

TERMS AND CONDITIONS FIXICOVER – JUNE 2020

- 1. SCOPE.** As used in these “**Terms and Conditions**”, “**Fixico**” is understood to be Fixicover B.V. which has declared to the Buyer (as defined hereafter) that these Terms and Conditions apply in relation to the sale of any Product; “**Buyer**” means the purchaser of Products from Fixicover and “**Product**” means any driver protection shield and all related goods sold by Fixicover to Buyer. All Products sold or otherwise provided by Fixicover are sold or provided exclusively on the basis of these Terms and Conditions. No differing or supplemental terms or conditions shall be applicable unless expressly agreed to by Fixicover in writing.
- 2. OFFER / ACCEPTANCE:** A quotation from Fixicover does not constitute an offer but an invitation to Buyer to make an offer. In all cases Buyer’s offer shall be deemed based on these Terms and Conditions. An agreement comes into effect only when Fixicover accepts Buyer’s offer, either through its webshop or through a separate ‘offline’ agreement.
- 3. DELIVERY / TRANSFER OF RISK:** A Product will be delivered to Buyer per courier. The costs thereof will be charged separately and are therefore not included into the selling price. Risk transfers to Buyer immediately when delivery has been made. Fixicover’s receipt from the courier evidencing such delivery shall be conclusive evidence of delivery of the Product(s). Delivery dates are approximate and are given by Fixicover in good faith but are not guaranteed.
- 4. QUANTITY VARIATIONS:** Buyer will pay for the quantity delivered and – in case of an order of 100 Products or more – may not reject any delivery of Product on the grounds of variation of quantity where such variation is not more than 10% of the quantity ordered.
- 5. RESPONSIBILITIES BUYER:** Buyer is responsible for being aligned with local transportation laws, complying to its insurance agreement(s), seeing if it can safely install and use the Product in any vehicle, obtaining all required licenses and approvals for the admission of the Product to the market and more generally the use and suitability thereof with regards to its intended use. Fixicover bears no responsibility and makes no warranties whatsoever to that respect. Buyer’s failure for any reason to take delivery of any quantity of the Product available for delivery, shall not relieve him from his obligation to pay the price contractually agreed upon for the whole amount of the Product.
- 6. WARRANTY / BUYER’S RIGHTS:** at the time of transfer of risk, the Products sold by Fixicover to Buyer conform to Fixicover’s standard Product specifications as set out on its website www.fixicover.com (“Specifications”). FIXICOVER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, THE APPLICATION OR USE THEREOF, OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT BUYING, INSTALLING AND USING THE PRODUCT IN A VEHICLE GUARANTEES OR WARRANTS FROM PEOPLE BEING CONTAMINATED BY ILLNESSES, EACH OF WHICH IS SPECIFICALLY DISCLAIMED. In the event Products do not comply with the foregoing warranty, Fixicover will, at its option, repair or replace such Products or refund the Price of the Products and, having done so, will have no further liability. Buyer must notify Fixicover of any claim Products do not comply with the foregoing warranty within seven (7) days after Buyer becomes aware of such claim but in no event later than thirty (30) days after delivery of the Product to Buyer. Buyer’s failure to notify Fixicover of any such claim within the time set out in the preceding sentence will constitute a waiver by Buyer of such claim. Fixicover makes no warranty of any kind with respect to any services provided to Buyer and shall have no liability with respect to such services.
- 7. RETURNS:** No Products may be returned for any reason without Fixicover’s written authorization. If Fixicover has expressly agreed to a return, Buyer must return the Products in clean, resalable condition. If returned for reasons other than Fixicover’s error in filling Buyer’s order, the Buyer shall bear the cost for the returning the Products. Buyer will receive a credit in the amount of the billed price of the Products if returned within 90 days of the invoice date. Amount of credit for materials returned

after 90 days is subject to negotiation. Products returned to Fixicover are to be delivered by the Buyer to the location designated by Fixicover.

