

NAME: \_\_\_\_\_  
INSTRUCTOR NAME: \_\_\_\_\_

**ACKNOWLEDGEMENT, ASSUMPTION, INDEMNITY, WAIVER AND RELEASE  
FOR PURCHASERS, LESSEES, RENTERS AND OTHER ACQUIRERS OR USERS OF  
CLOSED CIRCUIT REBREATHER COMPONENTS AND/OR A CLOSED CIRCUIT REBREATHER UNIT**

**INSTRUCTIONS AND NOTICE**

As a condition of your purchase, lease, rental or acquisition or use by any means whatsoever of the closed circuit or semi closed circuit rebreather components (the "Components") and/or the partially assembled or pre-assembled closed circuit rebreather unit (the "Unit"), as the case may be, listed on Schedule "A" hereto from KISS REBREATHERS, LLC. ("KISS") either directly from KISS or, if applicable, from and through one of KISS'S authorized dealers (the "Dealer"), you (the "Undersigned") are required to read this entire acknowledgement, assumption, indemnity, waiver and release (the "Acknowledgement") and each of its sections, you are required to initial each section in the space provided after reading each such section and you are required to sign, date, and have your signature witnessed as indicated on the last page after reading and initialing each section, and deliver this Acknowledgement to KISS or, if applicable, the Dealer. ***IF YOU DO NOT INITIAL, SIGN AND DELIVER THIS ACKNOWLEDGEMENT IN THE REQUIRED MANNER, YOU WILL NOT BE PERMITTED TO PURCHASE, LEASE, RENT OR OTHERWISE ACQUIRE OR USE THE COMPONENTS AND/OR THE UNIT FROM KISS OR, IF APPLICABLE, THE DEALER ON BEHALF OF KISS.***

**REPRESENTATIONS, WARRANTIES AND COVENANTS**

In consideration of the sale, lease, rental or other disposition or use by any means whatsoever of the Components and/or the Unit by KISS or, if applicable, the Dealer on behalf of KISS to the Undersigned and, in the case of the Undersigned or any other person, firm or corporation initialing, signing and delivering this Acknowledgement to KISS or, if applicable, to the Dealer on behalf of KISS in accordance with the terms hereof, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Undersigned, with the express intention that KISS and, if applicable, the Dealer on behalf of KISS will rely thereon in selling, leasing, renting or disposing by any means whatsoever (or contemplating use in any means whatsoever of) the Components and/or the Unit to the Undersigned, and any such person, firm or corporation, acknowledges, represents, warranties and covenants to KISS that:

**A. Acknowledgement and Assumption of Risk**

1. the Undersigned is fully aware and understands that diving with semi closed or closed circuit rebreathers including, without limitation, any diving involving the use of the Components and/or the Unit is an inherently dangerous activity that involves many risks including, but not limited to:
  - (a) the inherent risk of arterial embolism, inert gas narcosis, hypoxia (oxygen deficiency), hypercapnia (carbon dioxide poisoning), central nervous system oxygen toxicity resulting in convulsions or seizures, carbon dioxide poisoning, anoxia, asphyxia and the risks of exposure to and burns from caustic chemicals, and hazards inherent with the handling and mixing of high pressure gases including, without limitation, explosions; and
  - (b) decompression sickness, arterial embolism and pulmonary barotrauma as well as all other risks associated with SCUBA diving including but not limited to water related injuries such as death by drowning.

In connection with the foregoing, the Undersigned acknowledges that the Undersigned has a complete understanding of such risks and the dangers related thereto. The Undersigned expressly and voluntarily assumes any and all risk of injury, death or damage to person or property arising from or in connection to the use or operation of the Components and/or the Unit. The Undersigned further acknowledges and agrees that the Undersigned is aware and fully understands that:

- (c) some of the foregoing risks can manifest themselves with little or no warning;

- (d) all of the foregoing risks can manifest themselves at any dive depth and can result from multiple and/or unpredictable failure modes or for multiple and unpredictable reasons which may, or may not, be within the control of the Undersigned. In this regard, the Undersigned further acknowledges and agrees that such risks may result notwithstanding that the Undersigned dives within any prescribed limitations such as time or depth limits; and
  - (e) all of the foregoing risks can result in severe discomfort and/or permanent and serious physical and/or mental disabilities, including but not limited to visual and auditory impairments, and/or death; and
2. given the foregoing, the Undersigned represents, warranties and covenants that the Undersigned fully understands the risks of rebreather diving including, without limitation, diving involving the use of the Components and/or the Unit and the possible consequences of such risks and, therefore the Undersigned assumes all responsibility for, and risks of, the Undersigned's personal actions during diving activities involving the use of the Components and/or the Unit.

