

# TERMS OF USE

## 1. Scope of Application

1.1. The following Terms of Use (hereinafter "**TOU**") govern all contracts concluded between Berlin Phil Media GmbH, Leipziger Platz 1, 10117 Berlin, represented by its Managing Director Olaf Maninger and Maximilian Merkle (hereinafter "**Berlin Phil Media**") and the customer regarding goods and gift vouchers (hereinafter "**products**") offered at [www.shop.berliner-philharmoniker.de](http://www.shop.berliner-philharmoniker.de) or [www.berliner-philharmoniker-recordings.com](http://www.berliner-philharmoniker-recordings.com). Further information regarding the identity (commercial register number, legal representation) and the contact details of Berlin Phil Media can be found in the provider identification.

1.2. The following terms of use, the privacy policy and the order confirmation constitute the entire agreement made by Berlin Phil Media and the customer. Differing or additional provisions of the customer do not apply, even if Berlin Phil Media does not object to them explicitly. Contractual languages are German and English.

1.3. This TOU are available for viewing in pdf format at [https://www.berliner-philharmoniker-recordings.com/content/agb\\_bphil-recordings\\_en\\_20230104.pdf](https://www.berliner-philharmoniker-recordings.com/content/agb_bphil-recordings_en_20230104.pdf) and can be saved. The customer shall be entitled to print out the TOU.

## 2. Subject of Performance, Conclusion of Contract

2.1. At [www.shop.berliner-philharmoniker.de](http://www.shop.berliner-philharmoniker.de) and [www.berliner-philharmoniker-recordings.com](http://www.berliner-philharmoniker-recordings.com) Berlin Phil Media offers products for purchase. The presentation and advertisement of the products is non-binding and does not constitute a binding offer to conclude a contract of sale.

2.2. The customer can place an order as registered customer of the Digital Concert Hall or as guest. The customer insures that all data (e.g. name, address, email address, bank details) entered during registration or when ordering is correct and that he has not used data of a third party. The customer shall inform Berlin Phil Media immediately of any changes to the data. According to the terms of use of the Digital Concert Hall, the customer is liable for the misuse of access data by third parties if he is to be held responsible. As a result, the customer may have to pay for products which he himself did not order.

2.3. To order a product the customer first chooses the article by clicking the button "ADD TO CART" and "BUY NOW". This process does not constitute a contractual offer. The desired product will merely be booked. Even when the button "PROCEED TO CHECKOUT" is clicked, the offer is still not binding. The customer then enters his order details (invoice address, delivery address, delivery type, type of payment e.g.).

2.4. The customer only makes a binding offer to conclude a contract of sale by clicking the button "ORDER WITH OBLIGATION TO PAY". Before placing the order, the customer is provided with the summary of the content of the order (including product name, unit amount, price, postage costs) and his ordering data on an overview website. By using the change buttons on this website the customer can correct all data provided for the order.

2.5. On receipt of the order the customer will receive an automatically generated email from Berlin Phil Media confirming the receipt of the order and its content. The receipt confirmation does not

constitute the acceptance of the contract. The contract is concluded only when an order confirmation or the product itself has been sent to the customer.

2.6. Berlin Phil Media will only enter into contractual relationships with full-aged persons who are legally competent.

### **3. Music Downloads**

3.1. At [www.shop.berliner-philharmoniker.de](http://www.shop.berliner-philharmoniker.de) and [www.berliner-philharmoniker-recordings.com](http://www.berliner-philharmoniker-recordings.com) Berlin Phil Media offers digital music recordings via music downloads to the customer (hereinafter “downloads”), either as a package together with physical image or sound carriers (hereinafter “product package”) or as a music download only (hereinafter “download only”). The available file formats for download are stated in the respective product description.

3.2. The order process generally corresponds to the purchase of a conventional product (cp. cl. 2 above). For downloads, however, a registration is compulsory. The customer either may choose a new registration or may use an existing Digital Concert Hall account. After payment, the download is made available to the registered customer in the user account in the section “My downloadable products”. Subject to the provisions of cl. 3.4, the download may be repeated any number of times.

3.3. When purchasing a product package, the customer receives an individual online code. This online code must be entered when ordering the download (cp. cl. 3.2 above) under the provided download link, which reduces the purchase price to the amount of € 0.00. After the customer has executed the purchase process using “gift voucher” as payment method, the download is made available to the customer for download in the section “My downloadable products”.

