

**Pathfindr Safe Distancing Assistant.
Terms & Conditions for the Sale of Goods, 05/06/20**

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply to the Contract.

Business Day	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
Calendar Day	means any day of the year (irrespective of whether it is a Business Day or not);
Conditions	means the terms and conditions set out in this document as amended from time to time in accordance with clause 16.1;
Contract	means the contract between Pathfindr and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
Customer	means the person or firm who purchases the Goods from Pathfindr;
Delivery	means the completion of the unloading of the Goods at the Delivery Location;
Delivery Location	means the location as set out in the Order Acknowledgement (or as otherwise agreed in writing between the parties);
Force Majeure Event	has the meaning given to it in clause 13.1;
Goods	means the goods (or any part of them) set out in the Order;
Offline Order	means the Customer's Order for the Goods, as set out in the Customer's purchase order form;
Online Order	means the Customer's Order for the Goods place though the Website;
Order	means either an Online Order or an Offline Order (as the context may require);

Order Acknowledgement Means:

1. in respect of **Online Orders**, Pathfindr's email acceptance of the Customer's Online Order; or

2. in respect of **Offline Orders** either:

2.1 Pathfindr's email of acceptance of the Customer's Order; or

2.2 Pathfindr's email containing a link to Pathfindr's online payment facilities;

Pathfindr means Pathfindr Limited, registered company number 11663771 and whose registered address is at 36 Percy Street, London W1T 2DH;

Specification means the specification of the Goods as set out on the Website at <https://pathfindr.io/products/safe-distancing-assistant>;

Website means Pathfindr's website at <https://pathfindr.io/> as may be updated from time to time.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its personal representatives, successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted and a reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 A reference to writing or written includes email.

2. BUSINESS CUSTOMERS ONLY

2.1 The Customer warrants and represents that in placing an Order it does so as a business customer (that is, either wholly or mainly in connection with a business, trade, craft or profession) and not as a consumer.

2.2 Further, the Customer acknowledges and agrees that consumer regulation (including the Consumer Rights Act 2015, Consumer Protection Act 1987 and the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013) shall not apply to the Contract and that the Customer shall not be able to rely on any right or remedy as may be contained in such consumer regulation.

3. **BASIS OF CONTRACT**

3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3.2 When placing an **Online Order**:

3.2.1 the Customer is to follow the onscreen prompts to place an Online Order;

3.2.2 each Online Order is an offer by the Customer to buy the Goods subject to these Conditions;

3.2.3 Pathfindr's order process allows the Customer to check and amend any errors before submitting its Online Order;

3.2.4 the Customer must check its Online Order carefully before confirming it; and

3.2.5 the Customer is responsible for ensuring that the terms of any Order are complete and accurate.

3.3 When placing an **Offline Order**:

3.3.1 the Offline Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions; and

3.3.2 the Customer is responsible for ensuring that the terms of the Offline Order are complete and accurate.

3.4 Any quotation for the Goods given by Pathfindr shall not constitute an offer. A quotation shall only be valid for a period of 21 Calendar Days from its date of issue.

3.5 Any Order shall only be deemed to be accepted when Pathfindr issues an Order Acknowledgement, at which point the Contract shall come into existence.

3.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3.7 Any descriptive matter or advertising produced by Pathfindr and any descriptions or illustrations contained on the Website (or in any other material it may produce) are produced for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Contract nor have any contractual force.

4. GOODS

4.1 The Goods are described in the Specification.

4.2 Pathfindr reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5. DELIVERY

5.1 Pathfindr shall deliver the Goods to the Delivery Location.

5.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Pathfindr shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Pathfindr with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.4 If Pathfindr fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Pathfindr shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Pathfindr with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.5 If the Customer fails to take or accept delivery of the Goods on the day the Goods are delivered, then, except where such failure or delay is caused by a Force Majeure Event or Pathfindr's failure to comply with its obligations under the Contract:

5.5.1 delivery of the Goods shall be deemed to have been completed at the time delivery was attempted; and

5.5.2 Pathfindr (or any third party instructed by it so to do) shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.6 If five Business Days after the day on which Pathfindr first attempted to make delivery of the Goods and the Customer still has not taken or accepted actual delivery of them,

