

General Terms and Conditions To Westone® Purchase Orders

- 1) **ACCEPTANCE OF CONTRACT:** BUYER SHALL NOT BE BOUND BY THIS PURCHASE ORDER UNLESS AND UNTIL THE BUYER SIGNS THE PURCHASE ORDER (FOR PURCHASES ABOVE \$1,000) AND THE SELLER EXECUTES AND RETURNS TO BUYER AN ACKNOWLEDGEMENT OF THE PURCHASE ORDER (INCLUDING AN INVOICE). SELLER SHALL BE BOUND BY THIS PURCHASE ORDER AND ITS TERMS AND CONDITIONS WHEN IT EXECUTES AND RETURNS THE ACKNOWLEDGMENT OR, WHEN IT SHIPS ANY PART OF THIS ORDER, WHICHEVER SHALL OCCUR EARLIER. NO CONTRACT SHALL EXIST EXCEPT AS HEREIN PROVIDED. DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS CONTAINED IN THE ACKNOWLEDGEMENT OF THIS PURCHASE ORDER OR IN AN INVOICE ARE HEREBY REJECTED. ANY ACCEPTANCE HEREOF IS EXPRESSLY MADE CONDITIONAL ON SELLER'S ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN AS OPPOSED TO THE ACKNOWLEDGEMENT DOCUMENT. NO AGREEMENT OR UNDERSTANDING TO MODIFY THIS PURCHASE ORDER SHALL BE BINDING UPON BUYER UNLESS BUYER ACCEPTS THE SAME IN WRITING SIGNED BY BUYER'S AUTHORIZED AGENT.
- 2) **PRICE AND PAYMENT:** The articles shipped or work performed against this purchase order must not be invoiced at a higher price than shown unless written consent is obtained from Buyer. No charge will be allowed for packing, crating, freight, express or cartage unless shown on the purchase order. Invoices must itemize transportation charges and taxes as separate items. If price is omitted on the purchase order, it is agreed that your price will be the lowest prevailing market price. Cash discounts will be calculated from the date acceptable invoices are received by Westone Laboratories Inc. ("Westone®") or from the date of the receipt of the articles shipped pursuant to this purchase order, whichever is later. Except as otherwise provided in this purchase order, the price includes all applicable federal, state, and local taxes in effect on the date hereof. Payment terms will be net 60 days from the receipt of a valid invoice.
- 3) **INSPECTION:** Seller facilities, equipment, the articles to be shipped, and the work to be performed are subject to Westone®'s inspection and acceptance. The Seller shall have on file at its plant, subject to audit by Westone® adequate data showing the presence in each article, including all components and raw materials incorporated therein, of the physical and chemical properties required by the applicable specifications; Seller also shall impose this same requirement on subcontractors. The Seller agrees to permit Westone® and Westone®'s customer, or Government representatives if this purchase order references a U.S. Government contract or subcontract number, to verify the quality of supplies and services being provided under this purchase order at any production stage in the Seller's facility. Verification may consist of a physical assessment/surveillance of the Seller's facilities and quality programs and/or a source inspection. Deficiencies identified during such verification shall be positively corrected by the supplier in the most expeditious manner possible. The Seller shall provide all reasonable facilities and assistance for the safety and convenience of personnel engaged in such verification. Seller agrees to include in each subcontract Seller makes hereunder appropriate provisions to the same effect.
- 4) **WARRANTY:** For one year from the date of shipment Seller warrants that each article including all components and raw materials incorporated therein, will be free from defects in material, labor and fabrication and will meet and comply with all requirements of the pertinent specifications, drawings, and samples, if any, including performance specifications. An inspection system and quality program inherent to verifying the technical requirements must be maintained consistent with Westone®'s specification, and objective evidence of such will be produced on request. Proof of compliance must be produced upon request or by assessment from Westone®. Seller further warrants that all work ordered hereunder will be done by careful, efficient, and qualified workers in the best and most workmanlike manner and that the work will conform to the requirements hereof and to the highest standards applicable in the field. This warranty shall survive acceptance and payment by Westone®. Articles not in conformity herewith at Westone®'s option: (1) may be retained at an equitable adjustment in price; (2) may be returned for replacement, correction, credit or refund as specified by Westone®; or (3) may be corrected in place. All returns, replacements and corrections will be at Seller's expense including all labor, materials, installation, repair, service, transportation and other charges. Seller expressly assumes the risk of loss or damage to articles returned by Westone® while same are in transit. No replacement of defective or nonconforming articles returned to Seller shall be made unless specified on Westone®'s written purchase order.
- 5) **PERFORMANCE SCHEDULE:** Performance shall be strictly in accordance with the performance and/or release schedule set out or referred to in this purchase order. Articles shipped to Westone® in advance of schedule may be

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returned to Seller at Seller's expense. If Seller's deliveries fail to meet such schedule, Seller, at its expense, will use an expedited method of shipment specified by Westone®, if requested to do so by Westone®, until past deficiencies are corrected, and deliveries are on schedule. If releases are used by Westone®, Westone® is not liable for fabrication or shipment of articles in excess of authorized releases. Authorized releases are defined as those performance schedules covering the next 90-day period. For parts that may have a large volume price advantage, NCNR components, or custom parts, Westone® must approve purchases in writing, for procurement beyond the 90-day period. On shipments subject to released value ratings, shipper shall declare value consistent with the lowest rating when shipment is made F.O.B. shipper's dock.

