

2023

# TERMS & CONDITIONS

**SHAPE**  
OBSTACLES



**PMC GmbH**

Thalerhofstraße 5  
8141 Premstätten  
Austria

+43 677 62 66 80 35  
office@pimpmycable.com



# CON TENT

1. **Scope**
2. **Contract language**
3. **Applicable laws and jurisdictions**
4. **Nature and purpose of business**
5. **Conclusion of contract**
6. **Prices, shipping costs, payment, and default**
  - 6.1 **Sale**
  - 6.2 **Rental**
  - 6.3 **Lease-purchase (optional)**
  - 6.4 **Payment and default**
  - 6.5 **Price adjustment**
  - 6.6 **Additional efforts**
7. **Delivery and performance**
  - 7.1 **Sale**
  - 7.2 **Rental**
8. **Obligation to inform**
9. **Retention of title during sale**
10. **Transfer of Risk**
11. **Warranty**
12. **Manufacturer guarantee**
13. **Liability**
14. **Insurance of features**
15. **Charging for features**
16. **Notes on safety & usage**
  - 16.1 **General Information**
  - 16.2 **Rental**
17. **Force Majeure**
18. **Severance clause**

## **1. SCOPE**

The terms and conditions of PMC GmbH, Thalerhofstraße, 8141 Premstätten FN 574657 i (hereinafter referred to as "PMC") are effective as of the time an order between PMC and its commercial customer is concluded. They are valid for all contractual agreements.

By placing an order or by confirming of an official PMC offer, the customer agrees to these terms and conditions. The terms and conditions apply to all future transactions, even without express agreement. Changes and additions to the Terms and Conditions, including verbal agreements which deviate from the content of these terms and conditions, are only effective if confirmed in writing by PMC. All agreements, subsequent modifications, additions, additional agreements, etc. are only valid if confirmed in writing. This also applies to deviations from this written agreement.

PMC expressly rejects any general business or purchase conditions set out by the customer. Deviations from the PMC terms and conditions that are submitted by customers shall not be valid unless their validity has been expressly agreed in writing. The terms and conditions available on the PMC website [www.pimpmycable.com](http://www.pimpmycable.com). They are printable and can be saved as a PDF file.

## **2. CONTRACT LANGUAGE**

These terms and conditions were originally produced in German. The English language version is a translation. The German language version should always be referred to in cases of dispute. All legally binding/official information and communication is offered in German.

## **3. APPLICABLE LAWS AND JURISDICTIONS**

This Agreement, which includes these Conditions and attached contracts, are subject to Austrian Material Law. Exclusions apply for the United Nations Convention on Contracts for the International Sale of Goods (CISG), unless mandatory rules of the law of the State in which the customer - if simultaneously a consumer - have stay to proceed. Exclusive jurisdiction is granted to the competent court in Graz.

## **4. NATURE AND PURPOSE OF BUSINESS**

PMC rents features for the operation of wakeboard and water ski facilities (rental) and sells water fun parks (sales) exclusively to commercial customers. PMC also rents and sells used features and water fun parks. Depending on the contract agreed, individual provisions apply depending on whether a rental or sale has been concluded. Where there is doubt or no corresponding provision, the provisions of the sales contract are to be applied.

## **5. CONCLUSION OF CONTRACT**

All PMC offers are invitations to the customer to make an offer for the sale or rental of goods.

All PMC offers are subject to change. Written offers from PMC are only binding if this was so declared. Contracts can only be concluded through the confirmation of PMC or through delivery by PMC.

Information offered in catalogs, price lists, brochures, advertisements, exhibition stands, newsletters, mail, or other media (information) about PMC goods services is not binding unless expressly declared in writing in the form of a contract.

Estimates are, unless otherwise agreed, created without guarantee and payment.