Pathfindr may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

- 5.7 Pathfindr may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. QUALITY

- 6.1 Pathfindr warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

6.1.1 conform in all material respects with Specification; and

6.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)

- 6.2 Subject to clause 6.3, if:

6.2.1 the Customer, within the Warranty Period, reports any defect to Pathfindr via the support and returns section of the Website at <https://pathfindr.io/products/safe-distancing-assistant/support> within five Business Days of discovering that some or all of the Goods do not comply with the warranty set out in clause 6.1;

6.2.2 Pathfindr is given a reasonable opportunity of examining such Goods; and

6.2.3 the Customer (if asked to do so by Pathfindr) returns such Goods to Pathfindr's place of business at the Customer's cost,

Pathfindr shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 6.3 Pathfindr shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;

6.3.2 the defect arises because the Customer failed to follow Pathfindr's oral or written instructions as to the storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

6.3.3 the Customer alters or repairs such Goods without the written consent of Pathfindr;

- 6.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 6.3.5 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, Pathfindr shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 These Conditions shall apply to any repaired or replacement Goods supplied by Pathfindr.
- 6.7 The Customer may direct any queries about the returns process by emailing Pathfindr at support@pathfindr.co.uk. However, all returns must be made (and will only be accepted, subject to the terms of the rest of this clause 6) in accordance with clause 6.2.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of Delivery.
- 7.2 Title to the Goods shall not pass to the Customer until Pathfindr receives payment in full (in cash or cleared funds) for the Goods and any other goods that Pathfindr has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Pathfindr's property;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
 - 7.3.4 notify Pathfindr immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; and
 - 7.3.5 give Pathfindr such information relating to the Goods as Pathfindr may require from time to time.

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, then, without limiting any other right or remedy Pathfindr may have Pathfindr may at any time:

7.4.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

7.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE

8.1 The price of the Goods shall:

8.1.1 in respect of **Online Orders**, be the price as set out on the Website; and

8.1.2 in respect of **Offline Orders**, shall be the price as set out in Pathfindr's then current price list or as otherwise agreed between the parties in writing and confirmed in the Order Acknowledgement.

8.2 For all Orders, the price of the Goods:

8.2.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Pathfindr at the prevailing rate, subject to the receipt of a valid VAT invoice; and

8.2.2 (unless otherwise agreed in writing between the parties) excludes the costs and charges of packaging, insurance and transport of the Goods, which (if applicable) shall be invoiced to the Customer.

8.3 For all Orders the Customer shall be responsible for the payment of all import charges, levies, taxes and duties as may be payable on the Goods. Pathfindr shall have no liability, whatsoever, to the Customer in this regard.

9. PAYMENT

9.1 In respect of **Online Orders**:

9.1.1 the Customer shall pay for the Goods at the time of placing its Order on the Website and payment shall be by those debit cards or credit cards as identified on the Website; and

9.1.2 Payment for the Goods and all applicable delivery charges is in advance;

- 9.1.3 Pathfinder will not charge the Customer's debit card or credit card until Goods are ready for dispatch; and
 - 9.1.4 if at the point of dispatch, Pathfinder cannot charge the Customer's chosen method of payment, Pathfinder will not dispatch the Goods and will contact the Customer for further instructions.
- 9.2 In respect of **Offline Orders** (unless otherwise agreed in writing between the parties):
- 9.2.1 50% of the total price of the Goods on receipt of the Customer's Order;
 - 9.2.2 50% on notifying the Customer that the Goods are ready for delivery; and
 - 9.2.3 the Customer shall pay each invoice submitted by Pathfinder immediately on receipt.
- 9.3 In respect of all Orders;
- 9.3.1 payments shall be in full and in cleared funds to a bank account nominated in writing by Pathfinder;
 - 9.3.2 time for payment shall be of the essence of the Contract;
 - 9.3.3 if the Customer fails to make any payment due to Pathfinder under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate as set under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time and such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and the Customer shall pay the interest together with the overdue amount; and
 - 9.3.4 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) and Pathfinder may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Pathfinder to the Customer.

