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Standard Terms & Conditions

ALL PURCHASES OF GOODS & SERVICES BY ALDEVRON ("Aldevron") ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS, AND BY SELLING OR PROVIDING ANY GOODS & SERVICES, THE SELLER ("Seller") AGREES TO BE BOUND BY ALL OF SUCH TERMS AND CONDITIONS, UNLESS EXPLICITLY AGREED OTHERWISE. ALDEVRON RESERVES THE RIGHT TO CHANGE THESE TERMS AT ANY TIME.

1. Applicability.

(a) Each purchase order is an offer by Aldevron, LLC and/or any Affiliate(s) ("**Aldevron**") for the purchase of the Goods and/or Services specified on the face of the purchase order from the party to whom the purchase order is addressed (the "**Seller**") in accordance with and subject to these terms and conditions (the "**Terms**"; together with any terms and conditions on the face of the purchase order, the "**Order**"). "**Goods**" means all items of whatever type or nature sold or licensed by Seller, including products made in performance of Services for Aldevron. "**Services**" means work to be provided by Seller to Aldevron. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any of Seller's terms or conditions contained in any other documentation and expressly exclude any of Seller's standard terms and conditions of sale or any other document issued by Seller in connection with this Order, regardless of whether Seller has submitted its sales confirmation or such terms. For purposes of this Agreement, "Affiliate" means any corporation, firm, partnership or other entity, which controls, is controlled by or is under common control with a party, and "control" means direct or indirect ownership of fifty percent (50%) or more of the outstanding stock or other voting rights entitled to elect directors thereof or the ability to otherwise control the management of the corporation, firm, partnership or other entity. Any prior or contemporaneous offer regarding such purchase is rejected. Notwithstanding the foregoing, if Aldevron and Seller have mutually executed a master services agreement, independent services agreement, purchase agreement, or any other definitive agreement (each a "**Service Agreement**") covering Goods and Services (each as defined herein), the terms of such Service Agreement shall prevail over these Terms.

(b) These Terms apply to any repaired or replacement Goods and/or Services provided by Seller hereunder.

(c) Aldevron is not obligated to any minimum purchase or future purchase obligations under each Order.

2. Acceptance. This Order is not binding on Aldevron until Seller accepts the Order in writing or starts to perform in accordance with the Order. Aldevron may withdraw the Order at any time before it is accepted by Seller. The Terms shall be deemed accepted by: (i) Seller's commencement of performance; (ii) Seller's shipment of any items specified in an Order; and/or (iii) any other indication of Seller's agreement to an Order, whichever occurs first. Any terms, conditions or provisions of any Seller quotation, confirmation, order acknowledgement, invoice, or other commercial document sent to Aldevron are hereby rejected, and shall not constitute additional or modified terms.

3. Delivery Date. Seller shall deliver the Goods or Services in the quantities and on the date(s) specified in each Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). If no delivery date is specified, Seller shall deliver the Goods within two (2) days of Seller's receipt of the Order. Timely delivery of the Goods is of the essence, and timely completion of the Services is of the essence. If Seller fails to deliver the Goods or complete the Services in full on the Delivery Date, Aldevron may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Aldevron against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods or complete the Services on the Delivery Date. Aldevron has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date.

4. Quantity. If Seller delivers more or less than the quantity of Goods ordered, Aldevron may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Aldevron does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted in an agreed-upon amount.

5. Delivery and Service Location. All Goods shall be delivered to and, as applicable, Services are to be performed at the address specified in each Order (the "**Delivery Location**") during Aldevron's normal business hours or as otherwise instructed by Aldevron.

6. Shipping Terms. Delivery shall be made DDP Delivery Location, Incoterms® 2020. Seller shall give written notice of shipment to Aldevron when the Goods are delivered to a carrier for transportation. Seller shall provide Aldevron all shipping documents, including the commercial invoice, packing list, air waybill, bill of lading, and any other documents necessary to release the Goods to Aldevron within one (1) business day after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order. All Services shall be provided in accordance with the Order, with any transportation, lodging, and other related costs set forth in the Order.

