

GUIDELINES FOR THE PROVISION OF FREELANCE SERVICES

FREELANCE SERVICES IN HAYS CONTRACTING **WHAT DOES THAT MEAN?**

When Hays is entrusted with the provision of freelance services, services will not be rendered by Hays but by a Sub-Contractor assigned with the performance of the services. Thus, the following persons are typically involved in this contractual relationship:

Sub-Contractor: The Sub-Contractor is the contractual partner of Hays but not necessarily the one providing the services. It can either be a company or a freelance service provider (“Single Contractor”).

Deployed Person: The Deployed Person is the person assigned by the Sub-Contractor who actually performs the service. If the Sub-Contractor is a company, the Deployed Person typically is an employee of this company. When assigning Single Contractors, Sub-Contractors and Deployed Persons are often identical.

Client: The company for which the Deployed Person is supposed to render services.

If you, as a Sub-Contractor, do not render the service yourself but assign another Sub-Contractor or your own permanent employee to act as the Deployed Person, please forward this document to the Deployed Person.

These guidelines are directed both at you as a Sub-Contractor and you as a Deployed Person.

FREELANCE PERFORMANCE OF THE PROJECT

It is not possible to determine schematically when a service can be considered to be provided on a freelance basis; what is decisive is an overall view of the following criteria. These criteria do not all have to be satisfied at once, but the following criteria should be predominantly found in the current project description:

The Deployed Person works without instructions on the basis of a defined, self-contained description of services, and is not integrated into the working organisation of the Client.

Binding service agreement – no gradual changes

The service to be provided by the Deployed Person, as defined in the project contract, is binding for all parties involved, in particular for the Client. A further specification by the Client of the services to be provided is completely permissible insofar as the respective contents of the services have already been referred to in an abstract form in the project contract or the written description of services. Likewise, a substitution or extension of the services to be provided is permissible. The latter requires, however, a corresponding amendment or supplement to the contract existing between Hays and the Client as well as to your individual project contract with Hays.

Provision of services without instructions

It is an absolutely essential characteristic of freelance activity that the Deployed Person in a project works without instructions, namely as follows:

- **“HOW” – nature of the provision of services**

You, as the Deployed Person, should not be issued with any instructions by the Client in relation to the form of the implementation of the contract, the choice of any working methods or the nature of the provision of the services. The continued issue of such instructions will jeopardise the independent provision of services, particularly as you will endeavour to fulfil any legitimate implementation requests expressed by the Client. In particular, you as the Deployed Person should not be issued by the Client with disciplinary instructions or be instructed to achieve a certain project goal in a certain way or by using a certain method, unless this concerns a certified test method, certain ÖNORM standards or other generally recognised codes of practice which form a measurable standard of quality for the provision of the services. However, the Client may define goals for the provision of the services, including in the form of interim goals.

- **“WHEN” – flexible arrangement of working hours possible**

An essential feature of the independent provision of a service is the right to flexibly arrange working hours. It is not required that you as the Deployed Person actually arrange your working hours differently on an ongoing basis. What is important, however, is that the Client does not arrange working hours for you as the Deployed Person which are to your disfavour or that he imposes an obligation on you for your respective working hours to be logged in and logged out with one of his contact persons, or for notifications of illness or similar to be given. This is an exclusive obligation for you yourself or for the Sub-Contractor as the employer of the Deployed Person. It shall obviously not affect handover dates, consultation dates or meeting dates which have been agreed. Also binding are limitations of the working hours of the Deployed Person or log-in and log-out obligations which exist due to work safety or reasons of infrastructure.

- **“WHERE” – flexibility as to place of work**

In the same way, a commitment to a fixed place of work should be avoided, unless a certain place of work is imperative from the content of the activity. Following consultation with the Client, you as the Deployed Person should therefore choose your place of work which is flexible and suitable for the task. You should, for example and as far as possible, work remotely if this suits the project. Any unilateral determination of your place of work by the Client should be avoided.

No work sharing cooperation with third parties

In line with the provision of independent services, you shall work to fulfil a defined assignment. A consecutive but in terms of timing successive¹ activity on the same matter together with any other third parties or internal employees of the Client is possible; your contribution to the services should, however, be independently identifiable and distinguishable from the services of other parties. Please note in particular that a work sharing cooperation with third parties is not just a feature which opposes the freelance performance of a contract, but moreover exposes you/your company to the risk of liability for any mistakes of others.

¹ The correct implementation of this aspect may be challenging when working, for instance, with agile methods. If you have any questions in this regard, please contact us.

Use of own operating resources

The independent provision of services shall also be recognisable from an independent operational organisation. Therefore, you should use your own or your employer's hardware as well as your own or your employer's e-mail address. Hardware and software provided by the Client can indeed be used, if such use is mandatory for technical reasons, data protection reasons or copyright reasons (licences etc.).

External relations within the project

In relation to third parties (suppliers of the Client, works council of the Client, etc.), you act and are recognisable as an external party – including, in particular, at the place of business of the Client. It is imperative to avoid that you are included in internal telephone lists, organisational charts or other employee lists of the Client unless it is made very clear at the same time that you are an external party. Likewise, any e-mail signature or similar used by you within the Client company, must clearly indicate your external status. The same applies to door plates, business cards or other handouts to third parties.

No equal treatment with employees of the Client

You as the Deployed Person are an external person in relation to the employees of the Client. This contradicts any involvement in social benefits provided by the Client such as subsidised canteen food, participation in Christmas parties etc. You as the Deployed Person should also not provide any cover for employees of the Client during periods of illness or holiday. Likewise, you will not be granted by the Client any holiday or free days to be taken after a bank holiday etc.; instead you or your employer shall be responsible for this. In doing so, it is obviously permissible for any project requirements to be taken into account and to further inform the Client with early notice of the holiday.

THE PRESENCE OF THE SUB-CONTRACTOR ON THE MARKET

As a Sub-Contractor, you have consciously decided to take advantage of your market opportunities on a project-by-project basis, but also to take entrepreneurial risks. Irrespective of the specific organisation of the respective project, you should largely fulfil the recognised characteristics for the status of a freelancer:

Acquisition of further clients

The economically independent freelancer is also characterised by the fact that within a given period of 12-24 months he has worked in parallel for at least one other Client in addition to the Client. Unless a further Client exists, corresponding acquisition initiatives must be recognisable and, if need be, attestable.

Perception of your opportunities on the market

As a freelancer, you accept economic risks in return for being able to take up opportunities on the market. Obviously, you therefore reject projects which in your opinion are not lucrative; you calculate your offers in line with the market and negotiate your charge-out rates. This must be documented as it reflects your economic independence as a freelancer.

Own business operation

As a freelancer, you run your own business operation on a continuing basis. That means that it is beneficial if you have your own website, own a company (in the form of a GmbH for example), employ at least one employee who is subject to social insurance contributions, have your own office space, a company car as well as your own operating and work resources (hardware and/or software).

You have your own value added tax identification number, the business license necessary for the exercise of the respective activity and you have protected your business operation with public liability insurance.



IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR HAYS CONTACT PERSON

Should you have any questions or would like to make any suggestions on how to optimise the points listed here, please do not hesitate to contact your Hays contact person. Your contact person at Hays will be glad to assist you or establish contact with our **Hays Compliant Sourcing²** consulting team.

² **Hays Compliant Sourcing** is a consulting concept developed by Hays and is a registered word mark of Hays AG in Germany. We support you in designing legally compliant flexible forms of work in service contracts.