## **6. PRICES, SHIPPING COSTS, DELIVERY DATES, AND DEFAULT**

### **6.1 SALE**

All prices offered by PMC (including those in estimates) are net prices excluding VAT or value added tax, unless otherwise specified. Packaging, transport, loading, shipping costs, and taxes are not included in these rates, unless otherwise specified. Packaging, transport, loading/ shipping costs, as well as customs charges, are calculated according to cost and effort to PMC.

If a discount has not been agreed, the customer is not entitled to a discount. The purchase price is payable upon placement of the order by the customer, unless otherwise agreed.

### **6.2 RENTAL**

The rent for features shall be the amount stated by PMC in the customer agreement. Rent is paid by the customer (renter) into the account of PMC (owner) into the bank account at Krentschker & Co AG.

IBAN: AT46 3818 3000 0062 6929, BIC: RZSTAT2G133.

-100% of the (first) annual total rent must be paid in advance immediately (within no more than 5 days) upon conclusion of the agreement.

For contract terms longer than one year, the full year's rent paid must be paid in full once annually in advance. Payment date for the first year and any subsequent years is always calculated from the date of the bilateral signing of the agreement. Provision is made for a 7 day credit margin.

### **6.3 LEASE-PURCHASE (OPTIONAL)**

The customer also has the option to purchase the rented feature after the agreed lease term has expired. After expiration of the lease term for the leased object, and the payment of the residual value amount specified in writing between PMC (into the aforementioned account of PMC) the property rights are passed to the customer (renter). Further details to this transaction are specified and agreed to in the written agreement between PMC and the customer.

## **6.4 PAYMENT AND DEFAULT**

PMC accepts the following payment options:

- Direct transfer (Sofortüberweisung)

Recipient details are provided to the customer alongside the order confirmation.

In cases of default, interest at the statutory rate of 9.2% will be charged over the base rate of the Austrian National Bank, calculated from the due date. Furthermore, in case of default, additional compensation for recovery costs will be charged a flat rate of € 40.00. Further legal claims are unaffected by the payment of default penalty charges. Dissatisfaction with the goods does not entitle the customer to withhold the purchase price owed to PMC. The offsetting of claims against the claims of PMC is inadmissible if the claim is not established beyond dispute or not legally related to the obligations of the customer. In cases of non-payment by the customer, PMC also has the right - following a set period for the elapsed Payment time - to cancel the contract and / or claim damages for non-fulfillment of the contract. In cases of voluntary withdrawal of goods ordered, PMC is entitled to demand compensation for expenses relating to use and depreciation.

These claims are calculated as follows:

- 10% of the purchase price as compensation for business costs.

- in cases in which the goods ordered are withdrawn within the first year: 60% of the purchase price, within the second year: 90% of the purchase price. The customer has the right to demonstrate to PMC, against the aforementioned rates, that only minor damages have been accrued.

## **6.5 PRICE ADJUSTMENT**

PMC reserves the right to increase prices when the agreed delivery period will last longer than four months. The new price shall be in line with cost increases due to tariff charges or material price increases, etc.. If the price increase is more than 5% of the agreed price, the customer has the right to withdraw from the agreement. Notice of withdrawal must be made within 14 days of the notification regarding the increased price, otherwise the price increase will be deemed accepted.

## **6.6 ADDITIONAL WORK**

Specific works on ordered goods (e.g. special paint, printing with advertising, promotional remodeling, construction, and installation work) will be invoiced separately by PMC. Charges are payable immediately after delivery. The payable sum for additional work is calculated according to the offer from PMC or through an agreed hourly rate.

