

## TERMS OF SALE AND LIABILITY WAIVER

### **THIS IS AN IMPORTANT LEGAL DOCUMENT. ALLOW YOURSELF SUFFICIENT TIME TO CAREFULLY READ AND UNDERSTAND THE ENTIRE DOCUMENT, BECAUSE BY SIGNING IT, YOU ARE AGREEING TO GIVE UP CERTAIN LEGAL RIGHTS.**

*Open Safety Equipment Limited, a company registered in Scotland, with its registered address at Zetland Road, Hillington, Glasgow, Scotland (hereinafter OSEL), and its suppliers, consultants and advisors, have taken an exceptional degree of care in the design and manufacture of its products, to the extent that this has won widespread acclaim. OSEL and its suppliers have published the important safety data required to enable users to assess the suitability of its equipment for the application and to assess the level of remaining risk. The equipment is designed to exceed the performance required by safety standards.*

*OSEL's products are designed for use in environments that are intrinsically hazardous and which carry a significantly higher risk of mortality and injury than normal office conditions. Accidents are inevitable in these environments, and those accidents will occur more frequently than under normal office conditions. We do seek to exceed the performance set down by regulators and standards to minimise those risks, but cannot guarantee absolutely that we have done so in every single possible case.*

*In Europe it is generally adequate for companies to prove the equipment meets all applicable safety regulations to defend themselves from claims, but this is not the case in the USA, where plaintiff lawyers tend to look for whoever has the deepest pocket to claim damages, whether or not the equipment is involved in the accident. OSEL do not wish to pass on to customers the cost of resources wasted in such litigation. For these reasons OSEL will sell its products subject to the following terms and conditions, which include a waiver of some of your rights, particularly in the USA.*

*This is a binding legal agreement between OSEL and the buyer of the equipment, who shall be referred to in the first person herein to emphasise the commitment being made.*

#### **AGREEMENT**

In consideration of Open Safety Equipment Limited, hereinafter referred to as "OSEL", supplying me with products, designed, manufactured, assembled and or maintained by Open Safety Equipment Limited, I hereby agree with the terms and conditions of sale published on the company's web site and in particular I agree as follows:

##### **1) REPRESENTATIONS, WARRANTIES & ASSUMPTIONS OF RISK:**

I understand I will be performing an underwater or hyperbaric dive which will expose me to the risk of personal injury, property damage and/or death. I understand that the success of my dive is dependent upon the functioning of the equipment I intend to use, my personal physical condition, the procedures I follow and my training.

Neither my equipment, nor my physical body, nor my intended dive plan can be guaranteed to function perfectly at all times and the safety of a dive depends on my planning for failures and managing those failures adequately.

I understand that the equipment, my data, my physical body and my dive plan are subject to mechanical malfunction as well as operator error.

For the thrill of participating in this activity, I freely, voluntarily and expressly choose to assume all risks inherent in diving, including, but not limited to, risks of equipment malfunction and/or failure, including those which may result from some failure in design, assembly and/or manufacture, as well as those risks arising from improper and/or negligent operation and/or use of the equipment and software, understanding full well that those risks may include personal injury, property damage, and/or death.

##### **2) EXEMPTION AND RELEASE FROM LIABILITY:**

I exempt and release the following persons and organizations:

(A) OSEL and its suppliers, and their officers, directors, agents, servants, employees, shareholders, and other representatives;

(B) Manufacturers, designers, and suppliers of component hardware and/or software, incorporated in products supplied by OSEL, directly or indirectly, that will be used during my intended dive;

from any and all liability, claims, demands, or actions or causes of action whatsoever arising out of any damage, loss or injury to me or my property, or my death, whether occurring while I am training and/or preparing for my intended dive, while I am present on the property (land or ship) from which the dive is to be made, while I am making my intended dive, or while I am engaged in related activities (all of the above herein referred to as "activities covered by this Agreement"), whether such loss, damage, injury, or death results from the negligence and/or other fault, either active or passive, of any of the persons and/or organizations described in paragraphs 2(A)-(B) above, or from any other cause.

##### **3) COVENANT NOT TO SUE:**

I agree never to institute any suit or action at law or otherwise against any of the organizations and/or persons described in paragraph 2(A) through (B) above, or to initiate or assist in the prosecution of any claim for damages or cause of action which I may have by reason of injury to my person or property, or my death, arising from the activities covered by this Agreement, whether caused by the negligence and/or fault, either active or passive, of any of the organizations and/or persons described in paragraph 2(A) through (B) above, or from any other cause. I further expressly agree that I will never raise any claim against any of the organizations and/or persons described in paragraph 2(A) through (B) above for product liability, failure to warn, negligence, breach of warranty, breach of contract, or strict liability, regardless of whether my claims for damages or injuries are alleged to result from the fault or negligence of the parties released. I further agree that my heirs, executors, administrators, personal representatives, and/or anyone else claiming on my behalf, shall not institute any suit or action at law or otherwise against any of the organizations and/or persons described in paragraph 2(A) through (B) above, nor shall they initiate or assist in the prosecution of any claim for damages or cause of action which I, my heirs, executors, administrators, personal representatives, and/or anyone else claiming on my behalf may have by reason of injury to my person or property, or my death arising from the activities covered by this Agreement, whether caused by the negligence and/or fault, either passive or active, of any of the organizations and/or persons described in paragraph 2(A) through (B) above, or from any other cause, and I hereby so instruct my heirs, executors, administrators, personal representatives, and/or anyone else claiming on my behalf. Should any suit or action at law or otherwise be instituted in violation of this Agreement against any of the organizations and/or persons described in paragraph 2(A) through (B) above, I agree that such organizations and/or persons shall be entitled to recover attorneys' fees and costs incurred in defence of such suit or action, including any appeals therefrom.