8. PRICE AND PAYMENT: Unless otherwise agreed by the Parties, the price for the Products will be the price quoted by Fixicover, or as demonstrated on its website www.fixicover.com in case of an online sale. All prices quoted by Fixicover are in US Dollars and exclusive of VAT and any other tax that may apply in respect of the Products. Fixicover will issue invoices to Buyer for all Products sold to Buyer. Buyer shall immediately pay the full price of the Products upon placing the order. The Buyer shall not be entitled to any discounts or set-offs (*verrekening*). If Buyer fails to pay any amounts owed within the agreed payment term, Buyer shall owe the statutory interest rate on the outstanding amount, as referred to in sections 6:119a and 6:120 of the Dutch Civil Code (*wettelijke rente bij handelstransacties*). Buyer shall also owe to Fixicover any reasonable compensation for the extrajudicial costs and for any costs incurred by court proceedings in connection with collecting such claim or exercising its rights.

9. RETENTION OF TITLE: Fixicover retains a security interest in all Products delivered to Buyer to secure payment in full of all amounts due to Fixicover and Buyer shall, upon Fixicover's request, execute such documentation as Fixicover deems necessary to perfect or maintain its security interest in the Products. Title to the Products passes to Buyer (subject to Fixicover's security interest) when the Product is delivered to Buyer. Buyer may sell the Products in the ordinary course of its business, but may not pledge, mortgage or otherwise encumber the Products prior to payment in full of the purchase price.

10. LIMITATION OF LIABILITY: If Fixicover is in default (*verzuim*), Fixicover will accept an obligation to compensate damages insofar as stipulated in this clause. FIXICOVER'S TOTAL, CUMULATIVE LIABILITY IN RESPECT OF BUYER FOR DIRECT DAMAGE OR LOSS SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID BY BUYER TO FIXICOVER PURSUANT TO THE QUOTATION. IN THIS REGARD, A SERIES OF MUTUALLY RELATED EVENTS THAT CAUSE DAMAGE OR LOSS SHALL BE CONSIDERED AS ONE EVENT AND ONE FACT CAUSING THE DAMAGE OR LOSS. FIXICOVER SHALL ONLY BE IN DEFAULT AFTER BUYER HAS SENT FIXICOVER A WRITTEN, PROPER AND DETAILED NOTICE OF DEFAULT (*INGEBREKESTELLING*) AND THE REASONABLE TERM, THAT BUYER HAS GRANTED TO FIXICOVER TO REMEDY THE BREACH, HAS PASSED. FIXICOVER SHALL NOT BE LIABLE FOR ANY INDIRECT DAMAGE OR LOSS, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF DATA, CLAIMS FROM THIRD PARTIES INCLUDING ANY CLAIMS BY THIRD PARTIES CLAIMING THAT THE PRODUCT DID NOT PROTECT AGAINST ANY BODILY INJURY OR CONTRACTING ANY ILLNESS OR VIRUS (INCLUDING CORONA), FINES, PENALTIES OR ADDITIONAL TAX DEMANDS, LOST INCOME OR LOST SAVINGS, REPUTATIONAL DAMAGE OR DAMAGE TO ONE'S IMAGE, OR ANY OTHER INDIRECT DAMAGE OR LOSS OR CONSEQUENTIAL DAMAGE OR LOSS RESULTING FROM OR IN CONNECTION WITH ANY FAILURE BY FIXICOVER TO COMPLY WITH AN OBLIGATION, SUCH AS BUT NOT LIMITED TO LATE DELIVERY OR NON-DELIVERY OR IN CONNECTION WITH ANY UNLAWFUL ACT. Buyer hereby agrees to indemnify, defend and hold Fixicover and its affiliates harmless from all claims, judgments, losses or expenses and any costs (including, but not limited to court costs and attorney's fees) that in any way relate to the execution of the agreement. Notwithstanding clause 11 (defects), Buyer shall only be entitled to any compensation of damages if Buyer reports the damage to Fixicover in writing as soon as possible, but no later than two (2) months after the damage has occurred. The limitation of liability shall not apply if and in so far as such damage or loss was caused by Fixicover's deliberate intent (*opzet*) or wilful recklessness (*bewuste roekeloosheid*). Fixicover will not be liable for any loss or damage caused by Buyer's failure to exercise effective quality control or the failure to store, use or otherwise handle the Products as advised or in accordance with instructions provided by Fixicover.