# **7. DELIVERY AND PERFORMANCE**

## **7.1 SALE**

PMC must execute the order without undue delay. The dispatch of the ordered goods will take place - if the product is in stock - within 10 working days of receipt of payment unless otherwise specified. Orders will be shipped only after full payment by the customer. The standard delivery time of 13 weeks and is intended as a guideline. PMC is responsible for initiating and organizing the delivery of goods ordered to Austria from other countries. However PMC is not the delivery provider. PMC will perform - subject to proper and timely delivery - the (further) delivery of goods to the customer. Further details regarding delivery dates and conditions - in addition to other agreements, amendments, etc. - are included in the information provided by PMC at the time of order confirmation to the customer and are separately agreed in writing. If the customer requests, the delivery by PMC will be covered by transport insurance. All costs are borne by the customer. If ordered goods are not in stock, PMC will inform the customer about the expected delivery date via e-mail. In this case, given dates and delivery dates are approximate and are intended as a guideline, unless expressly described as binding in writing. The customer's delivery address and the clarification of all technical issues (including compliance with customer obligations) are deemed as requirements for delivery, unless otherwise agreed. PMC reserves the right to send multi-unit orders separately or collectively at its own discretion, including if the full amount of ordered goods are not available simultaneously.

If the delivery includes installation services, the customer must ensure that the installation site is prepared by the contractually agreed delivery date and is freely accessible for staff and / or contractors appointed by PMC. Deviation from the above will result in additional costs to be borne by the customer.

PMC is entitled to engage subcontractors. PMC assumes liability for delays in deliveries performed by PMC. Compensation of 3% of the delivery value is payable for each week of delay in this case. Compensation paid for delays must not exceed 15% of the delivery value.

## **7.2 RENTAL**

### **7.2.1 PROVISION OF FEATURES**

PMC shall provide features only after full payment by the customer. Further details about delivery dates and terms are included in the information provided by PMC at the order confirmation stage, and are agreed to by the customer separately and in writing.

PMC guarantees that the features for the agreed rental period are within the free power of disposal of PMC. No third parties shall have claims of ownership that would preclude a rental. If features are not in stock or not ready, PMC will inform the customer about the expected delivery date via e-mail. In this case, given dates and delivery dates are approximate and are intended as a guideline, unless expressly described as binding in writing. Unless otherwise agreed, the customer address is considered a requirement for delivery.

### **7.2.2 RENTAL PERIOD**

The rental of features is offered for a fixed period of time, which is agreed with the customer separately in writing. The customer waives the right to terminate the contract for the duration of this contract period.

### **7.2.3 RETURNS**

The customer shall prepare features for collection 2 weeks before end date of the rental period, so that collection by PMC at the customer address is possible. The customer must, in writing, inform PMC that the goods are ready for collection. PMC will collect the features before the contract end date. PMC will inform the customer of the exact collection date in verbally or in writing. Features will be in an orderly and clean condition at the time of collection. The customer will ensure that features are returns in the state in which they were accepted, allowing for "normal wear"

## **8. OBLIGATION TO INFORM**

The customer has the obligation to communicate all necessary performance information to PMC truthfully and without omission. All changes, particularly changes in customer details (name, address, e-mail) should be brought immediately to the attention of PMC.

## **9. RETENTION OF TITLE DURING SALE**

Purchased goods remain the property of PMC until all claims arising from the contract: including interest, unjustifiably withheld payment, deductions not recognized by PMC, costs incurred, etc. for whatever legal reason whatsoever, are paid.

While PMC retains a title and until all claims have been settled in full, the customer agrees to treat all goods with care and to observe the proper due diligence. Deposits and down payments before the complete payment are do not contradict PMC's right to a title. If goods are seized, confiscated, or accessed in any other way by third parties, the customer shall refer to the ownership of PMC, inform them of the event immediately, and transmit all information and documents necessary for the enforcement of property rights to PMC.

## **10. TRANSFER OF RISK**

The risk of accidental loss and accidental deterioration of goods is transferred to the customer as soon as the goods are handed over by the courier or supplier (EXW).