(\_\_\_\_\_) *Please initial here after reading the above section.*

**B. No Representations and Warranties by KISS**

- 1. the Undersigned acknowledges and recognizes that KISS, as the builder of the Components and/or the Unit, is not a professional engineering company, designer, or trained diving instructor and, therefore, that the Components and/or the Unit have been sold and delivered to the Undersigned on an "as is, where is" basis and that KISS has not made any representations, warranties or covenants whatsoever, whether express or implied, to the Undersigned with respect to the Components and/or the Unit including, without limitation, any representations, warranties or covenants as to fitness of purpose, merchantability or reliability; and
- 2. the Undersigned hereby expressly waives any protections the Undersigned may have under the *Sale of Goods Act* (Arkansas) and any other similar legislation of any country, province, state or other division thereof having jurisdiction over the affairs of KISS and the Undersigned including, without limitation, with respect to the merchantability or fitness of purpose of the Components and/or the Unit.

(\_\_\_\_\_) *Please initial here after reading the above section.*

**C. Purchaser's Responsibilities and Additional Acknowledgements**

- 1. The Undersigned recognizes that the Undersigned must have necessary skills, experience, and training to properly be engaged in rebreather diving including, without limitation, diving involving the use of the Components and/or the Unit and to properly assemble and operate the Components and/or the Unit. Accordingly, the Undersigned acknowledges and agrees that:
  - (a) the Undersigned is the person who is ultimately, and solely, responsible and liable for the proper assembly, inspection, maintenance and operation of the Components and/or the Unit and for assuring that the Components and/or the Unit are operational before beginning a dive and that failure to do so may lead to a malfunction or failure of the Components and/or the Unit and, thereby, give rise to the risks noted elsewhere in this Acknowledgement and to injury or death;
  - (b) the Undersigned has received a copy of the instruction manual for the Components and/or the Unit and shall read, and fully understand, the contents of such manual prior to attempting any dive using the Components and/or the Unit and shall take heed of all cautions, warnings and instructions contained in such manual;

- (c) the Undersigned as been advised by KISS and, if applicable, the Dealer on behalf of KISS that the Undersigned must not attempt any dive using the Components and/or the Unit unless and until the Undersigned:
- (i) has been certified by a duly qualified diving instructor who is specifically qualified to certify divers in respect of the use of the Components and/or the Unit;
  - (ii) has been specifically trained and certified by a duly qualified instructor in the technology of using and mixing oxygen and other gases and has obtained and been trained in the use of all equipment required for the handling and mixing of gases including, without limitation, those used in connection with the Components and/or the Unit; and
  - (iii) has independently ensured that all gases and chemicals being used have been properly prepared prior to their use;
- (d) the Components and/or the Unit must not be misused in any manner and must not be altered in any manner whatsoever. Modifications are extremely dangerous and are strictly prohibited.
2. the Undersigned acknowledges and agrees that all communications, correspondence and actions with KISS in respect of the Undersigned's purchase, lease, rental or acquisition in any manner whatsoever of the Components and/or the Unit has taken place solely in the State of Arkansas, in The United States of America; and
3. the Undersigned shall not transfer, sell or dispose of the Components and/or the Unit in any manner whatsoever to, or lend or permit the Components and/or the Unit to be used by, any another person, firm, corporation or other legal entity unless and until such other person, firm, corporation or other legal entity has delivered to KISS an originally initialed and signed copy of this Acknowledgement.

