

GENERAL TERMS OF USE DIGITAL CONCERT HALL OF THE BERLINER PHILHARMONIKER

1. Scope of Application

- 1.1. The following General Terms of Use (hereinafter “**TOU**”) govern all contracts concluded between Berlin Phil Media GmbH, Leipziger Platz 1, 10117 Berlin, represented by its Managing Directors Olaf Maninger and Robert Zimmermann (hereinafter “**BERLIN PHIL MEDIA**”) and the **CUSTOMER** as defined in Section 3.1 regarding services offered at www.digitalconcerthall.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. These TOU, the privacy policy, the registration according to Section 3, and the confirmation according to Section 5.3 constitute the entire agreement made between BERLIN PHIL MEDIA and the CUSTOMER. Differing or additional provisions of the CUSTOMER do not apply, even if BERLIN PHIL MEDIA does not explicitly object to them. Contractual languages are German and English.
- 1.3. You can download and print these TOU at https://static.digitalconcerthall.com/cms/files/agb_en_20170201.pdf.

2. Streaming Services

- 2.1. At www.digitalconcerthall.com, BERLIN PHIL MEDIA provides fee-based access to recordings of subscription and non-subscription concerts by the Berliner Philharmoniker for streaming over the internet. In the archive, recordings of concerts will be offered as videos on demand. Access to the live concerts is granted by means of a live stream.
- 2.2. BERLIN PHIL MEDIA's video signal is produced in High Definition and has been encoded for internet streaming. Depending on the CUSTOMER's internet connection, he may choose from a range of different quality levels of transmission.
- 2.3. BERLIN PHIL MEDIA shall decide independently which concerts are offered as live streams or as video on demand in the Digital Concert Hall. The CUSTOMER shall not be entitled to claim that certain concert recordings are being made available in the Digital Concert Hall, even if BERLIN PHIL MEDIA previously announced such availability. Furthermore, BERLIN PHIL MEDIA reserves the right to remove certain content from the archive for legal reasons and/or to exclude certain regions from the offer of streaming services for legal reasons (Geoblocking).
- 2.4. The provision of internet access that is necessary for the use of the streaming services defined in Sections 2.1 and 2.2 shall not be subject to the contract between the CUSTOMER and BERLIN PHIL MEDIA.

3. Registration

- 3.1. The CUSTOMER may use the streaming services offered by BERLIN PHIL MEDIA only upon prior registration as a user of the Digital Concert Hall. Only major persons who are also legally competent may register.
- 3.2. Registration is effected by means of the CUSTOMER's Internet-enabled devices at www.digitalconcerthall.com or by using the Digital Concert Hall app if the relevant device allows for registration. In order to register, the customer has to provide the following data: title, first name, surname, email address, country and (if required) a password. If the CUSTOMER is registered with other online services and BERLIN PHIL MEDIA allows for an automatic transfer of data, the CUSTOMER may have his data transferred automatically by explicit permission.
- 3.3. When submitting the completed registration form, the CUSTOMER accepts this agreement regarding the access to the Digital Concert Hall and the use of streaming services (hereinafter "**AGREEMENT OF USAGE**").
- 3.4. The CUSTOMER ensures that all data entered during registration 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.

4. Use

- 4.1. The use of the streaming services is limited to certain content and time. The CUSTOMER may only stream videos for private use. The use of streaming services by the participants of the education initiative EXPLORE CLASSICAL MUSIC! is regulated by the participation agreement in the version currently enforced.
- 4.2. BERLIN PHIL MEDIA offers the CUSTOMER the following types of use:
 - 4.2.1. With the purchase of a ticket, the CUSTOMER receives access to the concert recordings available at the Digital Concert Hall's archive as well as to a certain number of live concerts during the period of validity of the ticket. The period of use does not start with the purchase of the ticket, but upon first access to a concert, however, no later than 365 days after the conclusion of the **PURCHASE AGREEMENT** as defined in Section 5.3. With regard to all tickets BERLIN PHIL MEDIA also offers vouchers, which may be redeemed at a later time. Purchased vouchers expire after 3 years. Vouchers that have been handed out for free, e.g. for reasons of advertisement, expire at the date announced when the voucher was handed out. If the CUSTOMER purchases another ticket or redeems a voucher during the period of use of a ticket, that period of use is extended accordingly and automatically. The CUSTOMER may not purchase another ticket before activation/redemption of all existing tickets/vouchers in his user account.
 - 4.2.2. If the CUSTOMER subscribes to the streaming services offered by BERLIN PHIL MEDIA, he may use all streaming services at www.digitalconcerthall.com upon

