Scope of application
These general terms and conditions apply to all agreements concluded between Vitalis BV and the client. By confirming an assignment, approving the quotation and/or entering into an agreement with Vitalis BV or its appointed representative, the client acknowledges that these general terms and conditions apply, to the exclusion of and taking precedence over any differing general terms or conditions stated by the client. Any deviation from these general terms and conditions is only possible with the written consent of Vitalis BV. Where applicable, all articles of these general terms and conditions from which no explicit deviation has been made shall remain fully in force.

Quotations, orders and/or order confirmations
Unless expressly and otherwise stipulated in writing, all offers or quotations are non-binding and valid for 30 calendar days from the date of issue. They may be revised at any time by Vitalis BV until the customer's written acceptance of the order. Such acceptance is effected by the customer's agreement with all the terms and conditions of the quotation. Once the quotation is accepted, it shall take precedence over all other agreements between the parties. In the absence of a quotation, the parties shall be bound by the written acceptance of the order or by the delivery or performance of the services. Unless otherwise agreed in writing, the following works are never included in our obligations: earthworks, paving works, demolition works and clearing works.

Delivery times
Delivery times are provided for indicative purposes only, unless expressly agreed otherwise. Vitalis BV has the right to proceed with partial delivery. Vitalis BV has the right to suspend delivery and/or cancel the agreement if the customer has failed to fulfil his obligations under an agreement concluded with Vitalis BV. In the event of non-compliance with an expressly stated delivery time, the customer shall not be entitled to any compensation, but may only cancel the unperformed part of the agreement if Vitalis BV has not proceeded with delivery within 6 months after receipt of a notice of default. The customer may exercise this right only provided that the delay is not attributable to him, it being understood that the stated delivery time shall be suspended if the delay in delivery is due to unforeseen events or cases of force majeure affecting Vitalis BV or its suppliers.

Complaints
The goods and designs delivered/installed by Vitalis BV shall be deemed accepted for visible defects at the time of installation, in the absence of receipt of any registered written complaint within 8 calendar days following the date of installation.

Warranty and guarantee
Vitalis BV warrants hidden defects in the goods and designs delivered/installed for a period of 24 months from the date of installation. Any hidden defects must be reported by registered letter within one month after their discovery. The warranty of Vitalis BV for the goods and designs delivered/installed by it covers the repair, either on site or in the warehouses of Vitalis BV, of the defective goods. The cost of installation, transport and reinstallation, as well as all other costs, shall remain at the customer's expense.

This warranty never gives rise to any compensation or indemnification of any kind. The germination capacity and purity of the supplied plants are guaranteed in accordance with legal standards.

The warranty shall lapse automatically, inter alia and without limitation, in the following cases: outstanding invoice amounts, failure of a lawn and other designs due to possible soil contamination, damage caused by abnormal weather conditions such as frost damage and drought damage, emergence of weeds after sowing the lawn, insufficient or excessive watering, inadequate maintenance, interventions or modifications by the customer or third parties without the written consent of Vitalis BV, damage due to abnormal use, damage caused by the customer, and normal wear and tear.

Prices
The applicable price shall be the price in force at the time of delivery. If, for any reason whatsoever, the stated prices increase between the date of conclusion of the agreement and/or order confirmation and the date of delivery of the goods and designs delivered/installed, Vitalis BV shall be entitled to charge this price increase to the customer. If the price increase exceeds 10% of the stated price, the customer shall be entitled to cancel the agreement, without being entitled to claim any compensation from Vitalis BV. All prices are in euros and include all charges and taxes. At the customer's request, and provided that the customer meets the necessary conditions, the VAT rate of 6% may be applied, subject to completion and signed submission of the required certificate before the commencement of the works. In any case, a full working hour shall be charged for the first commenced working hour.

For works carried out on a time and materials basis, all hours shall be charged from departure to return, with a minimum of one hour per employee and thereafter per commenced hour, increased by the materials used. A travel expense may also be charged per journey.

Liability
Vitalis BV is liable for the proper execution of the agreed works in accordance with the rules of good workmanship. Unless otherwise agreed, the obligations of Vitalis BV are obligations of means and not obligations of result.

The liability of Vitalis BV is limited to the repair or replacement of the products or defective parts of the delivered/installed goods and designs. Under no circumstances can Vitalis BV be held liable for any indirect or consequential damage, including loss of use or loss of profit. In any event, the liability of Vitalis BV shall be limited to the price of the assignment that caused the damage, regardless of the cause, nature or subject of the claim intended to invoke the liability of Vitalis BV. Liability with regard to delivered/installed goods is limited to the warranty provided by the manufacturer. In the event of joint fault with other suppliers, architects, contractors or subcontractors, Vitalis BV can only be held liable for compensation of that part of the damage that is directly and immediately attributable to Vitalis BV. If the agreement only comprises a design, sketch or drawing, Vitalis BV cannot be held liable for the execution of the design.