- 6) **PACKING AND SHIPPING:** Seller shall comply with best commercial practices for domestic shipments adequate for safe arrival at destination, for storage, protection against weather, transportation, compliance with carrier regulations and to secure lowest transportation costs. Pallets must be standard 42 inches wide by 48 inches long and in serviceable condition. Material on skids must not extend more than 2 inches over the pallet on any side and may not be stacked taller than 52 inches. Shrink wrap or strapping must be sufficient to prevent shifting in transit. We recommend no less than 2 wraps of shrink material. A packing list showing purchase order numbers, Westone®'s item numbers, Westone®'s revision number, quantity, ship date, and description of contents must be included in each package. A packing list is also required for services and non-tangible items [e.g., non-recurring engineering (NRE) charges, labor charges]. Individual packages must be labeled with Westone®'s purchase order number, Westone®'s item number, Westone®'s revision number, box quantity, and ship date. Seller must consolidate all shipments against this or other purchase orders to be forwarded on one day via the same mode to one delivery address of one bill of lading, Express Receipt, or Airbill. Notwithstanding any F.O.B. terms in this purchase order or otherwise, Seller's tender of goods shipped pursuant to this purchase order shall be upon receipt of the goods by Buyer at Buyer's delivery location as designated on the face of this purchase order. Risk of loss and or damage shall be upon Seller until the goods are physically delivered to Buyer's location. Any loss occurring from deviation from Buyer's routing, packing, or shipping instructions will be charged to Seller's account.
- 7) **DEFAULT:** Westone® may terminate this purchase order in whole or in part without liability by written or facsimile notice if Seller fails to perform or comply, or so fails to make progress as to endanger performance or compliance with any provisions of this purchase order, including Seller's warranties, or if Seller becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or if a petition under the Bankruptcy Act is filed by or against Seller. Seller agrees to indemnify and hold Westone® harmless from any loss, penalty or damages resulting from Seller's refusal or failure to make progress or comply with any provisions of this purchase order. Notwithstanding the above provisions of this paragraph, Seller shall not be liable for delays or defaults due to causes beyond its control and without its fault or negligence if Seller notifies Westone® in writing of such delay and its cause. The rights and remedies of Westone® provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.
- 8) **CHANGES:** Westone® shall have the right to make changes in: (1) the specifications, drawings and samples, if any; (2) the method of shipment or packaging; (3) the place and time of performance; and (4) the articles and materials, including the quantity thereof, to be furnished by the Seller. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this purchase order, an equitable adjustment shall be made in the contract price or performance schedule or both by mutual agreement. Any claim by Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Seller of the notification of change. No change under this clause or substitutions for material ordered will be allowed unless it is set forth in a written amendment of this purchase order approved by Westone®'s Purchasing Department.
- 9) **MATERIALS, TOOLS AND EQUIPMENT PAID FOR OR FURNISHED BY WESTONE®:** Any materials, tools, equipment or facilities furnished by Westone® on other than a charge basis in connection with this purchase order will be deemed bailed to the Seller for mutual benefit and titles thereto shall at all times remain in Westone®. Seller agrees to pay for all such materials, tools, equipment, or facilities spoiled by it or not otherwise satisfactorily accounted for. Tools, facilities and equipment paid for or furnished by Westone® shall be covered by a Westone® consignment invoice, the terms of which are incorporated herein by reference. Seller shall keep all materials, tools, facilities and equipment in which Westone® has any interest insured against risk of loss or damage for their value at Seller's expense during such time as they remain in Seller's or in its supplier's possession. Such property, and wherever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as property of Westone® and shall be safely stored separate and apart from Seller's property. Westone® has the right

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to audit and verify status and location of its property; and Seller shall return such property within seven (7) days upon request. Seller shall not substitute any property for Westone® property. Such properties are often representative samples of the items being built by seller and seller cannot use these representative samples to ship against Westone® open purchase orders.