payment of a monthly fee. The period of use commences upon receipt of payment of the first monthly fee and ends one month after the last monthly fee has been received. If the CUSTOMER redeems a voucher during the period of use of a subscription, the period of use already paid for is extended accordingly and automatically. The subscription can be cancelled at any time to the end of the period of use already paid for. Cancellation shall require text form (in writing, no signature required, e.g. email, fax) to be effective.

- 4.3. The CUSTOMER may not misuse the streaming services. In particular, he is prohibited from
- recording the concerts in full or in part;
 - using the stream for commercial purposes or for public performance, publicly broadcasting it or distributing it in any other way; or
 - reproducing the stream.
- 4.4. If the CUSTOMER breaches the duties defined in Section 4.3, BERLIN PHIL MEDIA may block the CUSTOMER's access and terminate the AGREEMENT OF USAGE for cause.

5. Purchase of tickets and subscriptions

- 5.1. Tickets/vouchers for tickets and subscriptions can only be purchased after prior registration as a CUSTOMER of the Digital Concert Hall. In order to buy a ticket/voucher or subscribe to streaming services, the CUSTOMER chooses the ticket/voucher or the subscription by clicking on the button "PURCHASE TICKET NOW" or "SUBSCRIBE NOW". This process does not constitute a contractual offer. The desired ticket/voucher or subscription will merely be booked. Even clicking the button "CONTINUE" does not constitute a contractual offer.
- 5.2. The CUSTOMER only makes a binding offer to conclude a contract regarding the use of streaming services by clicking the "ORDER WITH OBLIGATION TO PAY" button. Before placing the order, the CUSTOMER is once again provided with a summary of the complete content of the order (product name, price, amount, intermediary and complete sum). The CUSTOMER can then correct the method of payment using the change button that is provided on the overview page.
- 5.3. Upon receipt of the order, the CUSTOMER will receive an automatically generated email from BERLIN PHIL MEDIA, confirming the receipt of the order. This receipt confirmation constitutes the acceptance of the contractual offer and concludes the purchase of the ticket/voucher or subscription (hereinafter "**PURCHASE AGREEMENT**"). At the same time, the ticket/voucher will be saved in the user account and/or the subscription will be activated.

6. Right of Revocation

If the CUSTOMER is a consumer, he has the right to revoke his declaration of intent that is necessary for the conclusion of the AGREEMENT OF USAGE and/or each PURCHASE AGREEMENT. Information regarding the terms of the declaration of the revocation and the legal consequences of the revocation are contained in a separate [cancellation policy](#), which is expressly referred to.

The right of revocation terminates as soon as BERLIN PHIL MEDIA has completely delivered the streaming services.

7. Use of the Streaming Services, Technical Requirements

- 7.1. The streaming services are offered for access at www.digitalconcerthall.com.
- 7.2. For trouble-free reception, the CUSTOMER needs an internet connection with a minimum bandwidth of 2000 Kbit/s. However, a bandwidth of 6000 Kbit/s or more is recommended.
- 7.3. Streaming services can also be accessed by means of certain television sets, Blu-ray players, mobile devices and audio systems equipped with an integrated internet connection. This offer is non-binding, may vary and may be revoked at any time by BERLIN PHIL MEDIA.
- 7.4. The devices and system requirements needed for the use of the streaming services are listed at www.digitalconcerthall.com.
- 7.5. The CUSTOMER can access the streaming services of BERLIN PHIL MEDIA on multiple devices. Simultaneous streaming, however, is not possible. The CUSTOMER can manage the connected TV sets and Blu-ray players in the user account at www.digitalconcerthall.com.

