

# Liquivision X1 User Agreement and Warranty

© Liquivision Products, 2007. v 1.0

## ► IMPORTANT NOTICES

**This Liquivision X1 User Agreement and Warranty (this “Agreement”) is an agreement between you and Liquivision Products Inc. (“Liquivision”). Your use of the Liquivision X1 dive computer (the “X1”) is subject to the terms and conditions set out in this Agreement. This Agreement also sets out Liquivision’s warranty of the X1, exclusions and limitations of Liquivision’s liability to you, provisions governing the resolution of disputes and claims between you and Liquivision, and other important provisions. If you do not agree with any term of this Agreement, you must not use the X1, and you may return the X1 to Liquivision or the authorized Liquivision dealer from which you purchased the X1 for a full refund within 30 days after your date of purchase. If you use the X1, you are deemed to have agreed to this Agreement.**

**You must read the entire X1 User Manual before using your X1. Incorrect use of the X1 or its accessories will invalidate your warranty and can cause permanent damage to the X1 or its accessories.**

### 1. Your Risks and Responsibilities

Scuba diving, free diving and any other form of underwater diving (all of which are referred to in this Agreement as “diving”) are inherently dangerous and risky activities. Even with the best training, planning and equipment, participants may be injured or may die. If you choose to participate in diving, you accept the risk of injury or death and the responsibility to take all necessary steps to reduce these risks. Without limiting the foregoing, it is your sole responsibility to:

- obtain appropriate training;
- obtain, maintain and conduct appropriate pre-dive tests and checks of appropriate diving equipment, including redundant and back-up equipment to compensate for equipment failures while diving;
- plan your dive in advance and prepare and keep with you a dive plan;
- dive only within your abilities and experience and in accordance with your dive plan;
- practice safe diving techniques, including not diving alone.

You also have the responsibilities set out in sections 3, 4, 5, 6 and 9 below.

### 2. Liquivision and the X1

When purchased by you, the X1 consists of a computer hardware unit encased in a protective waterproof shell, a wrist strap and included attachments and accessories. When you purchase the X1, you become the owner of the X1 (but not any patent or other intellectual property rights in the X1, all of which remain the sole and exclusive property of Liquivision).

### 3. 3<sup>rd</sup> Party Software and Driver

The X1 as purchased by you is computer hardware only, and it will not operate or perform any function until you obtain and install third party decompression software (“3<sup>rd</sup> Party Software”). The Liquivision website lists 3<sup>rd</sup> Party Software that will operate on the X1. Liquivision does not recommend or endorse any 3<sup>rd</sup> Party Software, and you are responsible to select, purchase, install and properly use the 3<sup>rd</sup> Party Software of your choosing.

The package in which you X1 is delivered will include a CD containing a piece of third party software called a “driver” that you must install on your computer to enable it to recognize the X1 (the “Driver”). The Driver is the property of Silicon Labs, and you may use the Driver only for this purpose.

Liquivision is not responsible for any problems you may experience as a result of use of the 3<sup>rd</sup> Party Software or the Driver, including death, personal injury or loss or damage to your computer, software, data or other personal property.

