

## **General Terms & Conditions of Musicalion.com**

### **Terms of Music Download Library**

#### **§ 1.1 Purpose**

(1) Musicalion.com is a private institution, whose purpose is to support people who make music. The Music Library is designed to supplement the holdings of public libraries. As such, its terms and conditions are modeled on those of public libraries. The Musicians Websites make it possible for musicians to design and manage their own websites.

(2) Musicalion.com serves to promote musical activities, education and studies, continuing education and information, advancement of musical works and the leisure activities of internet users for general cultural purposes.

#### **§ 1.2 Content and the Use of Musicalion.com Services**

(1) Rights of access and use may be established after electronic registration and receipt of the user fee. However, Musicalion.com reserves the right to reject applications without explanation.

(2) The right to download sheet music is limited to one person per membership. This authorization is not transferable and may be accessed via one computer only. In the event Musicalion.com should in exceptional cases allow the use of several computers, this permission may not be construed as a permanent right. By registering as a member of Musicalion.com, the user agrees to allow Musicalion.com to install a cookie on the user's computer indicating that the user is authorized to access Musicalion.com.

(3) The services of Musicalion.com are provided for personal use only. For this reason, the frequency of sheet music downloads is limited to a number reasonable for personal use. Musicalion.com permits the user to download only sheet music which the user specifically wishes to learn. It is prohibited to download musical scores just for the sake of downloading. It will be assumed that this unauthorized practice has occurred when the user exceeds the established maximum allowable number of downloads. This upper limit has been set in accordance with the regulations of the Munich City Library, which permits 20 media to be borrowed for 28 days. This corresponds to approximately 20 works per week.

(4) The cooperating publishers and private copyists hold the copyright, and Musicalion.com the right of use, for the entire collection of sheet music and recordings published in Musicalion.com. The user may not modify these publications, whether in electronic or in printed form, nor reproduce them to be passed to third parties. Modification of vocal registers and reproduction is allowed as long as it benefits one's particular ensemble.

(5) The right to use the collection of all sheet music and recordings from Musicalion.com is limited to the period of membership. After terminating membership, the user must destroy all Musicalion.com data files and printouts which are still in the user's possession. In the event that a user provided an ensemble with sheet music from Musicalion.com, then the user is responsible to ensure the destruction of these copies.

(6) Musicalion.com relies in its business philosophy on the honesty of its users, whose membership fees contribute to the maintenance, improvement and expansion of Musicalion.com services. In individual cases where Musicalion.com has a reasonable suspicion of breach of trust, it may immediately terminate the user's right to use. Musicalion.com further reserves the right to claim compensation for damages.

#### **§ 1.3 Sheet Music and Recordings Made Available to Musicalion.com**

(1) Users who send to Musicalion.com sheet music works and recordings for publishing purposes, ensure that they are in possession of all rights for this purpose and upon the consignment and delivery to Musicalion.com all relevant rights of use. The user does not forfeit any exclusive rights to Musicalion.com and can further utilize the works. In the event that the user is not in agreement with this stipulation, then he should unequivocally make this clear upon sending the work to Musicalion.com.

(2) All recordings and sheet music sent to Musicalion.com for publication will be returned upon payment of return postage. In the event that return shipment has not been requested or paid for, then Musicalion.com reserves the right to destroy these materials after processing. In no case is Musicalion.com liable for these materials.

#### **§ 1.4 Compensation for Submissions**

(1) For every score submitted, the submitter receives, in conjunction with the submission of the score(s) a free extension of his or her membership.

(2) For each download which another member executes, entitles the submitter to receive credit which can be used in the Musicalion Shop. Only downloads from the preceding 365 days will be credited. Older downloads will not be credited.

(3) Credits resulting from downloads will be applied to items from the Musicalion.com Shop. The credit is provided voluntarily by Musicalion.com. The value of the credit may vary. There is no legal entitlement to the credit. The credit can only be used during the period of a valid Musicalion.com membership. Thereafter, it is forfeited without reimbursement. If the value of an order is less than the remaining credit in the account, then the remaining credit will be forfeited without reimbursement.

(4) The current credit (membership extensions and compensations for downloads) can be viewed at any time at <http://www.musicalion.com/en/scores/notes/info/contribute>.

### **§ 1.5 Liability**

(1) Musicalion.com manages its internet platform in good conscience to the best of its ability. It is not responsible for problems resulting from access to the internet or web browser or from the computer configuration or other software employed by the user in connection with Musicalion.com.

(2) User claims for damage compensation against Musicalion.com exist only in the case of gross negligence or criminal intent on the part of Musicalion.com and are otherwise excluded. Musicalion.com is not liable for damages unconnected with the web platform for customer loss of profit or damage to assets.

