

# terms and conditions of sale

## TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale of all products, merchandise and services supplied by X-Playground Pty Ltd (ACN 632 240 789) ("**X-Playground**") and any associated and related companies or businesses and its subsidiaries trading under to any person, firm or company placing an order with X-Playground for the purchase of any Products ("**Customer**"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of X-Playground and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer, or any other contract executed by the Customer and X-Playground. Any supply of products by X-Playground to the Customer made after the date of acceptance of these Terms and Conditions is a supply pursuant to the supply agreement constituted by these Terms and Conditions and the relevant order accepted by X-Playground in respect of any such supply does not give rise to a new or separate Agreement.

### 1. PRODUCTS AND ORDER

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- 1.1 While the information and material contained on the online shop is believed to be accurate and current and we endeavour to keep it up to date and correct, it is provided by us in good faith on an 'as is' basis, and we and our directors, officers, employees, contractors, and agents accept no responsibility for and make no representations, warranties or guarantees, express or implied, to you or to any other person as to the reliability, accuracy, suitability, availability or completeness of such information or material for any particular purpose.
- 1.2 Customers are encouraged to use the content on the online shop as a guide only and inspect the actual products in our introducing shop, LOVEY PATISSERIE PTY LTD (ACN 651 926 313), of Shop 1/642 Doncaster Road, Doncaster Vic 3108 ("**Introducing Shop**"), before placing orders online if possible. Please contact X-Playground or the Introducing Shop for the product availability for inspection beforehand. Pricing, weight, size, dimensions and product features and functions may be incorrect from time to time. X-Playground reserves the right to amend, change or modify such content at any time without notice. X-Playground may, as an option, cancel or remove any product on any order that it deems to contain errors or omissions when purchased. You hereby acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability for such to the fullest extent permitted by law. You read, use and act on information on the online shop, Third Party Information and/or Third Party Sites at your own risk.
- 1.3 Despite the term 1.1, X-Playground guarantees our products' authenticity. If any product sold is deemed inauthentic by the relevant trademark or license owners, we will issue a full refund of the purchase price plus an additional 10% of the price and disburse the returning shipping costs.
- 1.4 You may order from us as set out on the online shop or our introducing shops. We may at our discretion accept or reject an order depending on factors including availability of products and our ability to validate payment for the products.
- 1.5 It is your responsibility to check the order details, including product and pricing before you complete your order on the online shop or at the introducing shops.
- 1.6 We may provide you with order details and receipts, which may include an order number, an order ID, the shipping and billing addresses (as applicable) and a description of what was ordered when you order and make your first or one-off payment (as applicable) on the online shop and that payment has been validated.
- 1.7 A binding agreement comes into existence between you and us once we have given you an order number or receipts. No changes to these Terms will be effective unless we both agree to the changes in writing.
- 1.8 You cannot cancel your order once it has been despatched.
- 1.9 Please be aware that some of the products sold through the online shop may not be suitable for children under a certain age, as specified by the manufacturer on the product or its packaging (**Age Limit**). Use

of such products by children under the Age Limit is not advised. Additionally, for the purpose of product maintenance, please refer to the product user manual or instructions, as specified by the manufacturer on the product or its packaging.

## 2. TERMS OF PAYMENT

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- 2.1 You agree to pay the purchase price specified on the online shop or in the introducing shops, plus any applicable delivery and insurance charges based on the delivery options selected by you. All amounts are stated in Australian dollars. All purchase prices include Australian GST (where applicable). Any delivery and insurance charges will be separately shown.
- 2.2 You must pay for the product by one of the methods set out on the online shop or introducing shops. Your payment will be processed upon receipt of your order. Payment for products purchased is not final until funds have cleared. This means that products will not be provided or shipped until monies have been cleared by the relevant financial institutions, processed and approved by all parties concerned and all financial entities are satisfied that fraud, deceptive, or misleading conduct has not been carried out, and the full purchase amount is received by X-Playground. If your payment is not able to be successfully processed then your order may be cancelled.

## 3. ABILITY TO SUPPLY

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- 3.1 All purchases made with us are subject to availability. We do our best to keep in stock most products that are advertised by us, and to keep the online shop and introducing shops up to date with availability of products.
- 3.2 X-Playground shall not be liable in any way for failure to deliver the products within the stated time and the Customer may not reject the Products nor will they be relieved from any obligation to pay for the Products on account of such failure to deliver within the stated time.
- 3.3 X-Playground shall not be liable for any failure to supply or deliver the products due to strikes, fires, explosions, flood, riot, lock-out, injunction, and interruption of transportation, accidents, war, governmental action or other circumstances beyond X-Playground's control.
- 3.4 If for any reason X-Playground is unable to perform its obligations under the Contract, then X-Playground may at any time by notice in writing to the Customer terminate the Contract whereupon the Contract will be at an end and any money paid by the Customer will be refunded by X-Playground and neither party will have any claim against the other.