3.4. The online code may solely be used by the registered customer.

3.4.1. The registered customer must not pass on the online code to third parties. The customer is required to keep the online code secret. The customer will notify Berlin Phil Media if he knows or suspects that the online code has been misused.

3.4.2. The registered customer is liable for all damages originating from the use of the code by third parties if he is responsible for such misuse. Evidence for lack of his responsibility must be furnished by the customer.

3.4.3. Berlin Phil Media is entitled to block the online code if there are indications that the registered customer violates his duty of care as set out in cl. 3.4.1 and 3.4.2.

3.5. Providing the internet access that is necessary to download is not subject of the agreement between the customer and Berlin Phil Media.

3.6. By downloading a file the customer acquires the non-exclusive, non-assignable, non-sublicensable, revocable right to use the purchased music file for private, non-commercial purposes, including the right to save the file to the hard drive of his computer, to export the file and to burn it onto storage media (CD, DVD). Any exceeding duplication, distribution, rental, making available to the public, public performance, broadcast and repeated broadcast of the file is prohibited unless a respective use is permitted by compelling law. The customer must not cut, share, rearrange, reduce or enlarge the file, combine the file with other works or edit it in other ways and/or exploit it.

## 4. Right of Revocation

4.1. The customer has the right to revoke the agreement. Information regarding the terms of the declaration of the revocation and the legal consequences thereof are contained in a separate cancellation policy, which is available at [https://www.berliner-philharmoniker-recordings.com/content/right\\_of\\_revocation\\_en.pdf](https://www.berliner-philharmoniker-recordings.com/content/right_of_revocation_en.pdf) and expressly referred to.

4.2. Special note is made to the following products for which the right of revocation is barred: (1) shipping of audio and video recordings or computer software (e.g. CDs, DVDs, video cassettes) in sealed packaging, if the seal has been removed after delivery and (2) contracts regarding the delivery of newspapers, journals, and magazines, except for subscription contracts.

4.3. If the customer revokes the purchase, Berlin Phil Media reserves the right to reimburse the amount of money due to the customer using a payment method different to the method the customer had used for payment.

## 5. Prices

5.1. The prices of the products are contained in the presentation of the products. All prices are gross prices including the respective statutory VAT valid at the time of order. Delivery costs are excluded.

5.2. Delivery costs are calculated separately. A list of the delivery charges is made available via a link from the order confirmation.

5.3. Before the customer places the order, the total price of the order including VAT and postage and packaging is shown to the customer on a separate website summarising his order.

## 6. Payment

6.1. The purchase price and the delivery costs are to be paid two (2) weeks as of receipt of the order confirmation at the latest.

6.2. Payment can be made in different ways, e.g. credit card, online transfer or direct debit. In case of payments by online transfer the product will be delivered once payment has been received.

6.3. SEPA direct debit mandates are executed by means of the COR1 procedure, i.e. direct debits will be executed at a delivery deadline of one banking day, if the customer's bank supports that option. In that case the pre-notification deadline is reduced to one day. If the customer's bank does not support that option, initial direct debits are executed at a delivery deadline of five banking days and followup direct debits at a delivery deadline of two banking days. The pre-notification deadline is reduced to five banking days for initial direct debits and – if necessary – to two banking days for followup direct debits. The customer provides for sufficient funds on his account.

6.4. If the customer is in default with payments, Berlin Phil Media is entitled to charge interest to the amount of 5 percentage points over the basic rate of interest. Berlin Phil Media reserves the right to claim further damages.

6.5. The customer may set off his claims against the payment claim of Berlin Phil Media if the customer's claims are undisputed by Berlin Phil Media or if the claims against Berlin Phil Media have become legally final.

6.6. The customer may only exercise a right of retention if his counterclaim (Gegenanspruch) bases on the same legal relationship.

## **7. Delivery**

7.1. The product is delivered by Berlin Phil Media's shipping service to the delivery address stated by the customer. Berlin Phil Media is entitled to partial delivery as far as it is reasonable.

7.2. If, despite of a careful inspection of the stock, Berlin Phil Media realises that the product ordered by the customer is not available when processing the order and if Berlin Phil Media is not responsible for the shortness of supplies, the customer will be informed by email and the contract is not concluded. If Berlin Phil Media has already accepted the offer of a contract by confirming the order, Berlin Phil Media is entitled to revoke the agreement. Any payments made will be reimbursed immediately.

7.3. The delivery times stated when presenting and advertising the products are estimates. Therefore, they are to be regarded as only approximately agreed upon. If delivery is delayed for reasons for which Berlin Phil Media is not to blame (force majeure, third party liability etc.), the deadline of delivery shall be extended. The customer will be informed of this immediately. If the projected deadline for delivery is exceeded by more than four weeks, each party is entitled to revoke the contract.