#### **4. Warranty**

- 4.1 **Warranty & Warranty Period:** Liquivision warrants the X1 will be free from defects in materials or workmanship during the Warranty Period (the “Warranty”). If you purchased your X1 through the Liquivision website, the Warranty Period is the one year period commencing on the date of shipment of your X1 to you. If you purchased your X1 from an authorized Liquivision dealer (a “Dealer”), the Warranty Period is one year commencing on your date of purchase of your X1. If you make a warranty claim, you must provide Liquivision with proof of your date of purchase of your X1 to establish your Warranty Period, and failure to do so will result in denial of your warranty claim.
- 4.2 **Remedy:** In the event of any breach of the Warranty, Liquivision’s sole liability and obligation to you, and your sole right and remedy against Liquivision, is for Liquivision, at its option, to either: (i) repair or replace the defective component of the X1; or (ii) replace the defective X1 in its entirety; or (iii) refund the purchase price for the defective X1. If Liquivision repairs or replaces your X1, the repaired or replacement X1 is subject to the Warranty for the remainder of the original Warranty Period of the repaired or replaced X1 or three months from the date of repair or replacement, whichever is longer. Any part removed from an X1 during repair and any X1 that is replaced or for which a refund is given by Liquivision, or by a Dealer on behalf of Liquivision, under the Warranty becomes the property of X1. In fulfillment of the Warranty, Liquivision and its Dealers may use parts that are new, equivalent to new or reconditioned in the repair of an X1, and may provide a new, equivalent to new or reconditioned X1 in replacement of another X1. Neither Liquivision nor any of its Dealers will be liable to compensate you for any loss of use of the X1 as a result of any warranty claim, including as a result of any delay in the repair or replacement of your X1.
- 4.3 **Warranty Limitations and Exclusions:** The Warranty is subject to the following limitations and exclusions:
- The Warranty applies only if the X1 is used while worn by a human being diving to a depth not exceeding 330 metres (1,082 feet). The Warranty is void in the event of any other use.
  - The cables, attachments and accessories included with the X1 are not intended for use underwater, and any submersion of those items in water will void the Warranty in respect of those items. In addition, the X1 must not be submerged in water with any cable, attachment or accessory attached to it, and doing so will void the Warranty in respect of the X1.
  - The X1 must not be recharged in direct sunlight or while exposed to temperatures in excess of 45°C (113°F). Failure to comply with this requirement will void the Warranty.
  - The X1 must be used in accordance with the X1 User Manual. The Warranty does not apply to defects or damage caused by: (i) misuse, neglect or improper or rough handling (including punctures, bending, compressing or dropping of the X1); (ii) any use of the X1 not in accordance with the X1 User Manual; (iii) use of the X1 with or connection of the X1 to any product, accessory, software and/or service not manufactured, supplied or approved by Liquivision; (iv) normal wear and tear; or (v) accidents, fire, power changes, other hazards, acts of God and other causes beyond the reasonable control of Liquivision.
  - The Warranty does not apply to 3<sup>rd</sup> Party Software, the Driver, other software, settings, content or data that is installed or stored on the X1 at the time of purchase or afterwards, whether by Liquivision, you or any third party. You are responsible to back up your X1 as you would any other

computer in order to safeguard and recover any 3<sup>rd</sup> Party Software, other software, settings, content or data that is installed or stored on the X1.

- The Warranty will be void if: (i) the X1 has been opened, modified or repaired by any person other than Liquivision or a Dealer; (ii) the X1's serial number has been removed, erased, defaced or altered in any way or is illegible, as determined by Liquivision in its sole discretion; or (iii) the X1 has been exposed to chemical products, including mosquito repellants.
- The Warranty does not cover the audible buzzer, including diminishing buzzer volume or failure of the buzzer.

## **5. X1 Battery**

The battery in the X1 cannot be removed, replaced or repaired. If the battery in the X1 fails during the Warranty Period, Liquivision will replace your X1. If the battery in the X1 fails after the Warranty Period, you may purchase a replacement X1 at your cost.

You are responsible to ensure that the battery in your X1 is fully charged before each dive.

## **6. Warranty Procedure**

If you believe you have a warranty claim in respect of your X1, please consult the online help resources available at [www.liquivision.ca/customerservice](http://www.liquivision.ca/customerservice) or referred to in the X1 User Manual before submitting your warranty claim and seeking warranty service. If you still believe you have a warranty claim, then contact the Dealer from which you purchased your X1, or Liquivision at [info@liquivision.ca](mailto:info@liquivision.ca) if you purchased your X1 through the Liquivision website.

You are responsible for all shipping costs incurred when sending your X1 to Liquivision or a Dealer and returning your repaired or replacement X1 to you. Before returning or sending your X1 to Liquivision or a Dealer, you must remember to make back-up copies of any 3<sup>rd</sup> Party Software, other software, settings, content or data that is installed or stored on the X1, as these may be lost during repair of the X1, and will not be transferred to a replacement X1. Neither Liquivision nor its Dealers will be liable for any loss of, damage to or corruption of any 3<sup>rd</sup> Party Software, other software, settings, content or data that is installed or stored on the X1 during repair or replacement.

## **7. Transfer of Your X1**

You may sell, give, rent or lend your X1 to another person, provided that you give that person this Agreement at the same time and they agree to this Agreement. You will not sell, give, rent or lend your X1, or otherwise permit any person to use your X1, unless that person has agreed to this Agreement. If you purchased your X1 from a Dealer, you must also give that person proof of your date of purchase of your X1, without which they will not be entitled to submit a claim under the Warranty.