10. **PRODUCT RECALL**

- 10.1 Pathfinder may issue a notice to recall or withdraw the Goods from the market (**Recall Notice**) if:
 - 10.1.1 required to do so by law or at the request of any governmental or regulatory authority;

- 10.1.2 the supply or use of the Goods infringes, or may infringe, a third party's intellectual property rights;
 - 10.1.3 the Goods are, or may be, unsafe or otherwise may pose a risk to human health;
 - 10.1.4 the Goods are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
 - 10.1.5 a defect in the Goods may cause harm to Pathfinder's reputation or brand;
or
 - 10.1.6 any other reasonable ground.
- 10.2 The Customer must, at its own cost:
- 10.2.1 comply with any Recall Notice; and
 - 10.2.2 give such assistance as Pathfinder reasonably require to recall or withdraw the Goods from the market, and comply with Pathfinder's instructions about the process of implementing that recall or withdrawal.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in the Contract shall limit or exclude Pathfinder's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 any matter in respect of which it would be unlawful for Pathfinder to exclude or restrict liability.
- 11.2 Subject to clause 11.1, Pathfinder shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 11.2.1 loss of profits;
 - 11.2.2 loss of sales or business;
 - 11.2.3 loss of agreements or contracts;
 - 11.2.4 loss of anticipated savings;
 - 11.2.5 loss of use or corruption of software, data or information;

- 11.2.6 loss of damage to goodwill;
 - 11.2.7 loss of opportunity; and/or
 - 11.2.8 any indirect or consequential loss.
- 11.3 Subject to clauses 11.1 and 11.2, Pathfindr's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the price paid or payable for the Goods under the Contract.
- 11.4 Notwithstanding clause 11.1, the losses for which Pathfindr assumes responsibility and which shall (subject to clause 11.2 and clause 11.3) be recoverable by the Customer include:
- 11.4.1 sums paid by the Customer to Pathfindr pursuant to the Contract in respect of any Goods not provided in accordance with the terms of the Contract;
 - 11.4.2 wasted expenditure; and
 - 11.4.3 losses incurred by the Customer arising out of or in connection with third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by regulators or competent authorities caused by the act or omission of Pathfindr.
- 11.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.6 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies, Pathfindr may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 12.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five Business Days of that party being notified in writing to do so;
 - 12.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the

purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 12.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 12.1.4 the Customer's financial position deteriorates to such an extent that in Pathfinder's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 Without limiting its other rights or remedies, Pathfinder may suspend provision of the Goods under the Contract or any other contract between the Customer and Pathfinder if the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or Pathfinder reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, Pathfinder may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 12.4 On termination of the Contract for any reason the Customer shall immediately pay to Pathfinder all of Pathfinder's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Pathfinder shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

13. FORCE MAJEURE

13.1 **Force Majeure Event** means any circumstance not within Pathfinder's reasonable control including:

- 13.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 13.1.2 epidemic or pandemic (including the current COVID-19 pandemic);

- 13.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 13.1.4 nuclear, chemical or biological contamination or sonic boom;
 - 13.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 13.1.6 collapse of buildings, fire, explosion or accident;
 - 13.1.7 any labour or trade dispute, strikes, industrial action or lockouts;
 - 13.1.8 non-performance by suppliers or subcontractors; and/or
 - 13.1.9 interruption or failure of utility service.
- 13.2 Provided it has complied with clause 13.3, if Pathfindr is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, Pathfindr shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 13.3 Pathfindr shall:
- 13.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event and the date on which it started; and
 - 13.3.2 use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 13.4 If the Force Majeure Event prevents, hinders or delays Pathfindr's performance of its obligations for a continuous period of more than two Calendar Days, Pathfindr may terminate this agreement immediately on written notice to the Customer.
14. **ENTIRE AGREEMENT.**
- 14.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

14.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

14.4 Nothing in the Contract shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

15. **NOTICES.**

15.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

15.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

15.1.2 sent by email to the address specified in the Order Acknowledgement.

15.2 Any notice shall be deemed to have been received:

15.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

15.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

15.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.2.3, business hours means 9.00am to 5.00pm Monday to Friday on any Business Day.

15.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16. **GENERAL**

16.1 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 16.2 Pathfindr may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.3 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Pathfindr.
- 16.4 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 16.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.6 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17. **GOVERNING LAW AND JURISDICTION**

- 17.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 17.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.