- 10) **PATENT RIGHTS AND USE OF TECHNICAL INFORMATION:** Any specifications, drawings, reprints, technical information or data furnished Seller hereunder shall remain Westone® property, shall be kept confidential and shall be returned at Westone®'s request. Such documents shall be used in filling this purchase order and may not be used for other purposes unless agreed to by Westone® in writing. Furthermore, patent rights embodied in designs, tools, patterns, drawings, information, and equipment supplied by Westone® under this purchase order and exclusive rights for the use and reproduction thereof are reserved by Westone®.
- 11) **INFORMATION DISCLOSED BY SELLER:** Unless otherwise agreed to in writing by Westone® any information disclosed to Westone® by Seller in connection with the purchase covered by this purchase order shall not be deemed to be confidential or proprietary information and shall be acquired without any restrictions (other than a claim for patent infringement) as part of the consideration for this purchase order.
- 12) **PATENT INDEMNITY:** By acceptance of this purchase order, Seller agrees to indemnify Westone® against all claims, judgments, decrees, costs and expenses, and attorney's fees incident to any infringement or to any claimed infringement of any patent (or patents) arising out of the use or sale by Westone® or its customers of articles or materials covered by this purchase order or the use thereof by Westone® in the manufacture and sale of products unless the articles or materials are of Westone® design or formula, and Seller agrees that it will, upon request of Westone®, and at Seller's own expense, defend or assist in the defense of any action which may be brought against Westone® or its customers for such infringement or claimed infringement. Westone® agrees to notify Seller promptly upon receipt of notice of infringement of such a suit having been filed.
- 13) **COMPLIANCE WITH LAWS:** The articles furnished and work performed hereunder by the Seller shall comply both as to product and manufacture with all applicable state, federal, and local laws, rules and regulations, including but not limited to the Act of September 2, 1960 (4) U.S.C. 51-54, as amended, and the Seller will indemnify Westone® against liability on account of any non-compliance. Seller agrees to furnish on each invoice a statement in form approved by U.S. Department of Labor certifying that the items covered by such invoice were produced, manufactured and delivered in accordance with the Fair Labor Standards Act of 1938, as amended and all regulations issued thereunder.
- 14) **EQUAL EMPLOYMENT OPPORTUNITY:** Seller agrees to submit the reports and information, and comply with the Government's policy on equal employment as set forth in Presidential Executive Order 11246 dated 24 September, 1965 and the clause appearing in ASPR 12-802 which clause is a part of this purchase order.
- 15) **SALES AND USE TAX:** If Taxable Box is marked no, the sales are exempt from Sales or Use Tax because the articles will be resold in the ordinary course of business or are machinery or equipment to be used directly in manufacturing processing or fabricating.
- 16) **TERMINATION:** Westone® shall have the right to terminate this purchase order, in whole or in part, for other than the default of Seller, by giving Seller written notice of its election and desire so to do by mail, electronically or by facsimile. Such termination shall become effective upon receipt of such notice by Seller, and Seller will stop work immediately on the terminated portion of this purchase order, notify sub-contractors to stop work, and protect property in Seller's possession in which Westone® has or may acquire an interest. In the event of such termination, Westone® agrees to pay Seller, in addition to the stipulated price for all articles which have been completed by Seller and delivered to and accepted by Westone® and for all work performed and accepted by Westone® pursuant to the terms of this purchase order and not previously paid for all costs necessarily incurred by Seller in the performance of this purchase order which are properly allocable under recognized commercial accounting practices to the cancelled portion of this purchase order. Any claim for payment of such additional costs incurred by Seller must be submitted in writing to Westone® within thirty (30) days of receipt of written notice of termination and must be thoroughly documented by invoices or other applicable documents. Westone® shall have the right to audit all elements of any termination claim, and Seller shall make available to Westone® on request all books, records, and papers relating thereto. The

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provisions of this paragraph are without prejudice to the rights of Westone® in the event of any failure on the part of Seller to comply with the performance schedule or other provisions of this purchase order.

- 17) **WAIVER:** Failure or delay on the part of Westone® to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.
- 18) **APPLICABLE LAW AND VENUE:** The construction, interpretation, and performance of this purchase order and all transactions under it shall be governed by the laws of the State of Colorado, without regard to its conflict of laws or choice of laws provisions. Seller and Buyer: (1) consent to the personal jurisdiction of the state and federal courts having jurisdiction over El Paso, Colorado; (2) stipulate that the proper, exclusive, and convenient venues for all legal proceedings arising out of this purchase order are the Circuit Court for El Paso, for state court proceedings, and the United States District Court for the District of Colorado – for federal court proceedings and (3) waive any defense, whether asserted by motion or pleading, that the aforementioned venues are improper or inconvenient.
- 19) **ATTORNEY'S FEES AND COSTS:** In any action to enforce this purchase order, the prevailing party in such action shall be entitled to recover costs and reasonable attorney's fee from the non-prevailing party.
- 20) **Insurance:** Seller shall carry such policies of general liability, errors and omissions, workers compensation and other such usual and customary insurance coverages in amounts as may be necessary to insure itself against claims, liability or damages arising out of or connected to the performance of its obligations under this Purchase Order.

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