## **8. No Other Representations, Warranties, Conditions or Guarantees**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE WARRANTY PROVIDED UNDER SECTION 4 ABOVE IS YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY, AND LIQUIVISION'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION TO YOU, IN CONNECTION WITH YOUR PURCHASE AND USE OF THE X1, AND IS IN LIEU OF EVERY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF OR RELATING TO ACCURACY; CAPACITY; COMPLETENESS; DELAYS; DURABILITY; ERRORS; FITNESS FOR A PARTICULAR PURPOSE; LACK OF NEGLIGENCE, VIRUSES OR OTHER HARMFUL COMPONENT, ERRORS, OR INTERRUPTED SERVICE; MERCHANTABILITY; NON-INFRINGEMENT; PERFORMANCE; RESULTS; SUITABILITY; QUALITY; TIMELINESS; TITLE; OR WORKMANLIKE EFFORT; ALL OF WHICH ARE HEREBY DISCLAIMED BY LIQUIVISION TO THE FULLEST EXTENT PERMITTED BY LAW.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LIQUIVISION MAKES NO REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE THAT: (A) THE X1 WILL BE COMPATIBLE WITH ANY PARTICULAR 3<sup>RD</sup> PARTY SOFTWARE; (B) THE X1 WILL BE AVAILABLE OR WILL FUNCTION WITHOUT INTERRUPTION OR WILL BE FREE OF ERRORS OR THAT ANY ERRORS WILL BE CORRECTED; (C) DATA PROCESSED BY THE X1 OR ANY 3<sup>RD</sup> PARTY SOFTWARE INSTALLED ON THE X1 WILL BE ACCURATE, COMPLETE, SEQUENTIAL, OR TIMELY; (D) CERTAIN OR ANY RESULTS MAY BE OBTAINED THROUGH THE USE OF THE X1; (E) THE USE OF THE X1 WILL BE FREE OF ERRORS, VIRUSES, TROJAN HORSES, WORMS OR OTHER DESTRUCTIVE OR DISRUPTIVE COMPONENTS; (F) THE USE OF THE X1 WILL NOT INFRINGE THE RIGHTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS) OF ANY PERSON; OR (G) WITH RESPECT TO THE 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER; AND LIQUIVISION DISCLAIMS ANY AND ALL LIABILITY REGARDING SUCH MATTERS TO THE FULLEST EXTENT PERMITTED BY LAW.

#### **9. Exclusion of Damages**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND EXCEPT FOR LIQUIVISION'S WARRANTY OBLIGATIONS UNDER SECTION 4 ABOVE, IN NO EVENT WILL LIQUIVISION BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE ARISING FROM, CONNECTED WITH, OR RELATING TO THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER, OR USE OF THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER, THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT, OR OTHERWISE, INCLUDING LOSS OF DATA, BUSINESS, MARKETS, SAVINGS, INCOME, PROFITS, USE, PRODUCTION, OR GOODWILL, ANTICIPATED OR OTHERWISE, OR ECONOMIC LOSS.

#### **10. Personal Injury or Death**

YOU AGREE THAT YOU UNDERSTAND AND ACCEPT ALL RISKS ASSOCIATED WITH DIVING, AND THAT LIQUIVISION IS NOT LIABLE TO YOU OR ANY OTHER PERSON, INCLUDING YOUR HEIRS, EXECUTORS OR PERSONAL REPRESENTATIVES, FOR ANY LOSS, DAMAGE, COST, EXPENSE OR CLAIM ARISING OUT OF, CAUSED BY OR RELATING TO YOUR PERSONAL INJURY OR DEATH WHILE DIVING, EVEN IF YOUR PERSONAL INJURY OR DEATH IS CAUSED, IN WHOLE OR IN PART AND DIRECTLY OR INDIRECTLY, BY THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER OR YOUR USE OF THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER, AND REGARDLESS OF WHETHER OR NOT THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER FUNCTIONED PROPERLY OR WAS DEFECTIVE IN ANY WAY.

YOU HEREBY IRREVOCABLY WAIVE AND RELEASE LIQUIVISION FROM ANY LIABILITY OR OBLIGATION TO YOU OR YOUR HEIRS, EXECUTORS OR PERSONAL REPRESENTATIVES FOR ANY LOSS, DAMAGE, COST, EXPENSE OR CLAIM ARISING OUT OF, CAUSED BY OR RELATING TO YOUR PERSONAL INJURY OR DEATH WHILE DIVING, EVEN IF YOUR PERSONAL INJURY OR DEATH IS CAUSED, IN WHOLE OR IN PART AND DIRECTLY OR INDIRECTLY, BY THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER OR YOUR USE OF THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER, AND REGARDLESS OF WHETHER OR NOT THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER FUNCTIONED PROPERLY OR WAS DEFECTIVE IN ANY WAY.