8. Prices and Tickets

- 8.1. The price of tickets/vouchers and subscriptions and their term are apparent from the presentation of the products. All prices are gross prices including the respective statutory VAT valid at the time of order.
- 8.2. Before the CUSTOMER places the order, the total price of the order including VAT is displayed on a separate web page summarising his order.

9. Payment

- 9.1. The purchase price is to be paid in advance and is due immediately upon conclusion of the order.

- 9.2. The CUSTOMER can pay per credit card and PayPal. In Germany, the CUSTOMER can also pay by “immediate transfer” and bank transfer. In case of online transfer, the ticket/voucher will not be saved in the CUSTOMER account or the subscription will not be activated before receipt of payment.
- 9.3. 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 5 banking days and follow-up direct debits at a delivery deadline of 2 banking days. The pre-notification deadline is reduced to 5 banking days for initial direct debits and – if necessary – to 2 banking days for follow-up direct debits. The CUSTOMER provides for sufficient funds in his account.
- 9.4. If the CUSTOMER delays payment, BERLIN PHIL MEDIA may charge interest in the amount of 5 percentage points above the base interest rate. BERLIN PHIL MEDIA reserves the right to claim further damages.
- 9.5. The CUSTOMER may set off his claims against the payment claim of BERLIN PHIL MEDIA if his claims are undisputed by BERLIN PHIL MEDIA or have been determined without further legal recourse.
- 9.6. The CUSTOMER may only refuse the performance owed by him (right of retention) if he has a claim that is due against BERLIN PHIL MEDIA under the same legal relationship as the one on which his obligation is based.
- 9.7. Should the CUSTOMER not fulfil the payment duty or should amounts that already have been paid be returned or re-debited, BERLIN PHIL MEDIA is entitled, reserving the right to assert further claims, to block the CUSTOMER's access to his account. Should the account be blocked due to outstanding debts, access shall again be granted if the debts are settled. The right to terminate the AGREEMENT OF USAGE pursuant to Section 13 shall remain unaffected.

10. Access Data

- 10.1. The access data (email address and password) may only be used by the CUSTOMER. The CUSTOMER may not pass the access data on to a third party. The CUSTOMER shall keep his access data secret and change or have BERLIN PHIL MEDIA change the data, if he becomes aware that his access data has been misused. This also applies in cases that misuse is suspected.
- 10.2. The CUSTOMER is liable for all damages caused by a third party using his account, if and to the extent that he is to be held responsible for it. The CUSTOMER is responsible for proving that he is not culpable.

- 10.3. If the CUSTOMER substantially breaches the duties of care defined in Section 10.1, BERLIN PHIL MEDIA may (temporarily) block the CUSTOMER's access. The CUSTOMER will be informed thereof by email.

11. Guarantee

- 11.1. **BERLIN PHIL MEDIA does not warrant or guarantee the proper functioning of the internet connection or the performance of the end device used.**

- 11.2. **BERLIN PHIL MEDIA shall eliminate any technical malfunctions without delay if feasible. If a service malfunction results in the CUSTOMER not being able to use the video stream according to the terms of the AGREEMENT OF USAGE or if the possible use is considerably affected, BERLIN PHIL MEDIA offers the following compensation:**

- 11.2.1. **If live streaming is not possible for technical reasons, BERLIN PHIL MEDIA shall provide the CUSTOMER with the respective recording as a video on demand later on. If this is also not possible, the expiry of the CUSTOMER's ticket will be extended by 7 days.**

- 11.2.2. **In case of a malfunction when streaming video on demand, BERLIN PHIL MEDIA shall enable the CUSTOMER to access the stream later on.**

- 11.2.3. **The right to revoke the PURCHASE AGREEMENT or to reduce the purchase price if the replacement services failed remains unaffected.**

12. Limitation of Liability

- 12.1. BERLIN PHIL MEDIA shall be liable without limitation for damages due to intent or gross negligence on the part of BERLIN PHIL MEDIA, its legal representatives or persons whom BERLIN PHIL MEDIA uses to perform its obligation. To the extent the breach of the AGREEMENT OF USAGE is unintentional, BERLIN PHIL MEDIA's liability shall be limited to typically foreseeable damages at the conclusion of the AGREEMENT OF USAGE for ordinary negligent breach of such duties arising from the contractual relationship that make the proper performance of the AGREEMENT OF USAGE possible in the first place, the observance of which the contractual partner may regularly rely on and the violation of which puts the intended purpose of the AGREEMENT OF USAGE at risk (material contractual duties). Any liability not expressly provided for above – including the liability for persons employed in performing an obligation and vicarious agents – shall be disclaimed.

