



THE IN-EAR EXPERTS®

Westone Laboratories, Inc.

# CREDIT APPLICATION

ACCOUNT TYPE: CREDIT ACCOUNT (GREATER THAN \$2,000)

Phone: 1-800-525-5071 Fax: 1-800-736-9576  
Phone: (719) 540-9333 Fax: (719) 540-9183  
P.O. Box 15100, Colorado Springs, CO 80935  
2235 Executive Circle, Colorado Springs, CO 80906

This application is to apply for trade credit from Westone Laboratories, Inc. Westone Laboratories reserves the right to give or deny credit as they please. Fax or email completed application to 1-800-736-9576 or accounting@westone.com. If applicant has any questions, please call 1-800-525-5071.

**ALL SECTIONS MUST BE COMPLETED - THIS FORM IS SUBJECT TO THE ATTACHED GENERAL TERMS AND CONDITIONS**

New Account:  Yes  No Credit Requested: \$ Forecasted Annual Sales Volume: \$

**BUYER INFORMATION**

Exact Legal Name of Business ("Buyer") Taxpayer ID (Federal ID#) of Business

D/B/A Contact

Street Address City State Zip

Phone Fax Cell Phone

Email Address Web Site

Have you been a previous Westone customer?  Yes  No If yes, Account# Number of Locations Sales Tax Exemption #

Type of Entity:  Corporation  Partnership  Sole Proprietorship  LLC  LLP

Date Incorporated or Organized

**COMPANY DIRECTORS/OFFICERS/PRINCIPALS**

Name Title Phone

Name Title Phone

**SHIP TO ADDRESS (IF DIFFERENT)**

Street Address City State Zip

**PRIMARY BANK REFERENCE**

Name of Bank Account Number

Type of Accounts:  Checking  Savings  Loan How long? Name of Bank Officer Phone

Street Address City State Zip

**TRADE REFERENCES - MINIMUM OF 3**

1) Business Name Contact Phone Fax

Street Address City State Zip

2) Business Name Contact Phone Fax

Street Address City State Zip

3) Business Name Contact Phone Fax

Street Address City State Zip

4) Business Name Contact Phone Fax

Street Address City State Zip

**CONSENT TO CREDIT REVIEW AND ACCEPTANCE OF STANDARD TERMS AND CONDITIONS OF SALE**

Any misrepresentation in this application will be considered evidence of fraud, since the information is the basis for the extending of credit. As an inducement to grant credit, on behalf of the Buyer, the undersigned warrants that the information submitted is true and correct. In consideration for the extension of credit, Buyer promises to pay for all purchases within the terms to be granted by Seller and agrees to pay interest on all unpaid past due amounts at the rate of eighteen percent (18%) per annum. In the event any third parties are employed to collect any outstanding monies owed, Buyer agrees to pay all reasonable collection costs, including attorney fees, whether or not litigation has commenced and all costs of collection. The undersigned represents that he/she has the authority to execute this application on behalf of the Buyer, and Buyer: (1) consents to credit review, and (2) agrees to and accepts the attached Terms and Conditions.

SIGNATURE TITLE

PRINTED NAME DATE

**IMPORTANT: Please submit the following documents with this form (if applicable)**

- A copy of your sales tax exemption certificate (**REQUIRED** for processing)
- Your most recent balance sheet, operating statement, and prior year gross sales

**WESTONE USE ONLY**

Credit Limit: Account # Date Est. Initials

## TERMS AND CONDITIONS

These provisions (the "Terms and Conditions") govern all sales of products ("Products") by Westone Laboratories, Inc. ("Seller") to Buyer, effective as of the date of Buyer's acceptance of these Terms and Conditions (the "Effective Date"). Seller from time to time, in its discretion, may revise the Terms and Conditions, and the Terms and Conditions will apply to all orders that Buyer places after the date that such revised Terms and Conditions are delivered to Buyer. The following definitions shall be used herein: (i) "Agreement" means a fully completed New Account Form (Account Type: Payment with Order) or Credit Application and these Terms and Conditions (including the Credit Terms, if applicable); and (ii) "Credit Terms" means the Credit Terms set forth in Part A of these Terms and Conditions. Other defined terms used in these Terms and Conditions will have the meanings given them New Account Form (Account Type: Payment with Order) or Credit Application or herein.

**A. WESTONE LABORATORIES TERMS AND CONDITIONS APPLICABLE TO CREDIT CUSTOMERS.** Buyer acknowledges and agrees that the following Credit Terms apply to its purchases of Products on credit. Buyer grants permission to Seller to obtain independent credit reports or other information from Buyer's references and bank and authorizes Buyer's bank and references to release information that may be used to determine Buyer's creditworthiness. Seller shall determine in its sole discretion the credit limit to apply to Buyer's credit purchases ("credit limit"), which may be decreased or terminated for any reason in Seller's sole discretion.

**B. CREDIT PAYMENTS.** Buyer shall make payment for the full amount of Seller's invoice(s), in U.S. Dollars, without discount, adjustment, or set-off, so that such payment is received into Seller's account, according to Buyer's established payment terms.

**C. ADDITIONAL TERMS AND CONDITIONS.** The following provisions apply to all purchases of Products by Buyer, whether or not purchased on the Credit Terms.

**1. GRANT OF SECURITY INTEREST.** As security for the payment of all amounts owed by Buyer to Seller, including, but not limited to, all amounts owed by Buyer under this Agreement for purchases of Products, whether now or hereafter existing (the "Secured Obligations"), Buyer hereby grants to Seller a security interest (the "Security Interest") in all goods, inventory, cash and non-cash proceeds, and accounts. Buyer represents and warrants that it has the requisite power and authority to grant the Security Interest to Seller and that none of the Collateral is subject to any security interest or other lien other than the Security Interest. Buyer acknowledges that Seller will have any and all rights and remedies upon default with respect to the Secured Obligations, the Security Interest and the Collateral pursuant to the Uniform Commercial Code in effect in the State of Colorado.