7. Title and Risk of Loss. Title passes to Aldevron upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

8. Packaging. All Goods shall be packed for shipment according to Aldevron's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in an undamaged condition. Seller must provide Aldevron prior written notice if it requires Aldevron to return any packaging material. Any return of such packaging material shall be made at Seller's expense.



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9. **Amendment and Modification.** No change to this Order is binding upon Aldevron unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Aldevron.

10. **Inspection and Rejection of Nonconforming Goods.** Aldevron has the right to inspect the Goods and/or performance of Services on or after the Delivery Date. Aldevron, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods or associated Service are nonconforming or defective. If Aldevron rejects any portion of the Goods and/or Services, Aldevron has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods and/or Services at a reasonably reduced price; or (c) reject the Goods and/or Services and require replacement or reperformance of the rejected Goods and/or Services. If Aldevron requires replacement or reperformance of the Goods and/or Services, Seller shall, at its expense, promptly replace the nonconforming Goods and/or reperform the nonconforming Services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods and/or Services. If Seller fails to timely deliver replacement Goods and/or to timely reperform the Services, Aldevron may replace them with goods and/or services from a third party and charge Seller the cost thereof. Any inspection or other action by Aldevron under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Aldevron shall have the right to conduct further inspections after Seller has carried out its remedial actions.

11. **Price.** The price of the Goods and/or Services is the price stated in the Order (the "**Price**"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, travel, and insurance. The price does not include sales or use tax or shipping charges. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Aldevron.

12. **Payment Terms.** Seller shall issue an invoice to Aldevron on or any time after the completion of delivery of the Goods or performance of the Services and only in accordance with the Terms. Aldevron shall pay all properly invoiced amounts due to Seller within ninety (90) days after Aldevron's receipt of such invoice, except for any amounts disputed by Aldevron in good faith. All payments hereunder will be made in US dollars or other currency agreed upon by Aldevron and made by wire transfer, ACH, credit card, or check.

13. **Setoff.** Without prejudice to any other right or remedy it may have, Aldevron reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Aldevron to Seller.

14. **Warranties.** Seller warrants to Aldevron that for a period of twelve (12) months from the Delivery Date, all Goods and Services will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements as defined in the agreed upon specifications found in Seller's proposal; (c) be merchantable; (d) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. If Aldevron gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Aldevron. Seller warrants to Aldevron that all Services shall be performed in accordance with the requirements of the Order and in a professional, workmanlike and timely manner by personnel appropriately trained and skilled in the service to be performed, with the legal right to work in the jurisdiction in which the Services are to be performed, and/or in accordance with any applicable documentation as may be related to the Services. The warranties set forth in this Section 14 survive any delivery, inspection, acceptance or payment of or for the Goods or Services by Aldevron. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Aldevron's discovery of the noncompliance of the Goods or Services with the foregoing warranties.

15. **General Indemnification.** Seller shall defend, indemnify, and hold harmless Aldevron and Aldevron's subsidiaries, Affiliates, successors or assigns and its respective directors, officers, shareholders and employees and Aldevron's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with (i) the Goods or Services purchased from Seller, (ii) Seller's material breach of its representations, warranties, or other obligations under the Terms; (iii) bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or negligent acts or omissions of Seller and its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees. Seller shall not enter into any settlement without Aldevron's or Indemnitee's prior written consent. Seller's indemnification obligations will not extend to claims arising from the negligence or willful misconduct of Aldevron

16. **Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify, and hold harmless Aldevron and any Indemnitee against any and all Losses arising out of or in connection with any claim that Aldevron's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Aldevron's or Indemnitee's prior written consent.

17. **Insurance.** During the term of the Order and for a period of two (2) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than USD \$1,000,000 per occurrence, \$2,000,000 aggregate; umbrella liability in a sum no less than USD \$5,000,000; and products liability in a sum no less than USD \$5,000,000, with financially sound and reputable insurers. Upon Aldevron's request, Seller shall provide Aldevron with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Aldevron as an additional insured. Seller shall provide Aldevron with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require



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its insurer to waive all rights of subrogation against Aldevron's insurers and Aldevron or the Indemnitees.