## 4. DELIVERY

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- 4.1 The customers may either nominate a postal address for our delivery, or choose to pick up in one of our introducing shops, or picking-up locations as listed below. The Customer authorises X-Playground to deliver product to the place nominated by the Customer and to leave the products at such place whether or not any person is present to accept delivery. X-Playground shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the Customer's nominated delivery address. the customers may nominate their picking up at the introducing shop:
- 4.2 Our delivery service is worldwide. However, if an international delivery is required, we may contact you to confirm your international address and delivery options. We offer International Express as the preferred delivery method. Please contact us as soon as practical if you prefer alternative delivery options.
- 4.3 **Cost:** We offer free pickup options as set out on the online shop. If you are unable to pick up your purchase from our warehouse, a delivery fee will apply, as set out on the online shop.
- 4.4 **Timing:** X-Playground will endeavour to despatch orders as quickly as possible of receiving the order (excluding non-working days in Victoria). Some delays of several days or more are to be expected during peak periods between October and December months. X-Playground is not responsible for late deliveries. X-Playground takes no responsibility for the delay of deliveries caused by any courier or other third party delivering the products. Likewise, X-Playground is not liable for any burden, stress, inconvenience, hardship or financial loss caused by any delays. Customers are advised to place orders well ahead of time to ensure sufficient time for delivery during peak periods to minimise the risk of unexpected delays. We will deliver the product to the place of delivery you specify when making your order.

- 4.5 **Change:** If you need to change a delivery date or the delivery address, please contact us as soon as possible to see if this is possible. If you are not available to take delivery on the agreed delivery date, you may be charged a delivery fee for each additional attempt for delivery.
- 4.6 **Method:** We may deliver the products via a range of delivery methods. You must sign whatever forms, delivery dockets, or consignment notes are presented by the courier prior to acceptance of the purchased products. Refusal to sign or accept delivery from the courier means you risk your order being returned back to X-Playground. Under such circumstances, you acknowledge that shipping and handling fees are payable for any subsequent re-deliveries. You also acknowledge any costs incurred and made payable by the courier in connection with any return or re-delivery will be passed on to you by X-Playground for payment prior to the handling and/or further requests or processing of such order.
- 4.7 **Title:** Title in the products will not pass to you until the later of (i) delivery of the products to you; or (ii) all payments due to be made by you to us in respect of the product being processed or otherwise received in full by us. If your payment is declined for any reason we reserve the right to reclaim the products from your possession, custody or control even if they have been delivered to you or moved from the delivery address. We reserve the right to keep or sell the products. Risk of loss, damage or deterioration to any products will pass to you on delivery.

## 5. WARRANTY AND GUARANTEES

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- 5.1 **ACL:** Certain legislation including the Australian Consumer Law ("**ACL**") in the *Consumer and Competition Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees, and remedies relating to the provision of products or services to you by us via the online shop or introducing shops which cannot be excluded, restricted or modified. Our liability is governed solely by the ACL and these Terms.
- 5.2 **Products:** If you are a consumer as defined in the ACL, the following notice applies to you: "Our products come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (**Consumer Guarantees**). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the products repaired or replaced if the products fail to be of acceptable quality and the failure does not amount to a major failure."
- 5.3 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work are provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and/or fitness for a particular purpose.
- 5.4 The product may come with a manufacturer's warranty. The manufacturer's warranty is in addition to but may overlap with any rights and remedies you may have under applicable law, including any Consumer Guarantees. If you are not considered a "consumer" within the meaning of the ACL, the manufacturer's warranty may be your sole remedy. You should check the manufacturer's warranty, as many manufacturers' warranties do not apply in a business or commercial setting. Please contact the manufacturer if you would like to make a claim under the manufacturer's warranty.
- 5.5 In order to claim under the warranty in term 5.2 you must:
- 1) Within thirty (30) days of any defect arising, notify X-Playground of the defect in writing (**Notification**);
  - 2) Contact the X-Playground supplier within the Warranty Period; and
  - 3) The Notification must include:
    - a) your full name, address and telephone number;
    - b) your original proof of purchase of the item(s) the subject of the defect or Claim;
    - c) a written description of the defect;
    - d) where possible, a photograph of the defect; and
    - e) a written assurance that the Products have not been damaged, incorrectly assembled, installed or operated, negligently treated or misused.
- 5.6 The Notification and contact must be made to The X-Playground via:

- 1) WeChat account (WeChat ID: xplayground\_au); or
- 2) The X-Playground's supplier who supplied the products to you; or
- 3) Email at contact@x-playground.com; or
- 4) an enquiry through our online shop (s) at www.x-playground.com.