7.4. The liability of Berlin Phil Media for damages caused by the delay of delivery shall be limited to typical and foreseeable damages. This limitation of liability shall not apply in cases of culpable or grossly negligent breach of the contract. The above limitation of liability of Berlin Phil Media shall not apply in cases of culpable injury of life, body and health.

## **8. Reservation of Title**

The product remains the property of Berlin Phil Media until the purchase price has been fully paid.

## **9. Guarantee, Limitation of Liability**

9.1. With regard to material and legal defects of the products Berlin Phil Media shall be liable in accordance with statutory provisions. Warranty claims shall be statute-barred two years after the customer has received the product.

9.2. Berlin Phil Media shall not be liable for the malfunction of the internet connection and of the device used by the customer for the download pursuant to cl. 3. Berlin Phil Media shall not be liable for the permanent availability of the download file according to cl. 3 and for the possibility of copying it on the hard drive of the customer or transferring it to other storage media (CD, DVD) or players. Technical malfunctions within the scope of Berlin Phil Media's responsibilities shall be – if appropriate and technically possible – promptly resolved.

## 10. Liability

10.1. Berlin Phil Media shall be liable without limitation for damages due to intent or gross negligence by Berlin Phil Media, its legal representatives or persons that Berlin Phil Media uses to perform its obligation. In case of simple negligence (einfache Fahrlässigkeit), Berlin Phil Media is only liable for the violation of obligations that are material to the customer and upon which the customer reasonably relies (cardinal duties), if Berlin Phil Media, based on the facts known at contract conclusion, typically had to expect the damages. Any liability not expressly regulated above – including the liability for persons employed in performing an obligation and vicarious agents – shall be disclaimed.

10.2. The limitation and exclusion of liability agreed upon in cl. 10.1 shall not apply in case of injury of life, body and health, in case of non-conformity of goods if Berlin Phil Media has given a guarantee for the quality of the product or in case Berlin Phil Media fraudulently concealed the default of the product. The liability under the Product Liability Act shall remain unaffected.

## 11. Data Protection

Berlin Phil Media collects and stores any customer data necessary for business purposes. When processing the personal data of the customer Berlin Phil Media observes the applicable statutory provisions. For further information please refer to the privacy policy, which is available in the version currently enforced under <https://www.berliner-philharmoniker-recordings.com/privacy-policy>

## 12. Copyrights

All text, images, graphics, videos included in or made available through [www.shop.berliner-philharmoniker.de](http://www.shop.berliner-philharmoniker.de) and [www.berliner-philharmoniker-recordings.com](http://www.berliner-philharmoniker-recordings.com) and their arrangement and graphic presentation on the websites are subject to German copyright law and further protection acts. The customer may not use, distribute or modify any material made available on these websites (e.g. text or graphics) without the explicit written consent of Berlin Phil Media.

## 13. Amendments

Berlin Phil Media has the right to amend these TOU at any time, unless material stipulations of the contractual relationship (such as the nature, scope, term and cancellation) are concerned. Such

amendments are necessary, inter alia, in case of regulatory gaps (e.g. by changes in the law; court decisions deeming these TOU void). The customer will be notified of such amendments in textual format (Textform) six weeks before taking effect, at the latest. The amendments are deemed to be approved by the customer if he does not object within six weeks after notification. If he objects, the amendments do not become part of the agreement between the parties, and the contract prevails unchanged. Berlin Phil Media will expressly point to the possibility of objecting and compliance within the six weeks term. The right of cancellation remains unaffected.

## **14. Applicable Law**

These TOU and the contract between Berlin Phil Media and the customer shall be governed by the laws of the Federal Republic of Germany. The Convention on Contracts for the International Sale of Goods does not apply.

## **15. Final Provisions**

15.1. Any changes and supplements to the TOU shall require the written form to be effective.

15.2. Should any provision of these TOU be invalid, this shall not affect the validity of any other provisions of the TOU.

15.3. Where legally permissible, the place of performance and exclusive place of jurisdiction for all disputes between the parties shall be Berlin.

## **16. Provider Identification**

Our contact information is:

Berlin Phil Media GmbH,

represented by their managing directors Olaf Maninger and Maximilian Merkle

Leipziger Platz 1

10117 Berlin

Companies' Register Number HRB 113690

CR-Court: Berlin Charlottenburg

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