

# GUIDE

**For The Independent Provision of Commissioned Work**



**hays.at/compliant-sourcing**

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We have successfully managed to fill one of your existing project vacancies with a Hays-appointed independent expert as subcontractor. Hays will accompany you as a consultant during this temporary project assignment and will be available to you at any time as your point of contact. Please feel free to take advantage of our many years of experience should you have questions about using independent contractors – even if this extends beyond the information below.

Being a self-employed person (referred to as a “Business Partner” in Hays terminology) is linked to various criteria, the safeguarding of which especially rests with your company. These criteria do not all have to be fulfilled at the same time, but the current status of the Business Partner employed by you via Hays should be predominantly reflected in the following.

**The Business Partner as
a freelancer in your project**

As a self-employed person, our Business Partner works independently based on a clearly defined statement of services and is not integrated into the working organisation of your company. Whether the work performed fulfils these requirements cannot be determined schematically, but rather must be determined by taking an overall view of the following criteria, most of which must be fulfilled in relation to the current project activity or activities:

## Binding performance agreement – no creeping changes

The service to be provided by our Business Partner, as defined in the project contract between Hays and your company, is binding for all parties involved. This also applies, in particular, to the employees of your company. Your company may supply a more detailed specification of the service to be rendered, but only to the extent that the respective components of the service have already been mentioned in abstract form in the project contract or the written service description. It is also permissible to exchange or supplement the services to be provided by our Business Partner. The latter, however, requires a corresponding change or addition to the existing contract between Hays and your company on the one hand, so that Hays can then also implement this in the existing project contract with the Business Partner on the other.

## Independent provision of services

It is an essential feature of self-employment that our Business Partner works without being given any instructions on the project agreed with you, namely:

###  “HOW” – The way in which services are provided

**** Neither your company’s employees nor Hays will issue instructions to our Business Partner regarding the way in which the contract is to be performed, the choice of any working methods or the manner in which the contract is to be carried out. This is because the continued issuing of such instructions by employees of your company endangers the self-employed status of our Business Partner, especially since he will endeavour to meet any legitimate implementation requests received from his respective points of contact within your company. In particular, no employees of your company may give our Business Partner any disciplinary instructions or instruct him to achieve a certain project goal by a certain means or via a certain methodology, unless this is a certified test procedure, certain DIN standards or other generally recognised rules of technology which form a measurable quality standard for the provision of services by our Business Partner. That being said, you as the client may define the service provision goals for our Business Partner. This also includes intermediate goals.

###  “WHEN” – The use of flexible working hours

**** An essential feature of self-employment for our Business Partner is the right to flexible working hours. This does not mean that it is necessary for the individual to change his working hours on an ongoing basis. It is more important that employees of your company do not stipulate working hours for our Business Partner that he does not want to work and that they do not require the Business Partner to be obliged to check in or check out each day with one of his points of contact within your company, to submit sick leave or similar. Of course, handover, coordination or meeting dates agreed with your company or with employees of your company will remain unaffected by this. This will also equally apply to limitations on our Business Partner’s working hours or obligations to check in or out on site which may exist for reasons of safety or infrastructure.

###  “WHERE” – Workplace flexibility

**** In the same way, being required to attend a fixed site should be avoided, unless the product of the activity or activities our Business Partner is engaged in necessitates working at a fixed location. Our Business Partner should therefore – in coordination with his points of contact in your company – choose his workplace flexibly and according to the task at hand. For example, he should work “remotely” as far as possible, as long as this serves the needs of the project. However, any one-sided determination of our Business Partner’s place of work by employees of your company should be avoided.

**No division of labour with third parties**

As a self-employed individual, our Business Partner is responsible for fulfilling a defined task or activity. It is possible, however, to work on the same task or activity with other Business Partners, third parties or employees of your company, as long as these activities are related to the task at hand and are completed one after the other and are not all worked on at the same time. The work or services provided by of our Business Partner should, however, be independently identifiable and distinguishable from that of others.

## Use of own resources

The independence of our Business Partner is also apparent through the use of his own independent means of organisation. Accordingly the Business Partner’s own hardware and equipment should be used. He should also use his own email address or other resources. All this serves to document the independence of our Business Partner from both your company and Hays. Hardware and software provided by your company can be used without endangering the self-employed status of our Business Partner, but only if this is absolutely necessary for technical, data protection or copyright (licenses, etc.) reasons.

**External appearance regarding the project**

Our Business Partner acts vis-à-vis third parties (your suppliers, the works council of your company etc.) as an external, independent service provider. This also applies in particular when on site at your customer’s company. Any inclusion in internal telephone registers, organisational charts or other employee overviews of your company should be avoided as a matter of urgency, unless this also makes it very clear that our Business Partner is an external service provider. Likewise, any email signature file or similar used by our Business Partner within the customer’s company must clearly indicate his external status from the company. The same applies to doorplates, business cards or other handouts to third parties.

**No parity with employees of your company**

As a self-employed person, our Business Partner is an external entity with regard to the employees in the your company. This negates any involvement in any company employee benefits, e.g. subsidised canteen meals, participation in your Christmas parties, etc. Our Business Partner may also not stand in for any sickness or holiday leave for any employees of your company. Similarly, his contacts within your company are not responsible for granting our Business Partner holidays or “bridging days” (days taken off following a public holiday) etc., but rather he shall choose his own holidays. This, of course, should be done so that there is no negative impact on the project (i.e. project requirements are taken into consideration and the appropriate customer contacts are informed in good time).

As an independent contractor, the Business Partner is liable according to the general service contract principles of the Austrian Civil Code (ABGB). Accordingly, a privileged position as to liability under labour law shall not apply contractually. Consequently, the self-employed person must include corresponding risks of liability in his billing rates.

**The Business Partner as an independent entity on the market**

Regardless of the specific form of the respective project, those characteristics indicative of a self-employed individual should, in the main, also be fulfilled by our Business Partner.

The self-employed person is characterised by the fact that he has worked in parallel for at least a second customer alongside Hays within a period of 12 – 24 months. As the customer, you should make this possible.

As a self-employed person seeking to work for different customers, the Business Partner will typically appear as such on the market. This is reflected, for example, by having a corresponding business homepage or other forms of advertising to present to existing or potential clients.

If the Business Partner has already been self-employed for some time, he has usually established himself as an independent service provider on the market and can therefore present references from the work he has performed for other customers.

As an independent service provider, the Business Partner takes advantage of the opportunities offered to him by a supply and demand economy and thus negotiates his own hourly rates and does not allow his remuneration to be determined by third parties, as would be the case for an employee.



**Questions: Contacting your Hays representative**

Should you have any questions, please do not hesitate to contact your Hays representative.

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www.hays.at/standorte

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