5.7 This warranty does not include the cost of transportation to or from X-Playground.

## **6. CANCELLATION AND VARIATION**

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6.1 The Contract may be cancelled/varied by the Customer only with the written consent of X-Playground. To the extent permitted by law, X-Playground may require as a condition of its consent that the Customer pay reasonable charges for such cancellation/variation, which take into account expenses incurred by X-Playground to the date of cancellation/variation, including recompense for any commitments made by X-Playground in consequence of the Order and all other losses both actual and prospective, incurred as a result of such cancellation/variation.

## **7. DISPUTE RESOLUTIONS**

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7.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our products, please contact us. If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- 1) The complainant must tell the respondent in writing the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (Initial Meeting).
- 2) If the Parties cannot agree on how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 3) Any attempts made by the Parties to resolve a dispute pursuant to this term are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

7.2 All complaints must be lodged in accordance with term 9. Notices directly to X-Playground, RATHER THAN any of our introducing shops or collection locations.

## **8. PRIVACY AND CYBERSECURITY**

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8.1 The integrity and security of information between you and our online shop cannot be assured or guaranteed to the fullest extent. Likewise, we cannot and will not accept responsibility for the safekeeping, transmission, and the overall security of information sent to and from our online shop. The Customer should take steps to ensure they are protected by relevant third-party software including, but not limited to, firewall software, anti-virus software, and other security protection software at all times and that such software is properly maintained and updated. The Customer acknowledges that any information accessed or downloaded from our online shop is done so at their own risk.

8.2 From time to time, access to our online shop may be denied during irregular online shop maintenance and/or scheduled repairs, upgrades and enhancements, during unexpected server downtime/failures and systems downtime/failures. X-Playground is not responsible for any access restrictions, delays or interruptions to the online shop whether scheduled or not. We do not warrant that the online shop will be available at all times or at any given time. We may at any time and without notice to you, discontinue the online shop in whole or in part. We are not responsible for any loss, cost, damage or liability that may result from our discontinuance of the online shop.

8.3 X-Playground may, at its discretion, prevent a Customer, or any other person from gaining access to our online shop or introducing shops, for whatever reason it sees fit, through any means/technologies available at its disposal.

- 8.4 Whilst Customers are encouraged and permitted to post reviews, comments, suggestions, questions, ideas, relevant information and other content (collectively 'Reviews', Customers must not post Reviews which are obscene, threatening, or inappropriate, illegal, political or religiously motivated, of poor taste, false or misleading. We reserve the right to amend or delete any and all of your Reviews, and to block you if we believe that there is a violation of these Terms or for any other reason, at our sole discretion.
- 8.5 By making available any Reviews on or through the online shop you:
- 1) grant to X-Playground a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable license to use your Reviews in any way including but not limited to, use, view, copy, adapt, license, distribute, sell, transfer, reproduce, change, communicate the content to the public, broadcast, access, and otherwise exploit such Reviews on, or by means of the online shop; and
  - 2) consent to any act or omission which would otherwise constitute an infringement of your moral rights, and if you add any content in which any third party has moral rights, you must ensure that the third party consents in the same manner.
- 8.6 Reviews posted or uploaded to the online shop are the views and opinions of our Customers. X-Playground does not accept responsibility for the accuracy, or otherwise, of any Reviews by the Customer, and shall not be held legally liable for the content provided. Reviews posted on the online shop are not the views of us, the store, management or our employees.
- 8.7 You agree you are solely responsible for all contents including Reviews you make available through the online shop. If you choose to add any content on the online shop, you represent and warrant that:
- 1) you are the sole and exclusive owner of all Reviews you make available through the online shop or you have all necessary rights, licenses, consents and releases that are necessary to grant to X-Playground the rights in such comments, as contemplated under these Terms; and
  - 2) neither the Reviews, nor the posting, uploading, publication, submission or transmittal of the Reviews or our use of the Reviews (or any portion thereof) on, through or by means of the online shop will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 8.8 X-Playground is a responsible and ethical commercial business and we agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988 (Cth)* and any other applicable legislation or privacy guidelines. We value your privacy and will ensure, to a level reasonably expected, your personal information is handled appropriately and protected at all times. Please read our Privacy Policy which is available here. By agreeing to these Terms, you agree to accept our Privacy Policy.
- 8.9 This online shop may contain third party information, including but not limited to Reviews, guest articles, and advertisements (**Third Party Information**). We do not control, recommend, endorse, sponsor or approve Third Party Information. You should make your own investigations with respect to the suitability of Third Party Information for you.
- 8.10 This online shop may contain links to online shop owned by third parties (**Third Party Sites**). Third-Party Sites provided for your convenience only. We do not control, recommend, endorse, sponsor or approve Third Party Sites, including any information, products or services mentioned in Third Party Sites. Use or reliance on any Third Party Sites and their content are at your own risk. You should make your own investigations with respect to the suitability of Third Party Sites for you.
- 8.11 We will provide a confirmation of profile registration when you register on the online shop ('**Profile**'). The Customer is responsible for the accuracy of its Profile details. Where a Customer's contact information is inaccurate, X-Playground may decline, refuse, cancel, delay or postpone the processing of the Customer's order without notice. Failure by the Customer to update or provide accurate Profile details may result in the loss/delay of deliveries by our courier and/or risk having the Customer's payment declined by its financial institution. X-Playground is not responsible for any matters arising as a result of inaccurate information provided by the Customer.
- 8.12 It is the Customer's responsibility to keep its Profile details confidential. The Customer is liable for all activity using its Profile, including purchases made when using their Profile details.
- 8.13 X-Playground is committed to ensuring that your information is secure. In order to prevent unauthorised access or disclosure, we have put in place suitable physical, electronic and managerial procedures to