18. Compliance with Law. Seller represents and warrants the following:

(a) Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods or Services under this Order, including, but not limited to, all US regulations. Seller assumes all responsibility for shipments of Goods or performance of Services requiring any government import clearance. Aldevron may terminate this Order if any government authority imposes antidumping duties, countervailing duties, or any retaliatory duties on the Goods or Services.

(b) Seller represents and agrees that, whether directly or indirectly through Seller or any of its agents, employees, directors, officers, or other representatives, Seller shall not make nor promise to make payments nor give any objects of any value to any public official for any purpose, nor shall perform any other act of bribery in violation of the laws that regulate this Agreement or the laws of the United States of America, including in particular the Foreign Corrupt Practices Act (FCPA), with respect to the object and purpose of this Agreement. It is mutually agreed that a violation of this clause by Seller would be a material breach of this Agreement, entitling Aldevron to all available relief and remedies for such breach; further, if Seller violates the applicable laws or acts in conflict with the foregoing statements and obligations, Seller shall defend, indemnify, and hold harmless Aldevron and any Affiliate with respect to any and all damages, penalties, fines and losses which may arise as a result of such breach.

(c) Seller represents and warrants that it will provide all documentation required per applicable regulations, including, but not limited to a certificate of analysis (COA), certificate of release (COR), country of origin statement (COO), safety data sheet (SDS), and other documents required by law or otherwise agreed upon in the applicable Order.

19. Audit Rights. Aldevron shall have the right to audit Seller's facilities used in the generation of the Goods and shall also have the right to audit the processes applicable to the generation of the Goods and performance of the Services.

20. Change Notification. Aldevron shall receive a formal change notification in the event [TBD]. Any failure by the Seller to provide such change notification for [does this need to be specific to GMP raw materials?] will result in a breach of this Agreement by the Seller and Aldevron shall be entitled to seek all legal recourse under this Agreement or available at law.

21. Termination. Aldevron may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods or unperformed Services on ten (10) days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Aldevron may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Aldevron may terminate this Order immediately upon written notice to Seller. If Aldevron terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received or Services performed and accepted by Aldevron prior to the termination.

22. Limitation of Liability. Nothing in this Order shall exclude or limit (a) Seller's liability under Sections 14, 15, 16, 18, 19, 20, 24 and 31 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

23. Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

24. Confidential Information. All non-public, confidential or proprietary information of Aldevron, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Aldevron to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Aldevron in writing. Upon Aldevron's request, Seller shall promptly return all documents and other materials received from Aldevron. Aldevron shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure without an obligation of confidentiality; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

25. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, pandemics, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than ten (10) business days, Aldevron may terminate this Order immediately by giving written notice to Seller.



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26. Assignment and Subcontracting.

(a) Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Aldevron. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Aldevron may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

(b) Subcontracting. Seller shall not engage subcontractors to provide any portion of the Goods or Services without Aldevron's prior written consent. In no event shall any subcontracting relieve, limit or modify Seller's obligations to Aldevron hereunder nor confer upon such subcontractors any contractual relationship with, or rights with respect to Aldevron. Notwithstanding the foregoing, all subcontractors shall be bound by and comply with the provisions herein, including any confidentiality, insurance and indemnification obligations running in favor of Aldevron.

27. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

28. No Third-Party Beneficiaries. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

29. Governing Law. All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of North Dakota without giving effect to any choice or conflict of law provision or rule (whether of the State of North Dakota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of North Dakota.

30. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of North Dakota in each case located in the City of Fargo and County of Cass, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

31. Cumulative Remedies. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

32. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

33. Severability. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

34. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Setoff, Warranties, General Indemnification, Intellectual Property Indemnification, Insurance, Compliance with Law, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.