Execution of works
Unless otherwise agreed, the customer must make the site accessible at his own expense so that the works can be carried out in a normal manner. Failing this, Vitalis BV may charge additional costs for extra travel and/or waiting times. Vitalis BV reserves the right to engage subcontractors in the execution of the works. If the works must be interrupted by Vitalis BV due to the actions of the customer or another contractor appointed by him, Vitalis BV shall be entitled to charge the loss of time as a supplement at the hourly rate for work carried out on a time and materials basis.

Delivery
If the planned delivery of goods and designs cannot take place due to the fault or negligence of the customer, the storage of the goods and designs concerned shall take place at the customer's expense and risk. If the goods and designs have been delivered to the customer's site, the risk relating to the goods and designs shall pass to the customer, who must, where appropriate, take out insurance against the risks to which the goods and designs are exposed on the site.

Additional and reduced works
If, during execution, additional or reduced works must be carried out or the works must be executed in a different manner, whether or not at the request of the customer, Vitalis BV shall inform the customer in writing, prior to commencing these works, of the price calculation and the implications for the timeline. If the execution of additional or reduced works or execution in a different manner is urgent, or if it is necessary for reasons of efficiency to obtain clarification at short notice, notification may also be given orally and proven by all means of law. Unless the customer has given prior explicit consent to the communicated price and timeline implications—consent that may be proven by all means of law—the customer shall be deemed to have agreed thereto and the works shall be executed accordingly, if the customer does not object in writing within 7 calendar days after notification. If the price of the additional works amounts to less than 15% of the amount of the quotation, the customer shall in any event be deemed to have agreed to the execution of these works.

Retention of title
Ownership of the delivered products shall only pass to the customer after full payment of the sale price. Even in the case of retention of title, the risks shall pass to the customer as soon as he has received the delivery.

Unilateral termination
In accordance with Article 1794 (old) of the Civil Code, the customer has the right to terminate the contract unilaterally and with immediate effect, provided that he compensates Vitalis BV for the expenses incurred, the work and materials supplied and the loss of profit. This compensation shall be assessed at the time of termination of the agreement, whereby the loss of profit shall be fixed on a lump-sum basis at 40% of the amount of the works and materials still to be supplied. This provision also applies if the customer terminates the contract before the commencement of the works. The aforementioned provisions are intended to determine the consequences of the customer's exercise of his right of termination pursuant to Article 1794 (old) of the Civil Code and therefore do not imply any breach on the part of the customer. If Article VI.83, 27° of the Code of Economic Law is interpreted to mean that the exercise by the customer of his right of termination pursuant to Article 1794 (old) of the Civil Code corresponds to the consumer's withdrawal from performance of the agreement and if the application of this article would result in Vitalis BV being allowed to retain the amounts paid by the consumer, then Vitalis BV shall owe compensation if it withdraws. This compensation shall be equal to the compensation for loss of profit as determined in the previous articles.

Payments
Invoices are payable in cash at the registered office of Vitalis BV. After approval of the quotation, an advance invoice is issued. In the event of non-payment of an invoice, Vitalis BV reserves the right to suspend its services until proper payment has been made. Unless otherwise agreed, all invoices of Vitalis BV are payable 30 calendar days after the invoice date.

In the event of staggered delivery, each partial delivery may be invoiced separately.
Any invoice that is not protested in writing within 8 calendar days after receipt shall be deemed definitively accepted. Failure to pay or late payment of all or part of the invoice gives rise to:
a) the suspension of the delivery obligation on the part of Vitalis BV;
b) the sending of a first notice of default;
c) if payment is not made following the aforementioned notice of default within 15 (in the case of an electronic reminder) or 17 (in the case of a reminder by post) calendar days, default interest and costs will be charged forthwith.

The following costs shall be charged in this respect:
a) €20 if the outstanding balance is less than or equal to €150;
b) €30 increased by 10% of the outstanding amount on the tranche between €150.01 and €500 if the outstanding balance is between €150.01 and €500;
c) €65 increased by 5% of the outstanding amount on the tranche above €500, with a maximum of €2,000, if the outstanding balance exceeds €500.

Default interest shall be equal to the reference rate increased by eight percentage points as referred to in Article 5, paragraph 2 of the Act of 2 August 2002 on combating late payment in commercial transactions, calculated from the due date of the invoice until the date of full payment.

Subject to the application of the foregoing provision, if the customer fails to meet his financial obligations or if the customer's financial situation gives rise to the presumption that he will not be able to meet them, Vitalis BV may, at its discretion:
a) demand immediate payment of all invoiced amounts, irrespective of their due date;
b) make all further deliveries conditional upon payment upon delivery or the provision of a bank guarantee;
c) cancel all existing agreements by means of a simple notification to the customer, which shall, where applicable, allow Vitalis BV to take back all products already delivered at the place where they are located, against the issuance of a credit note equal to the sale price reduced by a lump-sum compensation equal to 40% of the sale price of the products.