#### **11. Limitation of Liability**

IF NOTWITHSTANDING THE PROVISIONS OF SECTIONS 7, 8 AND 9 OF THIS AGREEMENT LIQUIVISION HAS ANY LIABILITY OR OBLIGATION TO YOU IN RESPECT OF ANY MATTER REFERRED TO IN THOSE SECTIONS, LIQUIVISION'S TOTAL CUMULATIVE LIABILITY TO YOU, YOUR HEIRS, EXECUTORS AND PERSONAL REPRESENTATIVES AND TO ANY OTHER PERSON ARISING FROM, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER OR YOUR USE OF THE X1, ANY 3<sup>RD</sup> PARTY SOFTWARE OR THE DRIVER, OR OTHERWISE, FROM ANY AND ALL CAUSE OR CAUSES WILL NOT, IN THE AGGREGATE, EXCEED THE PURCHASE PRICE OF THE X1, AND YOU HEREBY RELEASE LIQUIVISION FROM ANY AND ALL OBLIGATIONS, LIABILITIES, CLAIMS OR DEMANDS IN EXCESS OF THIS LIMITATION.

#### **12. Application of Exclusions and Limitations**

SECTIONS 8, 9 AND 10 SHALL APPLY TO ALL LOSSES, DAMAGES, COSTS, EXPENSES, CLAIMS, LIABILITIES AND OBLIGATIONS REFERRED TO THEREIN, UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY OR ANY OTHER THEORY OR LAW OR EQUITY), REGARDLESS OF ANY

NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR OTHER FAULT OR WRONGDOING BY LIQUIVISION OR ANY PERSON FOR WHOM LIQUIVISION IS RESPONSIBLE, AND EVEN IF LIQUIVISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE BEING INCURRED.

**13. Exception to Exclusions and Limitations**

The exclusion of certain warranties and the exclusion or limitation of certain liabilities is prohibited by legislation in some jurisdictions. Such legislative limitations may apply to you.

**14. References to Liquivision**

In sections 7, 8, 9, 10 and 11, references to Liquivision include Liquivision's past, present and future directors, officers, employees, agents, representatives, successors and assigns.

**15. Interpretation**

In this Agreement: (i) a reference to "this Agreement" and other similar terms refers to this Agreement as a whole, and not just to the particular provision in which those words appear; (ii) "including" means including without limitation; (iii) headings in this Agreement are for reference only and do not define, limit or enlarge the scope or meaning of this Agreement or any of its provisions; (iv) words importing the singular number only include the plural and vice versa; and (v) words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies, and corporations.

**16. Enurement**

The provisions of this Agreement will enure to the benefit of and be binding upon the Liquivision and its successors and assigns and you and your heirs, executors, personal representatives and permitted assigns. You may not assign this Agreement except with your X1 in accordance with section 13 above.

**17. Governing Law and Jurisdiction**

This Agreement and all related matters will be governed, and construed in accordance with, the laws of British Columbia, Canada and applicable federal laws of Canada, excluding the United Nations Convention for the International Sale of Goods and any rules of private international law or the conflict of laws which would lead to the application of any other laws. Any dispute arising from, connected with, or relating to this Agreement or any related matters will be resolved by the courts of British Columbia sitting in the City of Vancouver, British Columbia, Canada and you hereby irrevocably submit and attorn to the original and exclusive jurisdiction of those courts in respect of any and all such matters.

**18. Severability**

If any provision of this Agreement is determined to be unenforceable or invalid for any reason, then that provision will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, unless as a result of any such severance this Agreement would fail in its essential purpose.

**19. Entire Agreement**

This Agreement constitutes the entire agreement between Liquivision and you regarding the subject matter of this Agreement and supersedes any and all previous communications, representations, negotiations, discussions, agreements or understandings, whether oral or written, between you and Liquivision or between you and any Dealer with respect to the subject matter of this Agreement. This Agreement may be modified only by a written instrument signed by Liquivision or its successors or assigns.