- 12.2. The limitation and exclusion of liability agreed upon in Section 12.1 shall not apply in cases 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 cases where BERLIN PHIL MEDIA fraudulently concealed the material defect of the product. The liability under the Product Liability Act shall remain unaffected.

13. Termination of the AGREEMENT OF USAGE

- 13.1. The CUSTOMER may terminate the AGREEMENT OF USAGE anytime to the end of the month. His right to terminate for cause (außerordentliche Kündigung) remains unaffected.
- 13.2. BERLIN PHIL MEDIA may terminate the AGREEMENT OF USAGE anytime by giving 2 weeks notice to the end of the month, but at the earliest to the end of the validity period of any ticket or subscription acquired by the CUSTOMER pursuant to Section 4.2. The right of BERLIN PHIL MEDIA to terminate for cause remains unaffected. In particular, BERLIN PHIL MEDIA shall be entitled to terminate for cause if the CUSTOMER violates these TOU. In case of a termination for cause, all tickets and vouchers that were valid at the time of the termination notice become invalid. Furthermore, all subscriptions expire by the end of the month. Fees that already have been paid will not be refunded.
- 13.3. After cancellation of the AGREEMENT OF USAGE, the CUSTOMER will no longer be able to access the Digital Concert Hall. His account will be deleted.
- 13.4. Any termination notice must be made in text form (in writing, no signature required, e.g. email, fax).

14. Institutional Access

- 14.1. In the course of the initiative known as DIGITAL CONCERT HALL FOR INSTITUTIONS, the Berliner Philharmoniker provide educational institutions (hereinafter “**INSTITUTIONS**”) such as universities or libraries with institutional access to the Digital Concert Hall at www.digitalconcerthall.com. The INSTITUTION itself purchases access to the Digital Concert Hall (hereinafter “**INSTITUTIONAL ACCESS**”). After registration, members of the INSTITUTION (hereinafter “**INSTITUTIONAL USERS**”) receive personalised access to the Digital Concert Hall and have free access to all content and functions. INSTITUTIONAL USERS are CUSTOMERS within the meaning of these TOU. Unless explicitly stated otherwise hereunder, all Sections of these TOU shall be applicable to INSTITUTIONAL USERS as well.
- 14.2. INSTITUTIONAL USERS may use the INSTITUTIONAL ACCESS only upon prior registration as an INSTITUTIONAL USER of the Digital Concert Hall. Sections 3.1 to 3.4 of these TOU apply with the following specifications: Registration is possible via the INSTITUTION’s network only. If the INSTITUTIONAL USER already has a user account, it can be changed to an INSTITUTIONAL USER account via the INSTITUTION’s network. Registration as an INSTITUTIONAL USER is only possible during the term of the INSTITUTIONAL ACCESS pursuant to Section 14.3.1.
- 14.3. By way of derogation from Section 4.2 of these TOU, INSTITUTIONAL USERS have free access to all content and functions of the Digital Concert Hall during the term of

the INSTITUTIONAL ACCESS pursuant to Section 14.3.1. The Digital Concert Hall may also be accessed from outside the INSTITUTION's network as follows:

- 14.3.1. The possibility to use the streaming services for free begins with completion of registration as an INSTITUTIONAL USER and ends with the end of the term of the INSTITUTIONAL ACCESS as agreed upon between BERLIN PHIL MEDIA and the INSTITUTION. The INSTITUTIONAL USER shall verify his account at least every 4 weeks by logging in via the INSTITUTION's network. If he fails to do so, his account shall be changed into a normal user account and his possibility to use the streaming services for free ends until he logs in via the INSTITUTION's network again. With the end of the term of the INSTITUTIONAL ACCESS as agreed upon between BERLIN PHIL MEDIA and the INSTITUTION, the INSTITUTIONAL USER account shall be changed into a normal user account. The right to termination pursuant to Section 13 remains unaffected.
- 14.3.2. INSTITUTIONAL USERS may not purchase tickets or subscriptions. If the INSTITUTIONAL USER already has a valid ticket or subscription, he can continue using it or register as an INSTITUTIONAL USER. If he chooses the latter, BERLIN PHIL MEDIA shall refund the INSTITUTIONAL USER the value of his ticket in form of a voucher pursuant to Section 4.2.1 which expires after 3 years. The INSTITUTIONAL USER shall be entitled to terminate an existing subscription to the end of the period of use already paid for pursuant to Section 4.2.2. BERLIN PHIL MEDIA shall provide the INSTITUTIONAL USER with a link via email which he can use to effect termination.
- 14.3.3. INSTITUTIONAL USERS may purchase vouchers at the regular price. However, they may not redeem vouchers while they can use the streaming services for free pursuant to Section 14.3.1.
- 14.4. Section 4.3 shall also apply to INSTITUTIONAL USERS. In addition, INSTITUTIONAL USERS may screen the streaming services within the INSTITUTION for educational purposes and for the purpose of lectures. For the avoidance of doubt, any further use of the streaming services, in particular, but not limited to the public performance of the streaming services (e.g. public screening on the premises of the INSTITUTION) is prohibited.
- 14.5. If the INSTITUTIONAL USER substantially breaches the duties of care defined in Sections 4.3 and 14.4, BERLIN PHIL MEDIA may (temporarily) block his access and terminate the AGREEMENT OF USAGE for cause. The INSTITUTION will be informed thereof by email.
- 14.6. Section 13.2 shall apply with the following modifications: For INSTITUTIONAL USERS, BERLIN PHIL MEDIA may terminate the AGREEMENT OF USAGE at the earliest to the end of the term of the INSTITUTIONAL ACCESS pursuant to Section 14.3.1. Apart from that, Sections 13.1 to 13.4 remain unaffected.

15. Data Protection

BERLIN PHIL MEDIA collects and stores any data necessary for business purposes. When processing the personal data of the CUSTOMER, BERLIN PHIL MEDIA complies with the applicable statutory provisions. For further information please refer to the privacy policy. The current version is available at www.digitalconcerthall.com/en/privacy.

16. Copyrights

All text, images, graphics, and/or videos included in or made available through www.digitalconcerthall.com and their arrangement and graphic presentation on the website are subject to German copyright law and further protection acts. The CUSTOMER may not use, distribute or modify any material made available on this website (e.g. text or graphics) without BERLIN PHIL MEDIA's explicit prior consent in written form (in writing, signature required).

17. 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 text form (in writing, no signature required, e.g. email, fax) at the latest 6 weeks before they take effect. The amendments are deemed to be approved by the CUSTOMER if he does not object within 6 weeks after notification. If he objects, the amendments do not become part of the agreement between the parties, and the AGREEMENT OF USAGE remains unchanged. BERLIN PHIL MEDIA will expressly point to the possibility of objecting and compliance within the 6 weeks term. The right of cancellation remains unaffected.

18. Applicable Law

These TOU, the AGREEMENT OF USAGE and all PURCHASE AGREEMENTS (for tickets, subscriptions, or vouchers) 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.

19. Final Provisions

- 19.1 Any changes and supplements to the TOU shall require text form (in writing, no signature required, e.g. email, fax) to be effective.

- 19.2 Should any provision of these TOU be invalid, this shall not affect the validity of all other provisions of the TOU.
- 19.3 Where legally permissible the place of performance and exclusive place of jurisdiction for all disputes between the parties shall be Berlin.

20. Provider Identification

Our contact information is:

Berlin Phil Media GmbH,
represented by their managing directors Olaf Maninger and Robert Zimmermann

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