**2. ORDERS.** Provisions in Buyer's purchase order and/or other documents of Buyer will not become part of this Agreement unless Seller agrees to such provisions in a document signed by Seller.

**3. PAYMENTS/DELIVERY.** If Seller does not approve the Buyer for credit, Seller may require advance payment or apply another payment procedure, in its sole discretion. All sums owed by Buyer to Seller are payable at Seller's post office box number 15100, Colorado Springs, CO 80935, or such other location as may hereafter be specified by Seller, or may be wire-transferred to a bank account designated by Seller from time to time, or, subject to Seller's approval, may be paid by credit card.

**4. SELLER'S REMEDIES.** If Buyer fails to make any payment in full to Seller when due or otherwise breaches this agreement, Seller shall have the right to: (a) terminate this Agreement and/or any purchase orders between Buyer and Seller; (b) suspend delivery at any time of Products; (c) enter Buyer's premises to reclaim delivered Products and/or the proceeds thereof; (d) enforce its Security Interest under applicable law; and/or (e) exercise any other remedy available to Seller.

**5. SELLER'S WARRANTIES.** Upon the written request of Buyer made within a period of ninety (90) days following Seller's shipment of the affected Product, Seller will, at its expense, repair or replace, in Seller's discretion, an earmold, if an earmold is lost in the mail, an error was made by Seller in earmold style, material, or acoustic modification specified on a Purchase Order, an earmold allows feedback (other than open style molds (CROS, Free Field, high-frequency molds, etc.)), which are not guaranteed against feedback), or an earmold does not fit properly. Upon the written request of Buyer made within a period of one (1) year following Seller's shipment of the affected Product, Seller will, at its expense, repair or replace, in Seller's discretion, an earmold that breaks within such time period due to failure of materials or workmanship. In all cases, Buyer will be responsible for shipping and all associated costs related to returning the affected Product to

Seller. Seller will not be responsible for remaking or replacing an earmold at Seller's cost when the wrong style, color, material or acoustic modification (resulting in occlusion or frequency response problems) is ordered by the dispenser or if feedback or fit problems arise or are reported after the first ninety (90) days following shipment, the earmold breaks for any reason after the one (1) year period following its shipment, or the earmold is lost. Buyer acknowledges and agrees that the repair and/or replacement warranties under this Section constitute Buyer's exclusive remedy for any defect in, or malfunction of, the Products. Any other claims of Buyer with respect to this Agreement shall be deemed to be waived and forever barred.

SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, OR ANY WARRANTY THAT THE PRODUCTS WILL BE FREE FROM INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. BUYER HEREBY WAIVES ALL CAUSES OF ACTION AND REMEDIES TO WHICH BUYER IS OR MAY BECOME ENTITLED INSOFAR AS SUCH WAIVER MAY BE INEFFECTIVE BY STATUTE.

**6. EXCLUSION OF CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT OR ANY BREACH THEREOF, OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF A PRODUCT.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL THE LIABILITY OF SELLER FOR ANY DAMAGES UNDER THIS AGREEMENT EXCEED IN THE AGGREGATE THE AMOUNT PAID BY BUYER UNDER THIS AGREEMENT FOR PRODUCTS DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING BUYER'S FILING OF A COMPLAINT OR COUNTERCLAIM AGAINST SELLER.

**8. INTEREST/ATTORNEY'S FEES.** Interest shall accrue on all unpaid amounts owed by Buyer to Seller at the rate of eighteen percent (18%) per annum. In the event that a collection agency is engaged and/or legal proceedings are commenced in order to enforce any of the provisions of this Agreement, Buyer shall be liable to Seller for all costs of collection, including court costs and reasonable attorneys' fees. THE PARTIES HERETO KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE OR DISPUTETHAT MAY ARISE BETWEEN THEM.

**9. GOVERNING LAW.** This Agreement is to be construed in accordance with the laws of the State of Colorado and Buyer consents to exclusive venue for any action brought under or pertaining in any way to this Agreement in El Paso County, Colorado or Colorado's federal courts. BUYER AGREES THAT THE COURTS OF THE STATE OF COLORADO SHALL HAVE PERSONAL JURISDICTION OVER BUYER.

**10. MISCELLANEOUS.** Except as otherwise expressly provided in this Agreement, all remedies are cumulative. The provisions of this Agreement are binding upon and for the benefit of the parties and their respective successors and permitted assigns and not for any third party beneficiary or other person, including any customer of Buyer. This Agreement may not be assigned by Buyer, except with the prior written consent of Seller. No party is an agent of the other and neither of them has any authority to represent or act on behalf of the other as to any matters. This Agreement does not constitute any partnership or joint venture between the parties. This Agreement will constitute the entire understanding between the parties with respect to the subject matter hereof and will supersede any and all other agreements, commitments and negotiations of whatever nature, whether oral or written. If any of the provisions hereof is declared invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability will not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement will be construed as if it did not contain the particular invalid or unenforceable provision or provisions and the rights and obligations of the parties will be construed and enforced accordingly. The respective obligations of each party that by their nature would continue beyond the termination, cancellation or expiration of this Agreement will survive such termination, cancellation, or expiration. This Agreement may be executed in counterparts, which taken together will be deemed to constitute one and the same instrument. This Agreement will be effective as of the Effective Date, subject to its execution by both Buyer and Seller.