(\_\_\_\_\_) *Please initial here after reading the above section.*

#### **D. Indemnity**

1. The Undersigned covenants and agrees to indemnify and hold harmless KISS and its officers, directors, shareholders, employees, servants, independent contractors, agents, suppliers, successors and assigns and all persons acting under KISS's authority from and against:
- (a) any and all loss, damages, expenses, costs and deficiencies suffered by KISS and its officers, directors, shareholders, employees, servants, independent contractors, suppliers, agents, successors and assigns and all persons acting under KISS's authority resulting from any misrepresentation, misstatement, breach of warranty or the non-fulfilment of any covenant on the part of the Undersigned under this Acknowledgement or resulting in any manner whatsoever from the Undersigned's use of the Components and/or the Unit; and
  - (b) any and all claims, actions, suits, proceedings, demands, assessments, judgments, charges, penalties, costs and expenses (including any payment made in good faith in settlement of any claim or potential claim, and including the full amount of any reasonable legal expenses invoiced to KISS) which arise or are made or claimed against or are suffered or incurred by KISS and its officers, directors, shareholders, employees, servants, independent contractors, suppliers, agents, successors and assigns in connection with the foregoing matters.

(\_\_\_\_\_) *Please initial here after reading the above section.*

**E. Release and Waiver of Liability**

1. The Undersigned, for the Undersigned and the Undersigned's heirs, executors, administrators, personal representatives, successors and assigns and anyone else who may claim on the Undersigned's behalf hereby waive any and all claims, liability, and damages the Undersigned may now and in the future have against KISS and its officers, directors, shareholders, employees, servants, independent contractors, suppliers, agents, successors and assigns and all persons acting under KISS's authority arising from any and all personal injury, death, property damages, or loss sustained by the Undersigned arising from or in connection with the Undersigned's use of the Components and/or the Unit however caused, including claims based upon product defect, whether by design, manufacture or failure to warn or negligent act or omission in connection with the design materials, assembly, structural integrity, performance, instructions for operating or warnings regarding the use or for operation of the Components and/or Unit; and
2. the Undersigned, for the Undersigned and the Undersigned's heirs, executors, administrators, personal representatives, successors and assigns and anyone else who may claim on the Undersigned's behalf hereby remises, releases and forever discharges KISS and its officers, directors, shareholders, employees, servants, independent contractors, suppliers, agents, successors and assigns and all persons acting under its authority from and against all demands, claims, actions, damages, costs and expenses arising from or with respect to death, injury, damages, or loss to my person or property of any kind whatsoever, no matter how caused in connection with my use of the Components and/or the Unit though the same may have contributed to or been caused by the negligence or gross negligence of KISS or its officers, directors, shareholders, employees, servants, independent contractors, suppliers, agents, successors and assigns and all persons acting under its authority.

(\_\_\_\_\_) *Please initial here after reading the above section.*

**F. General Provisions**

1. the Undersigned is of the age of majority under the applicable laws and has and has the capacity and mental competence to enter into and be bound by this Acknowledgement and to take all actions required pursuant hereto;
2. this Acknowledgement shall enure to the benefit of and be binding upon the Undersigned and KISS and their respective officers, directors, shareholders, employees, servants, independent contractors, suppliers, agents, heirs, executors, administrators, personal representatives, successors and assigns;
3. the Undersigned may not assign or transfer the Undersigned's rights or obligations under this Acknowledgement; and
4. the Undersigned acknowledges the Undersigned has been afforded, but has declined, the opportunity to obtain independent legal advice prior to initialling, signing and delivering this Acknowledgement. Accordingly, by initialling, signing and delivering this Acknowledgement, the Undersigned acknowledges, represents and warrants that the Undersigned has read and fully understands the nature and effect of each Section of this Acknowledgement.

(\_\_\_\_\_) *Please initial here after reading the above section.*

This Acknowledgement must be fully completed, originally signed and mailed (first class postage) or couriered to KISS at 4318 South 16th Street, Fort Smith, AR, 72901, USA. In addition to mailing, the Undersigned may also forward this Acknowledgement to KISS REBREATHER, LLC. via facsimile to : 1 604 477 0026.

This \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_. EMAIL ADDRESS: \_\_\_\_\_

SIGNED, SEALED AND DELIVERED  
by the UNDERSIGNED  
in the presence of:

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Witness  
\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
[Print Name]

**FINAL NOTICE**

**BY INITIALLING, SIGNING AND DELIVERING THIS ACKNOWLEDGEMENT YOU WILL BE  
ACKNOWLEDGING AND ACCEPTING THE HAZARDS OF REBREATHING DIVING USING THE  
COMPONENTS AND/OR THE UNIT AND WILL BE GIVING UP ANY RIGHT YOU MAY HAVE TO SEEK  
LEGAL REDRESS FROM KISS REBREATHING, LLC. AND OTHERS.**

**WAIVER AND RELEASE OF LIABILITY AND ASSUMPTION OF RISK AGREEMENT  
(Semi Closed & Closed Circuit Rebreather)**

**Please read carefully and fill in all blanks before signing.**

I, \_\_\_\_\_, hereby affirm that I am aware that diving with a Semi Closed or Closed Circuit Rebreather ("CCR") has certain inherent risks which may result in injury or death.