(3) Musicalion.com is not responsible for statements made on its message board or on the websites of its members. If a contribution contains statements inconsistent with standard English or statements which may be deemed immoral or illegal, Musicalion.com reserves the right to edit or delete them. Furthermore it is prohibited to use the message board for other commercial purposes such as advertising.

(4) Musicalion.com is not responsible for the content of websites to which it is linked.

(5) Users that submit scores which violate the copyright of third parties are responsible for the full value of any and all resulting damages.

### **§ 1.6 Memberships**

(1) Upon completion of registration at Musicalion.com, the user has signed up for a subscription which will automatically be renewed at the end of the subscription period with the booked duration.

(2) If the member books an additional service during a current membership, both memberships will automatically renew at the cheapest combined membership dues rate.

### **§ 1.7 Fees**

(1) The membership fee is due upon sending in the registration form.

(2) Dues will not be refunded irrespective of the legal basis for any reason.

(3) If a member, after being granted access to Musicalion.com, rescinds permission to automatically have membership dues transferred from her/his bank account, then an obligation will be incurred for payment in the amount of 5 Euros.

(4) Musicalion.com reserves the right to forward claims to a debt collection agency. The defaulting member is liable for all additional charges which may be incurred.

(5) Membership may include credit for use in the Musicalion Shop. The credit is a voluntary service provided by Musicalion.com. The value of the credit may vary. There is no legal entitlement to the credit. The credit can only be used during the period of a valid Musicalion.com membership. Thereafter, it is forfeited without reimbursement. If the value of an order is less than the remaining credit in the account, then the remaining credit will be forfeited without reimbursement.

### **§ 1.8 Revocation**

The revocation of a registration is possible within 14 days of the date of registration, provided that no use of the services provided by Musicalion.com has occurred. For the sake of clarity, use of services has occurred as soon as the registrant logs in to Musicalion.com and downloads at least one piece of sheet music. Whether the registrant actually makes use of the downloaded sheet music is irrelevant.

### **§ 1.9 Cancellation**

(1) A member can cancel his or her membership at any time using the associated online procedures. The cancellation is effective as soon as the member receives an email from Musicalion.com confirming the cancellation. Cancellation ends the automatic renewal of the membership.

(2) A cancellation may also be made within 14 days after an automatic renewal in keeping with the provisions of §1.8. This will result in the cancellation of the new membership and if applicable reimbursement of any monies which have already been paid.

### **§ 1.10 Welcome Gifts**

From time to time Musicalion.com gives new members welcome gifts. Musicalion.com assumes the complete shipping costs only within Germany. For deliveries to other countries the new member must contribute 3 Euros towards the cost of shipping. Musicalion.com reserves the right to optimize shipping costs, which may lead to delays of up to 4 weeks.

## **Conditions for Musicians Websites via Musicalion.com**

### **§ 2.1 Permissible Content**

The customer may not in format, content, or for pursued purpose violate laws, morality or the rights of third parties (protection of the name right, copyright, and of data privacy) in the presentation of her/his web site. In particular, the customer pledges not to present content which is pornographic, demagogic, glorifies violence, incites crime or provides instruction thereto; and not to offer any services or allow any services to be offered which consist of pornographic or erotic content (e.g. naked photos, peepshows, etc). The same holds true for the dispatching of emails.

Should Musicalion.com note that a customer's internet pages or email communications in form, content or pursued purpose violate legal mandates or prohibitions, the rights of third parties or morality, then Musicalion.com will reserve the right to remove the illegal content or block access to it.

If a customer's internet pages, domain names, email addresses or email communications violate the above prohibitions, morality or rights of third parties, and if it is determined that the customer is responsible, then the customer will be liable to Musicalion.com to compensate for all damages. The customer releases Musicalion.com in their internal relationship from claims from third parties resulting from the above violations.

### **§ 2.2 Security**

The customer is prohibited to introduce data or to use a storage device (e.g. USB flash drive) to send data to Musicalion.com which based on its type or characteristics (e.g. viruses), size, duplication capability (e.g. spamming) could jeopardize the holdings or operation of the data center or data network of Musicalion.com.

### **§ 2.3 Fines and Compensation for Damages**

For every case of a violation represented by the customer against the preceding obligation, the customer promises the payment of a contract penalty in the amount of EUR 5,000.10 (in words: five thousand Euros and 10 cents). The right to assert a claim for further compensation by Musicalion.com is not excluded by this.

### **§ 2.4 Limitation of Liability**

Musicalion.com sends emails, SMS and other messages into the Internet. Musicalion.com assumes no liability for the forwarding of emails, SMS or other messages to the recipient, nor for the correct rendition of the customer's internet pages in the internet presence, unless Musicalion.com can be charged with intent or gross negligence.