11. DEFECTS: If the Product has a defect which is attributable to Fixicover, Fixicover will, at its option, repair or replace such Products or refund the Price of the Products and, having done so, will have no further liability. Buyer must notify Fixicover of any defect of the Products within seven (7)

days after Buyer becomes aware of such defect but in no event later than thirty (30) days after delivery of the Product to Buyer. Buyer's failure to notify Fixicover of any such claim within the time set out in the preceding sentence will constitute a waiver by Buyer of such claim.

12. INTELLECTUAL PROPERTY RIGHTS: "Intellectual Property Rights" include copyrights (*auteursrechten*), trademark rights (*merkenrechten*), patent rights (*octrooirechten*) and trade name rights (*handelsnaamrechten*), in respect of any work, including documents, designs and/or other whether or not electronically recorded information. All Intellectual Property Rights of the Products remain with Fixicover or with the third party from whom Fixicover has obtained that right. The Intellectual Property Rights as regards to any work will not be transferred to the Buyer in any manner at all.

13. HEALTH & SAFETY OF WORKERS: Buyer expressly assumes all liability resulting from, or in any way connected with, the possession, handling and/or use by its employees, agents, or clients of the Products. Buyer hereby agrees to indemnify, defend and hold Fixicover and its affiliates harmless from all claims, judgments, losses or expenses and any costs (including, but not limited to court costs and attorney's fees) in any way related to Buyer's or its subcontractor's failure to comply with any of the foregoing.

14. FORCE MAJEURE: Fixicover will not be liable in any respect for failure to perform its obligations if hindered or prevented, directly or indirectly by war (declared or undeclared), national emergency, inadequate transportation facilities, machinery or equipment failure, Fixicover's inability to secure materials, supplies, fuel or power for the manufacture of Product on terms and conditions that are acceptable to Fixicover, fire, flood, windstorm or other act of God, strike, lockout or other labour dispute, order or act of any government, whether foreign, national or local, whether valid or invalid, or any other cause of like or different kind beyond the reasonable control of Fixicover (each a "**Force Majeure**"). Fixicover shall have no obligation to procure any Products from other sources and may allocate its available supply of Products among its customers, buyers, distributors and resellers on whatever basis Fixicover may deem fair and practical. In the event that the duration of a Force Majeure exceeds thirty (30) days or is reasonably expected to exceed 30 days, Fixicover is entitled to withdraw from any obligation it may have to supply the Products to Buyer without the Buyer having any right to compensation.

15. TERMINATION: An agreement with Buyer to deliver Products on the basis of these Terms and Conditions will not oblige Fixicover for the future to take further orders. Fixicover will at all times be entitled to end the relationship. Such termination will never entitle Buyer to compensation.

16. SUBCONTRACTING AND TRANSFER: Fixicover is allowed to deploy third parties to carry out (part of) its obligations under the Agreement, without prejudice to the agreement remaining in place between the Buyer and Fixicover. This includes, but is not limited to, the outsourcing of its invoicing and money collecting activities, in which case the Buyer will be discharged of its payment obligations when it settles its invoice with such third party. The applicability of section 7:404 of the Dutch Civil Code is explicitly excluded. The Buyer shall not be allowed to transfer the rights from the Agreement to a third party without the Fixicover's prior written permission.

17. OTHER: If any of the provisions of the Agreement (including these Terms and Conditions) is null and void (*nietig*) or is declared null and void (*vernietigd*), this shall be without prejudice to the legal effect of the other provisions, and the Parties shall use reasonable efforts to agree to a replacement provision that is legal, valid, and enforceable to achieve so far as possible the intended effect of the illegal, invalid or unenforceable provision.

18. LAW AND DISPUTE RESOLUTION: These Terms and Conditions and all disputes between Fixicover and Buyer are governed by Dutch law. Any and all disputes arising as a result of or in connection with the Agreement and the Terms and Conditions shall be submitted to the competent court in Amsterdam, the Netherlands. The *Convention on the International Sale of Goods* (Vienna 1980) shall not apply.