safeguard and secure your information and protect it from misuse, interference, loss and unauthorised access, modification and disclosure. However, no information transmitted over the internet can be guaranteed to be secure. The transmission and exchange of information is carried out at your own risk. Although we take measures to safeguard against unauthorised disclosures of information, we cannot assure you that your information will not be disclosed. For more information on how we protect your information, please see our Privacy Policy which is available on the online shop.

## 9. NOTICES

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- 9.1 A Notice or other communication connected with these terms and conditions ("Notice") has no legal effect unless it is in writing. In addition to any other method of service provided by law, the Notice may be sent by prepaid post to the address of the addressee set out in the Contract or subsequently notified; sent by facsimile to the facsimile number of the addressee; sent by email to the email address of the addressee; or delivered at the address of the addressee set out in the Contract or subsequently notified.
- 9.2 If the Notice is sent or delivered in a manner provided by clause 9.1, it must be treated as given to and received by the party to which it is addressed:
- 1) if sent by post, on the second Business Day (at the address to which it is posted) after posting;
  - 2) if sent by facsimile or email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
  - 3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

## 10. GOVERNING LAW

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- 10.1 The These Terms are governed by the laws of Victoria and the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts operating in Victoria.

## 11. INTELLECTUAL PROPERTY

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- 11.1 The trademarks, names, logos and service marks (collectively "**Trademarks**") or any products displayed on the online shop and introducing shops are owned by or licensed to us and are protected by Australian and international laws, including but not limited to the text, images, logos, buttons, audio, video, software, content design, trademarks, trade names, graphics, appearance, layout and look of our online shop and products ("**Materials**").
- 11.2 You agree that, as between you and us, nothing in these Terms constitutes a transfer of any intellectual property rights. Your purchase of our products does not grant you a license to or act as a right to, use any of the intellectual property, whether registered or unregistered, displayed on the online shop or any of the introducing shops without prior our written permission or the owner.
- 11.3 You must not breach any copyright or intellectual property rights connected with the online shop. This includes but is not limited to:
- 1) altering or modifying any of the code or the material on the online shop or introducing shops;
  - 2) causing any of the material on the online shop or introducing shops to be framed or embedded in any other online shop or introducing shops;
  - 3) creating derivative works from the content of the online shop ; or
  - 4) using the online shop for commercial purposes.
- 11.4 You are prohibited from transmitting, broadcasting, editing, adapting, or making use of any intellectual property, trademarks, logos or copyright material without the expressed written permission of X-Playground.

## 12. TRANSFER

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- 12.1 You must not assign any rights and obligations under these Terms, whether in whole or in part, without X-Playground prior written consent.

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## **13. INDEMNITY**

- 13.1 You indemnify us from and against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) resulting from your breach of these Terms. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our products and/or online shop including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us. The obligations under this clause will survive termination of these Terms.