In the event of non-payment or late payment, Vitalis BV expressly reserves the right to refuse the release of all useful documents, including plans, reports and diagrams, until such time as the customer has proceeded with full payment of all outstanding invoices.

Force majeure
Vitalis BV shall be released from its delivery obligation in all cases of force majeure. Cases of force majeure shall include all circumstances which, according to reasonableness and fairness, have the effect that performance of (part of) the agreement cannot be required of Vitalis BV, including but not limited to non-delivery by a supplier of Vitalis BV, fault of third parties, storm, fire and water damage, explosion, power failure, strikes, external price-increasing circumstances, incapacity for work of executing personnel or engaged third parties, government measures, scarcity, a pandemic recognised by the World Health Organization, etc.

Vitalis BV shall inform the customer of such circumstances as soon as possible. In the event of force majeure on the part of Vitalis BV, performance of the agreement for the relevant part shall be suspended without the customer being entitled to any compensation and/or refund and/or credit note. In the event that force majeure on the part of Vitalis BV is of a permanent nature or if the delivery period is exceeded by 6 months, the customer may unilaterally terminate the agreement for the future.

Data protection
Vitalis BV collects and processes the personal data it receives from the customer for the purpose of performing the contractual relationship arising from the agreement. The legal bases for this are the performance of the agreement, compliance with legal and regulatory obligations and/or legitimate interest (inter alia offering the customer new products and/or services). Such personal data shall only be passed on to processors, recipients and/or third parties insofar as this is necessary in the context of the aforementioned purposes of processing. The customer bears responsibility for the accuracy of the personal data he provides to Vitalis BV and undertakes to comply with the General Data Protection Regulation with regard to the persons whose personal data he has provided to Vitalis BV, as well as with regard to all possible personal data he may receive from Vitalis BV and its employees.

If the customer does not wish Vitalis BV to process his data for the purpose of direct marketing, it is sufficient to notify Vitalis BV via info@vitalistuin.be. Via that address, the customer may also at any time request which data Vitalis BV processes about the customer and have it corrected or deleted. The customer confirms that he has been adequately informed about the processing of his personal data and about his rights of access, rectification, erasure and objection. Vitalis BV, with registered office at Nijverheidsstraat 6, 2990 Wuustwezel and company number 829.267.747, is responsible for the processing of personal data as set out in this privacy statement. The data controllers are Laurent Debaere and Kristof van den Bouwhuysen.

Vitalis BV does not retain the customer's personal data longer than is strictly necessary to achieve the purposes for which the data is collected. Vitalis BV takes the protection of personal data seriously and takes appropriate measures to prevent misuse, loss, unauthorised access, unwanted disclosure and unauthorised modification. If you have the impression that your data is not properly secured or there are indications of misuse, please contact our customer service or via info@vitalistuin.be.

Right of withdrawal
The customer may withdraw from an agreement within a cooling-off period of 14 days without giving any reason. Vitalis BV may ask the customer for the reason for withdrawal, but may not oblige him to state his reason(s).

If the agreement concerns the installation/delivery of goods, the cooling-off period shall commence on the day following the installation of the delivered/installed goods. If the agreement concerns personalised goods and/or designs, the cooling-off period shall commence on the day following the conclusion of the agreement. In this case, the right of withdrawal shall lapse as soon as Vitalis BV has commenced execution of the personalised goods and/or designs. For specific plant species with a certain shelf life, the right of withdrawal does not apply. If the customer makes use of his right of withdrawal, he shall notify Vitalis BV within the cooling-off period by means of the model withdrawal form or in another unambiguous manner.

Model withdrawal form (*) = cross out what does not apply
To Vitalis BV, with registered office at Nijverheidsstraat 6, 2990 Wuustwezel and company number BE 0829.267.747.
I/we () hereby notify you that I/we () withdraw from our agreement concerning the sale of the following goods/provision of the following services ().
– *Ordered on ()*/received on (*)
– Name(s) of consumer(s)
– Address of consumer(s)
– Signature of the consumer(s)
– Date

For the sake of completeness, Vitalis BV refers to the Code of Economic Law, more specifically Book VI on market practices and consumer protection, Title 3: agreements with consumers, Chapter 3: agreements concluded outside business premises, concerning the modalities within which the right of withdrawal cannot be exercised, which statutory provisions are hereby reiterated and confirmed.

Final provisions
These general terms and conditions and the agreement between the parties may not be amended or modified unless agreed in writing and signed by the parties. The nullity of any provision of these general terms and conditions shall have no effect whatsoever on the validity of the other provisions of these terms and conditions and shall not lead to the nullity of those provisions. The parties undertake to replace the invalid clause(s) with a legally valid clause or clauses that shall correspond to the original intention of the parties and the spirit of the agreement, or shall approximate it as closely as possible.

Jurisdiction
Belgian law shall apply exclusively to the present agreement. All disputes shall fall within the jurisdiction of the courts of the location of the customer's place of residence.