##### **4) INDEMNITY AGAINST CLAIMS:**

I will indemnify, save and hold harmless the organizations and/or persons described in paragraph 2(A) through (B) above from any and all losses, claims, actions or proceedings of every kind and character, including attorney's fees and expenses, which may be presented or initiated by any persons and/or organizations and which arise directly or indirectly from my participation in the activities covered by the Agreement, whether resulting from the

negligence and/or other fault, either active or passive, of any of the organizations and/or persons described in paragraph 2(A) through (B) above, or from any other cause.

5) VALIDITY OF WAIVER:

I understand that if I institute or anyone on my behalf institutes, any suit or action of law or any claim for damages or cause of action against any of the organizations and or persons described in paragraph 2(A) through (B) above because of injury to my person or property, or my death, due to the activities covered by this Agreement, this Agreement can and will be used in court, and that such agreements have been upheld in courts in similar circumstances.

6) REPRESENTATIONS AND WARRANTIES AS TO MEDICAL CONDITION:

I represent and Warrant that I have assessed my physical condition, including any infirmities or special health risks I may have, and engage in use of this equipment in full knowledge that infirmity or underlying health problems may give rise to a higher level of risk than normal in using this equipment. In particular I am aware that there appears to be an association between rebreather diving and acute cardiac illness. I certify that I will not use the equipment if I have cardiac or pulmonary conditions or disease, diabetes, fainting spells or convulsions, nervous disorder, kidney or related diseases, eye conditions, high or low blood pressure or in the event that I do use the equipment, I assume all the additional risks and hazards these conditions may predispose me to in using this equipment;

7) WAIVER OF JURY TRIAL/APPLICABLE LAW/VENUE/HEADINGS:

I agree that the law of Norway shall apply to issues involving the construction, interpretation, and validity of this Agreement, and Norwegian law shall govern any dispute between the parties arising from the activities covered by this Agreement. In the event that this Agreement is violated and suit is brought against any of the organizations and/or persons described in paragraph 2(A) through (B) above, I waive my right to a jury trial, and agree that arbitration in Norway shall be the sole venue for any suit or action arising from the activities covered by this Agreement. I agree that the headings and sub-headings used throughout this Agreement are for convenience only and have no significance in the interpretation of the body of this Agreement.

8) SEVERABILITY/MULTIPLE WAIVERS:

I agree that should one or more provisions in this Agreement be judicially determined to be unenforceable, the remaining provisions shall continue to be binding and enforceable against me. If I have executed any other agreement containing provisions relating to the exemption and/or release from liability and/or covenant not to sue in connection with the activities covered by this Agreement, I agree that the Agreement which provides the most protection from liability and/or suit to Open Safety Equipment Limited shall be enforceable against me by Open Safety Equipment Limited

9) CONTINUATION OF OBLIGATIONS:

I agree and acknowledge that the terms and conditions of this Agreement shall continue in force and effect now and in the future at all times during which I participate in the activities covered by this Agreement, and shall be binding upon my heirs, executors, administrators, personal representatives, and/or anyone else claiming on my behalf. This Agreement supersedes and replaces any prior such agreement I have signed.

10) SPECIAL RISKS:

I agree and acknowledge that the changing of any of the default settings or configurations or any other modification of the equipment may result in a substantially increased risk to myself, and am willing to accept this risk should I so choose to modify the equipment in any way.

11) TRAINING:

I acknowledge that I have taken a formal course of instruction from an accredited dive training organization or dive training professional and have received a certification equivalent to the level of diving I intend to perform. I understand that this equipment and its manuals or other information published are not a replacement for proper training, and agree and acknowledge that I will not attempt any dive that exceeds my current level of training.

12) RESALE OF EQUIPMENT:

Should I resell this equipment provided by OSEL or allow any third party to use this equipment, I shall obtain a waiver no weaker than the waiver here from that party before the equipment is used by them.

13) FINAL WARNING ON DIVING HAZARDS:

I agree and acknowledge that:

A) Diving is an inherently dangerous activity that may result in injury or death to myself and others

B) No diving profile can assure me that I will not be injured or killed.

C) Decompression, Deep Diving, Cave & Wreck Penetration and the use of Mixed Gas while diving are hazardous aspects of an already dangerous activity.

14) SPECIFICATION:

OSEL endeavours to describe all products accurately and honestly, but reserves the right to change the specification of products for reasons of improvements in functionality, ergonomics, reliability, safety, production control, supplier management and cost.

15) DEPOSITS AND CHARGES:

OSEL takes payment when the order is placed.

16) PRICES, SHIPMENT AND TAXES:

All prices are quoted ex-factory, before tax.

If payment is made using debit or credit cards that charge a fee, you are responsible for meeting that fee, and where OSEL is charged a fee for payment from your credit card, the fee will be charged on to you up to a maximum of 4% of the value of the order. For information Visa Delta is currently 0.42%, Visa 2.75%, Mastercard 2.85%, Amex 3.2%, Paypal 3.4%.

Taxes are added to the order to meet legal requirements for sale from the UK.

Packing and shipment are charged at cost.

17) CANCELLATIONS:

Purchase is a binding commitment on both parties. For items on short lead time that are not built to order, there is no penalty arising from cancellation up to the point of shipment. Items that are built to order can be cancelled up to the point of shipment, subject to loss of the up to half the total sum unless otherwise agreed. Rebreathers are built to order, all accessories are standard.

I freely and voluntarily agree to all of the above by signing this contract on this day by my electronic acceptance here.

**Please read each paragraph carefully.**

**Your signature or electronic acceptance on the order is a statement that you understand and agree to all of the information and terms contained herein.**