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## **14. CHANGE TO THE TERM AND CONDITION**

- 14.1 X-Playground reserves the right to make changes and amendments to these Terms and Conditions from time to time without prior notice. Your use, access or purchase from us following any such amendments will be deemed to be confirmation that you accept those amendments. We recommend you check the Terms regularly to ensure you are aware of any changes, and only proceed to use the online shop if you accept and will comply with the new Terms.

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## **15. RETURN AND EXCHANGE**

- 15.1 Product returns cannot be made by the Customer without the prior knowledge and approval of X-Playground. If you wish to seek repair, replacement or a refund for a product, please contact us and we will explain the requirements to you. This may include you providing proof of purchase, evidence of the faulty product to us and the address to which the returned products should be posted. Please note that NONE of our introducing shops or collection locations process your return, exchange applications or complaints lodgement.
- 15.2 The total refund amount will be the purchase price of the product less the actual shipping costs incurred by us in respect of such product, as determined by actual shipping costs. Any refund we make will be by the same payment method used to purchase the product. If a product is found not to be defective, we will return the product to you.
- 15.3 Returns received in a damaged state will not be accepted. Unless a product is faulty or defective under the manufacturer's warranty, it will not be accepted by X-Playground in an opened or used state. This includes the removal of any product seals, shrink wrapping, protective materials, stickers or product attachments and/or accessories.
- 15.4 Specially-ordered or custom-made orders placed by Customers may not be returned for refund or exchanged.
- 15.5 Products that have been returned under warranty and are deemed by X-Playground to be misused, abused, or subject to inappropriate handling will not be accepted for refund or exchange.
- 15.6 X-Playground may, at its discretion, refuse any refund and return application simply because of your change of mind despite that the returned products arrive undamaged and in 'sale-able' condition.
- 15.7 You have a duty of care for the product while it is in your possession. If you damage products then subsequently return the products, you may be liable to pay to repair the product to its original condition. In these circumstances, where a repair is not economically viable, no refund will be made.

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## **16. LIABILITIES**

- 16.1 To the fullest extent permitted by law, X-Playground excludes all express or implied representations, conditions, guarantees and terms relating to the products and services, the online shop and introducing shops and these Terms, except those set out in these Terms, including but not limited to:
- 1) implied or expressed guarantees, representations or conditions of any kind, which are not stated in these Terms;
  - 2) the products being unavailable in the online shop or introducing shops; and
  - 3) any loss, liability, costs including legal costs, damage or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue,

production, opportunity, access to markets, goodwill, reputation, use of any indirect, remove, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on your information systems or cost of replacement of products, or otherwise, suffered by you or any third party or claims made against you, arising out of or in connection with the online shop, your inability to access or use of the online shop, the products, the services, the late supply of products, or these Terms, even if we were expressly advised of the likelihood of such loss or damage.

16.2 Our total liability arising out of or in connection with the products, the services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by you for the purchase of products and/or services under these terms.

16.3 This clause will survive termination of these Terms.

## **17. LOSS OR DAMAGED PRODUCTS**

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17.1 If your products are damaged upon receipt of delivery, you are required to notify X-Playground of any claims, regarding replacement, within seven (7) days of receipt. X-Playground will provide assistance with respect to the return, costs, and dispatch of any replacement products. In the event that replacement products are unavailable or out of stock, at the discretion of X-Playground, we may permit substitute products or issue a refund. X-Playground accepts no responsibility for any delays that may arise from the return of the damaged product to our store or the subsequent delivery of replacement products to the Customer.

17.2 A product can only be deemed as lost or stolen during delivery by the carrier/courier responsible for the delivery of such a product. X-Playground cannot provide any remedial action until a proper investigation by the carrier/courier is concluded and the product is deemed by them to be lost or stolen. Such investigations can take as long as 10 to 14 days. X-Playground will not accept any claims for lost or stolen products which are made more than 30 days after the order date of such products.

## **18. MISCELLANEOUS**

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18.1 If any condition of a Customer's Order, or any contract executed between the customer and X-Playground, conflicts with or purports to vary these conditions, then these conditions shall prevail to the extent of any inconsistency or variation unless otherwise agreed upon in writing.

18.2 The only terms and conditions binding on X-Playground are those contained herein or otherwise agreed to in writing by X-Playground and those, if any, which are imposed and which cannot be excluded by law.

18.3 If anything in these terms and conditions or the Contract is unenforceable, illegal or void then it is severed and the rest of these terms and conditions and the Contract remain in force.

18.4 These Terms and Conditions are not to be construed to the disadvantage of the party because that party was responsible for its preparation.