## **11. WARRANTY**

The customer must check the goods / rental equipment (features) immediately upon receipt and service. They must check of performance, completeness, and order compliance. Visible defects must be noted immediately upon proper inspection, hidden defects within 8 days of receipt, other defects within one week of discovery. Information must be transmitted in writing and contain a detailed description of the defect. Through the absence of complaint, work is considered accepted and all warranty claims excluded. Following complaint, the provisions of warranty law are applicable. For corporate customers, PMC accepts a warranty period is agreed of one year. Second-hand products are not subject to warranty or guarantee. The customer must prove that the defect was present at the time of delivery. The customer agrees to give PMC 2 attempts to fix the defect. If improvement or replacement is impossible, or would involve a disproportionate effort by PMC, or if PMC cannot comply within a reasonable time, PMC may reduce prices or annul the agreement. Used features and goods are expressly excluded from the warranty. PMC assumes no responsibility for defects and deficiencies in this case. In all cases, the warranty for material and legal defects - whether relating to used or reconditioned goods is excluded if:

- a) the product was subject to misuse by the customer (e.g. anchor usage, incorrect air pressure, or inappropriate towing of the product)
- b) goods were used on land or in insufficient water depth,
- c) damage occurred through collision, surf damage, theft, wind, vandalism, or when changing or altering the product design,
- d) damage occurred through environmental influences such as acid rain, salt water, storms, high waves, snow, ice, chemical or biological agents, inc. rust,
- e) damage of the goods was the result of insufficient care,
- f) damage is attributed to normal wear, fading of colors, blunting of the material, or deformation
- g) damage was caused by the aging of metal or other structures within the framework of usage, especially trampoline parts.

## **12. MANUFACTURER WARRANTY**

If a manufacturer has issued a voluntary commitment that its goods will function correctly for a certain period (manufacturer's warranty) the relevant guarantees of the respective manufacturers may be observed. Conditions and restrictions of the respective manufacturer's warranties are given in the respective warranty conditions. For goods and features that were replaced within a goodwill exchange, a new warranty is excluded.

## **13. LIABILITY**

PMC is not liable in any case for injuries in which culpability or negligence can be established. Liability is limited to the fair market value of the goods ordered by the customer, or the value of the PMC service to be provided. Liability for property damage in cases of slight negligence is excluded. PMC is liable only for typical and foreseeable damages, i.e. those that can be reasonably identified at the point the contract is agreed. Claims arising from consequential damages, damages for which the customer can obtain insurance coverage, from circumstances

controlled by the customer, and claims from any other indirect damages and losses or profits and general financial losses, especially from poor, of non- or late performance, are expressly excluded. Compensation claims expire within six months from acknowledgement of damage and identification of the damaging party. All compensation is governed by the statutory limitations according to Product Liability Law. A recourse liability as defined in §12 PHG is excluded, unless the claimant proves that the error was caused in in the sphere PMC's actions and has been at classified as at least gross negligence.

#### **14. INSURANCE OF FEATURES**

Features must be insured for the period of rental by the customer and at the customer's cost. The customer must assure cover for the entire rental period against theft, vandalism, etc. as well as for comprehensive cover for depreciation, replacement, etc. Coverage must apply to all natural hazards - including fire (fire insurance is therefore included for outside and/or interim storage of the rental object).

PMC may demand proof of the insurance from the customer relating to coverage against any of the aforementioned events. All insurance documents relating to the coverage of features (copies of relevant insurance policies / insurance certificates / other evidence) must be transmitted to PMC immediately and in writing. The transport of the features to customers - and the return transport - is carried out by PMC via a transporter / courier, which itself has a correspondingly sufficient transport liability insurance. For this purpose, the customer does not need to organize coverage itself. However, the customer has - at its own expense - to provide coverage for damages accrued during unloading (upon delivery), as well as for loading (return transport).

The construction and dismantling of the features - at the customer's facility - must be insured exclusively by the customer and at the customer's own expense. This process must be performed on the basis of the manufacturer of the features' instructions and also in accordance with all other safety regulations and guidelines. Customers must comply with the manufacturer's usage guidelines without deviation. Similarly, the customer has the responsibility to ensure proper use by its own customers, and to ensure the safety of all people and exclude damage to property in relation to use of the features.