## **Conditions of the Musicalion Shop**

### **§ 3.1 Purpose**

The Musicalion.com Shop serves only to extend the online music library for downloading sheet music.

### **§ 3.2 Sales Contract**

Placing an order with Musicalion.com, and/or a confirmation of an order from Musicalion.com only constitutes an offer for a sales contract. Musicalion.com reserves the right to reject this offer. A sales contract exists only when Musicalion.com ships the order and notifies you of the shipment with a second e-mail (shipment confirmation). If certain articles are not included in the shipping confirmation, no sales contract exists for those articles.

### **§ 3.3 Returns, 14 Day Cancellation Period, Exceptions to the Right of Cancellation**

If you decide to exercise your right to withdraw from the purchasing contract then you must bear the costs for return shipping yourself under the following circumstances: if the delivered goods are identical with the ordered goods; if the price of the returned goods do not exceed a value of 40 Euro or in the case of a higher price at the time of cancellation you have not yet made full payment or a contractually agreed partial payment.

## **Cancellation Instructions**

### **Right of Cancellation**

The sales contract can be cancelled within 14 days in written form without justification (e.g. letter, email) or by returning the goods before expiration of said period.

The period begins upon receipt of these instructions in written form and before the goods have been received (if multiple shipments of the same article are involved, the period begins upon the first such delivery) and not prior to fulfillment of Musicalion.com's information obligations under Article 246 § 2 in conjunction with § 1 Paragraph 1 and 2 EGBGB as well as Musicalion.com's obligations under § 312 e Paragraph 1.1 BGB in connection with Article 246 § 3 EGBGB. Sending a timely notice of cancellation or returning the goods in a timely manner is enough to exercise the right of cancellation during the period.

Send returns (preferably with a reason for the return) to:

Musicalion.com Shop  
c/o MGS Loib  
Dieselstraße 26  
85084 Reichertshofen  
Germany

Please give us advance notice of your return at: [www.musicalion.com/de/scores/correspondence/contact-us/edit](http://www.musicalion.com/de/scores/correspondence/contact-us/edit)

### **Return Process**

In the event of a properly cancelled order, the benefits mutually received shall be returned; any benefits already materialized (e.g. interest) shall be returned as well. If the received goods have been reduced in value due to damage or use (for instance, the bent or damaged pages in a book of sheet music), you must provide Musicalion.com indemnification for that lost value. This requirement does not apply if the damage or usage occurred as part of an examination of the goods by you similar to what one would expect of the examination of goods in a retail store. You can avoid a major reduction in value of the goods by not using them to their full extent as if they were your own.

### **Exceptions:**

The right to cancel or return an order does not apply to distant contracts when:

\*goods have been specially made according to specifications from the customer or otherwise have been clearly adapted to personal needs or, due to their construction, are not suited for return shipment or can spoil or exceed their expiration dates during the return shipment,

\*the packaging of software, video or audio items has been opened or

\*when the goods in question are newspapers or magazines

### **§ 3.4 Delivery**

Unless otherwise agreed, Musicalion.com or its logistics partner will deliver the goods to the address provided by the customer. On the website, you will find information regarding the availability of every product sold by Musicalion.com. Please be advised that all availability, shipment and delivery information are estimates. They do not constitute binding agreements or guarantees, except when explicitly stated in the shipping options of specific articles. If Musicalion.com determines during the processing of your order that an item which you ordered is not available then you will be notified as such by a separate email. In the event, through no fault of Musicalion.com, an order cannot be delivered because the logistics partner did not or cannot fulfill its contractual obligations, Musicalion.com may cancel the order and the customer will be informed that the order cannot be fulfilled. The purchaser's legal rights are not affected. If it is not possible to deliver the order to the purchaser because the purchaser was not available at the provided delivery address despite adequate notice of delivery, then the purchaser is responsible for the costs of the unsuccessful delivery attempt.

### **§ 3.5 Due Dates and Payment, Default**

The purchaser may pay the purchase price via invoice (conditions under § 3.6 apply), credit card, PayPal, bank transfer or direct debit. Payment via invoice is not permitted for first-time customers.

If payment per invoice is chosen, Musicalion.com reserves the right to review and evaluate the data provided by the purchaser. Accordingly, Musicalion.com may exchange data with third-parties including the Bürgel Wirtschaftsinformationen GmbH & Co. KG, Postfach 5001 66, 22701 Hamburg; Germany (a credit evaluation/report agency).

Musicalion.com reserves the right to refuse to offer certain payment methods or to change them after an order has been received, if it is apparent that it serves to minimize financial risks or losses to Musicalion.com.