**I ACKNOWLEDGE THAT SCR & CCR DIVING IS AN INHERENTLY DANGEROUS ACTIVITY** that involves certain risks unique to rebreathers, including but not limited to inert gas narcosis, hypoxia, hypercapnia, central nervous system oxygen toxicity, carbon dioxide poisoning, and the risks of exposure to and burns from caustic chemicals. In addition to these risks, I further acknowledge that SCR or CCR diving exposes me to risks normally associated with SCUBA diving, including but not limited to decompression sickness, arterial embolism, pulmonary barotrauma and water related injuries such as death by drowning. \_\_\_\_\_ (initial)

**I FURTHER ACKNOWLEDGE** that I have taken a formal training course of instruction on the particular model of rebreather that I am using from a qualified dive training organization and/or dive training professional and have received a certification equivalent to the level of diving I intend to undertake, or that I am currently taking or am enrolled in an approved course of instruction under the supervision of a qualified diving professional for the purpose of obtaining a certification on the model of rebreather that I am using.  
\_\_\_\_\_ (initial)

**I FURTHER ACKNOWLEDGE** that while participating in SCR or CCR diving, injuries can occur that require treatment in a recompression chamber or other facility that may require a great distance of travel. **I UNDERSTAND** that the SCR or CCR diving I undertake may be conducted at a site that is remote, either by time or distance or both, from a recompression chamber or medical facility.  
\_\_\_\_\_ (initial)

**I UNDERSTAND AND AGREE** that KISS REBREATHER, LLC., nor any of its officers, directors, instructors, agents, employees, contractors or assigns ("Released Parties") may be held liable or responsible in any way for any injury, death, or other damages to me, my family, estate, heirs or assigns arising out of my use of the CCR or as a result of the **NEGLIGENCE** of the Released Parties, whether passive or active.  
\_\_\_\_\_ (initial)

**I FURTHER AGREE TO RELEASE, EXEMPT AND HOLD HARMLESS** the Released Parties from any claim or lawsuit by me, my family, estate, heirs or assigns arising out of my use of the SCR or CCR including both claims arising out of my course of instruction or after I receive my certification.  
\_\_\_\_\_ (initial)

**I HEREBY PERSONALLY ASSUME ALL RISKS** associated with SCR or CCR diving, whether foreseen or unforeseen, that may befall me while using the CCR, including but not limited to the academics, confined water and/or open water activities before or after certification.  
\_\_\_\_\_ (initial)

I understand the terms herein are contractual and not a mere recital, and that I have signed this document of my own free will and with the knowledge that **I am agreeing to waive my legal rights**. I further agree if any provision of this Agreement is found to be unenforceable or invalid, that provision will be severed from this Agreement. The remainder of this Agreement will then be construed as though the unenforceable or invalid provision had never been contained herein.  
\_\_\_\_\_ (initial)

I, \_\_\_\_\_, **BY THIS DOCUMENT AGREE TO EXEMPT AND RELEASE THE RELEASED PARTIES AS DEFINED ABOVE FROM ALL LIABILITY OR RESPONSIBILITY WHATSOEVER FOR PERSONAL INJURY, PROPERTY DAMAGE OR DEATH HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE OF THE RELEASE PARTIES, WHETHER PASSIVE OR ACTIVE.**

**I HAVE FULLY INFORMED MYSELF OF THE CONTENTS OF THIS WAIVER AND RELEASE OF LIABILITY AND ASSUMPTION OF RISK AGREEMENT BY READING IT BEFORE I SIGNED IT ON BEHALF OF MYSELF AND MY HEIRS.**

\_\_\_\_\_  
CCR User's Signature

\_\_\_\_\_  
Date (Day/Month/Year)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date (Day/Month/Year)

**THIS IS A LEGALLY BINDING CONTRACT**