By mutual agreement between the parties - and applicable only between the parties as set - PMC expressly and generally rejects liability for all damages to persons or property which may occur during the rental and use of features for the entire rental period. Any such liability of PMC - and this both to the customer, as well as its employees and customers etc - is considered excluded by mutual agreement. The customer must, in this respect, maintain PMC's freedom from damages and prosecution.

Furthermore, the customer assumes sole liability only himself - and all related costs - regarding the overall operation of the wakeboard and water ski lift system. Furthermore, with respect to the features (and the further duration of the subject lease) - the customer must purchase a correspondingly sufficient (corporate) liability insurance, which must continue to be upheld throughout.

#### **15. CHARGING FOR FEATURES**

If payments must be made to local tax authorities in relation to the charging for feature rental and any other subject of the underlying contract (lease), this is solely the responsibility of the customer. The customer must assume responsibility for all related costs. PMC is, in this respect, not required to assume responsibility for payment. If PMC is subject to charges or consequences of claimed payments, the customer must, in this respect, maintain PMC's freedom from damages and prosecution.

#### **16. NOTES ON SAFETY & USAGE**

##### **16.1 GENERAL INFORMATION**

The goods delivered by PMC leased features are to be handled and used according to the user manual or instructions. Responsibility for observing the manual or instructions regarding handling or operation of the delivered goods or the rented features belongs solely to the customer.

For transport reasons, PMC delivers goods unassembled. The customer must assemble the goods according to the supplied installation instructions. PMC makes no guarantees for the safe use of goods ordered. In addition, the anchoring of the goods ordered must be performed by the customer, as certain environments may require different anchoring techniques.

The customer is responsible for checking the ordered goods before each use, and for all maintenance. This includes the review of all screws and ensuring that no parts are assembled or placed incorrectly. Specific products have a direction of travel. The customer has to ensure that such products are used only in the intended direction of travel, otherwise serious injury may occur. PMC assumes no responsibility in such cases.

##### **16.2 RENTAL**

During the rental period, the features may only be operated by the customer, and only for the purposes of wakeboarding & waterskiing, at the address registered by the customer with PMC.

Therefore, the customer is not entitled to sub-let any features. During the contract period, the customer may not transfer the features - against payment or free of charge - to a third party, in particular not to other wakeboarding & water ski lift operators. The customer has to handle the features, as far as is reasonably possible, with care, so that damage or excessive wear is avoided.

The customer is not - without prior (written) consent / agreement of PMC - permitted to re-label the features. The customer is for the duration the entire contract period - at their own expense - obliged to commission service and maintenance work by the manufacturer in the scope of the feature's recommended service and maintenance work plan. All repairs must be made properly and immediately.

In cases of damage to the features, the customer must fulfill all the conditions laid down in these Terms and Conditions accurately, and communicate immediately with PMC in the event of any damage to the features, in order to receive instructions regarding repair of the features. Deductibles incurred in relation to the features on with insurance providers must be covered at the expense of the customer.

The customer agrees to pay any further costs relating to the features incurred over their operating liability, in addition to all risk insurance premiums, on time, so that no interruption of coverage occurs. PMC can - if cases of doubt - otherwise at any time - request evidence of insurance cover from the customer.

## **17. FORCE MAJEURE**

Force majeure or other unforeseeable events absolves PMC of its duty of compliance with the agreed commitments. Force Majeure covers operational and traffic disturbances, improper performance of subcontractors, transport disruptions, or stoppages in production. For the duration of the disturbance, PMC is exempt from its obligation to provide the service and the customer is not entitled to claim for a reduction in price or other compensation.

## **18. SEVERANCE CLAUSE**

The invalidity of any provision of these Terms does not affect any other provisions or agreements. The invalid provision must be replaced by an economic equivalent or similar provision.

**PMC GmbH**

Thalerhofstraße 5 • 8141 Premstätten • Austria

+43 677 62 66 80 35 • office@pimpmycable.com • www.shape-obstacles.com