If the customer delays payment, Musicalion.com reserves the right to charge interest at the rate of 5% p.a. over the European Central Bank's basic interest rate. If delayed payments cause greater damages to Musicalion.com then Musicalion.com reserves the right to demand charges for them.

If a purchaser attempts to use a fraudulent means of payment (false credit card or bank account details), Musicalion.com is entitled to file a criminal complaint with the authorities and pursue legal action.

### **§ 3.6 Exceptions for Payment via Invoice**

Payment via invoice is only available for users who are 18 years of age and older. For online services (e.g. downloadable software) or for the purchase of gift certificates, payment via invoice is not permitted. The invoice amount is due upon receipt of the invoice.

### **§ 3.7 Compensation, Withholding**

A right to compensation by the purchaser only exists when (s)he has fully upheld the contractual obligations or is undisputed by Musicalion.com. In addition, (s)he may only withhold payment if his or her counterclaim is based on the same contractual conditions.

### **§3.8 Price**

All prices included the applicable statutory value added tax (VAT). VAT is not included in the price for purchasers who submit an order and reside outside of the European Union (EU).

### **§ 3.9 Reservation of Proprietary Rights**

All delivered goods remain the property of Musicalion.com until they are fully paid for.

### **§ 3.10 Liability for Defects**

If the purchased merchandise is defective, the appropriate legal regulations apply. The assignment of these claims on the part of the buyer is excluded.

If the defective merchandise is replaced via a new shipment, the purchaser is obligated to send the defective merchandise back to Musicalion.com within 30 days at the expense of Musicalion.com. The return shipment of the defective merchandise is to be effected according to statutory regulations.

The statutory period of limitation is two (2) years from the date of delivery.

Musicalion.com assumes unlimited liability in the event that the damages are a result of gross negligence or intentional.

Additionally, Musicalion.com is liable for negligent breach of contract, but only for damages that could have been foreseen and that relate to the fulfillment of the contract. Musicalion.com is not liable for negligent breach of obligations not specified in this document. The above limitations of liability do not apply to life, body or health, to defects which a guarantee exists, or for existing but undisclosed defects. Liability based on the German Product Liability Act is not affected.

Insofar as the liability of Musicalion.com is excluded or limited, this shall also apply to the personal liability of its employees, representatives and all other assistants.

## **Rules Pertaining to the Diabelli Music Contest**

### **§ 4.1 General**

The terms of participation for each contest are published separately at [www.diabelli-contest.com](http://www.diabelli-contest.com).

Submitted works are also published at [www.musicalion.com](http://www.musicalion.com). Accordingly, §1 (Paragraph 1) of Musicalion.com's General Terms and Conditions applies.

### **§ 4.2 Evaluation**

The competition organizers rate openly and automatically using a series of criteria which are not made public in order to prevent eventual manipulation. Participants will be directly informed concerning the results of the evaluations but these results will not be available to other parties.

#### **§ 4.4 Liability and Legal Recourse**

Legal recourse for the assertion of claims related to this contest insofar as pertaining to works which are not performed or award-winning works which were not to be performed are excluded. If prizes are to be awarded, their presentation will take place by agreement of the respective sponsor. If for any reason the sponsor is unable to distribute prizes for which Musicalion is not responsible then Musicalion.com shall assume no liability. The contest participant accepts the aforementioned terms of participation with the submission of her or his work.

#### **§ 4.4 Removal of Competition Submissions**

The composer has the right to remove a submitted work which was publicly provided for evaluation, 5 years after the final concert of the relevant contest from the following internet platforms: [www.musicalion.com](http://www.musicalion.com) and [www.diabelli-contest.com](http://www.diabelli-contest.com).

### **General Terms**

#### **§ 5 Data Privacy Protection**

All member data will be treated confidentially. Storage and processing of this data may take place only within the customer-approved context and under strict consideration of legal regulations such as the federal (German) laws governing data protection and the information/communication services. Member data may not be passed on to third parties who are not members of Musicalion.com staff outside of the context of carrying out this contract. Musicalion.com reserves the right to exchange information with the appropriate service providers in order to check on a member's credit or good faith. Musicalion.com is further authorized to transmit member information to SCHUFA (German credit reporting agency).

The user has entered a contractual agreement with Musicalion upon completion of registering and at the latest when downloading or purchasing of a work. Musicalion is legally bound to keep the data of the contracting party in accordance with HGB §257 (Paragraph 257) Abs. 4 (Section 4).

#### **§ 6 Final Conditions**

Laws of the Federal Republic of Germany apply, to the exclusion of United Nations sales laws. The place of fulfilment and court jurisdiction is Ebersberg, Germany.

The ineffectiveness of individual stipulations does not affect the remaining effectiveness of the contract and of these General Terms and Conditions.

Version: 23/09/2016