written permission from Caracola Art Studio, nor show them to third parties and / or make them available or use them in any other way.

Penalties

1. If the customer violates the articles of these general terms and conditions about secrecy or intellectual property, then he forfeits on behalf of Caracola Art Studio an immediately due and payable fine of € 1000 if the customer is a consumer and € 5000 if the customer is a company, for each violation and in addition an amount of 5% of the aforementioned amount for each day that this violation continues.
2. No actual damage, prior notice of default or legal proceedings are required in forfeiting the fine referred to in the first paragraph of this article.
3. The forfeiture of the fine referred to in the first paragraph of this article shall not affect the other rights of Caracola Art Studio including its right to claim compensation in addition to the fine.

Indemnity

The customer indemnifies Caracola Art Studio against all third-party claims that are related to the products and/or services supplied by Caracola Art Studio.

Complaints

1. The customer must examine a product or service provided by Caracola Art Studio as soon as possible for possible shortcomings.
2. If a delivered product or service does not comply with what the customer could reasonably expect from the agreement, the customer must inform Caracola Art Studio of this as soon as possible, but in any case within 1 month after the discovery of the shortcomings.
3. Consumers must inform Caracola Art Studio of this within two months after detection of the shortcomings.
4. The customer gives a detailed description as possible of the shortcomings, so that Caracola Art Studio is able to respond adequately.
5. The customer must demonstrate that the complaint relates to an agreement between the parties.
6. If a complaint relates to ongoing work, this can in any case not lead to Caracola Art Studio being forced to perform other work than has been agreed.

Giving notice

1. The customer must provide any notice of default to Caracola Art Studio in writing.
2. It is the responsibility of the customer that a notice of default actually reaches Caracola Art Studio (in time).

Joint and several Client liabilities

If Caracola Art Studio enters into an agreement with several customers, each of them shall be jointly and severally liable for the full amounts due to Caracola Art Studio under that agreement.

Liability of Caracola Art Studio

1. Caracola Art Studio is only liable for any damage the customer suffers if and insofar as this damage is caused by intent or gross negligence.
2. If Caracola Art Studio is liable for any damage, it is only liable for direct damages that results from or is related to the execution of an agreement.
3. Caracola Art Studio is never liable for indirect damages, such as consequential loss, lost profit, lost savings or damage to third parties.
4. If Caracola Art Studio is liable, its liability is limited to the amount paid by a closed (professional) liability insurance and in the absence of (full) payment by an insurance company of the damages the amount of the liability is limited to the (part of the) invoice to which the liability relates.
5. All images, photos, colors, drawings, descriptions on the website or in a catalog are only indicative and are only approximate and cannot lead to any compensation and/or (partial) dissolution of the agreement and/or suspension of any obligation.

Expiry period

Every right of the customer to compensation from Caracola Art Studio shall, in any case, expire within 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions in article 6: 89 of the Dutch Civil Code.

Dissolution

1. The customer has the right to dissolve the agreement if Caracola Art Studio imputably fails in the fulfillment of his obligations, unless this shortcoming does not justify termination due to its special nature or because it is of minor significance.
2. If the fulfillment of the obligations by Caracola Art Studio is not permanent or temporarily impossible, dissolution can only take place after Caracola Art Studio is in default.
3. Caracola Art Studio has the right to dissolve the agreement with the customer, if the customer does not fully or timely fulfill his obligations under the agreement, or if circumstances give Caracola Art Studio good grounds to fear that the customer will not be able to fulfill his obligations properly.

Force majeure

1. In addition to the provisions of article 6:75 Dutch Civil Code, a shortcoming of Caracola Art Studio in the fulfillment of any obligation to the customer cannot be attributed to Caracola Art Studio in any situation independent of the will of Caracola Art Studio, when the fulfillment of its obligations towards the customer is prevented in whole or in part or when the fulfillment of its obligations cannot reasonably be required from Caracola Art Studio .
2. The force majeure situation referred to in paragraph 1 is also applicable - but not limited to: state of emergency (such as civil war, insurrection, riots, natural disasters, etc.); defaults and force majeure of suppliers, deliverymen or other third parties; unexpected disturbances of power, electricity, internet, computer or telecoms; computer viruses, strikes, government measures, unforeseen transport problems, bad weather conditions and work stoppages.
3. If a situation of force majeure arises as a result of which Caracola Art Studio cannot fulfill one or more obligations towards the customer, these obligations will be suspended until Caracola Art Studio can comply with it.
4. From the moment that a force majeure situation has lasted at least 30 calendar days, both parties may dissolve the agreement in writing in whole or in part.
5. Caracola Art Studio does not owe any (damage) compensation in a situation of force majeure, even if it has obtained any advantages as a result of the force majeure situation.

Modification of the agreement

If, after the conclusion of the agreement and before its implementation, it appears necessary to change or supplement its contents, the parties shall timely and in mutual consultation adjust the agreement accordingly.

Changes in the general terms and conditions

1. Caracola Art Studio is entitled to amend or supplement these general terms and conditions.
2. Changes of minor importance can be made at any time.
3. Major changes in content will be discussed by Caracola Art Studio with the customer in advance as much as possible.
4. Consumers are entitled to cancel the agreement in the event of a substantial change to the general terms and conditions.

Transfer of rights

1. The customer cannot transfer its rights deriving from an agreement with Caracola Art Studio to third parties without the prior written consent of Caracola Art Studio .
2. This provision applies as a clause with a property law effect as referred to in Section 3:83 (2) Dutch Civil Code.

Consequences of nullity or annulability

1. If one or more provisions of these general terms and conditions prove null or annulable, this will not affect the other provisions of these terms and conditions.
2. A provision that is null or annulable shall, in that case, be replaced by a provision that comes closest to what Caracola Art Studio had in mind when drafting the conditions on that issue.

Applicable law and competent court

1. Dutch law is exclusively applicable to all agreements between the parties.
2. The Dutch court in the district where Caracola Art Studio is established is exclusively competent in case of any disputes between parties, unless the law prescribes otherwise.

Attribution

These terms and conditions were created using a document from [Rocket Lawyer](https://www.rocketlawyer.com/nl/nl) (<https://www.rocketlawyer.com/nl/nl>).

Drawn up on 01 oktober 2021.