

# **CONTRACTING GUIDELINES**

**FOR THE DEPLOYMENT OF  
FREELANCE SUB-CONTRACTORS**

## **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 freelancers, Sub-Contractors and Deployed Persons are often identical.

**Client:** The company for which the Deployed Person is supposed to render services. This is either your company, if the service is provided in your company, or possibly your Client if the services are not to be rendered for your company but for your Client.

**If the service is not rendered in your company but in your Client’s company, please forward this document to the responsible persons at your Client’s company.**

### **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 Hays of the service to be provided is permissible insofar as the respective contents of the service have already been referred to in an abstract form. 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 your company and to the individual project contract existing between Hays and the Sub-Contractor.

### Provision of services without instructions

It is an absolutely essential characteristic of freelance activity which is exempt from social insurance payments that the Deployed Person works without instructions on the project agreed with you, namely:

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

Neither employees of your company nor Hays shall issue the Deployed Person with instructions in relation to the form of the implementation of the contract, the choice of any working methods or the nature of the provision of its services. This is because the continued issue of such instructions by employees of the Client will jeopardise the independency of the services provided by the Deployed Person, in particular as the Deployed Person will endeavour to fulfil any legitimate implementation requests expressed by the Client. They may not issue the Deployed Person with disciplinary instructions or instruct the Deployed Person to achieve a certain project goal in a certain way or using a certain method, unless this concerns a certified test method, certain DIN standards or other generally recognised codes of practice which form a measurable standard of quality for the provision of services by the Deployed Person. However, the Client may define goals for the provision of services, also including interim goals.

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

An essential feature of the independent provision of services is the right to flexibly arrange working hours. The Deployed Person is not required to arrange working hours differently on an ongoing basis. What is important, however, is that employees of the Client do not arrange working hours to the disfavour of the Deployed Person or that they impose an obligation for the Deployed Person or its respective working hours to be logged in and logged out with one of its contact persons, or for notifications of illness or similar to be given. This is an exclusive obligation for the Deployed Person. It shall obviously not affect handover dates, consultation dates or meeting dates which have been agreed with contact persons of the Client. Also binding are limitations of the working hours of the Deployed Person or log-in or 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 of the Deployed Person. Therefore, following consultation with the contact persons at the Client, the Deployed Person should freely choose its place of work which is flexible and suitable for the task. The Deployed Person should, for example and as far as possible, work remotely if this suits the project.

Any unilateral determination of the place of work of the Deployed Person should, however, be avoided by the Client.

### No work sharing cooperation with third parties

The Deployed Person will work to fulfil a defined assignment. A consecutive but in terms of timing successive activity on the same matter together with other Deployed Persons, any other third party or employees of the Client is possible<sup>1</sup>. The contribution to the services by the Deployed Person should, however, be independently identifiable and distinguishable from the services of other parties.

#### Use of own operating resources

The independent provision of services shall also be recognisable by the independent business organisation of the Deployed Person. Therefore, the Deployed Person's own hardware should be used. The Deployed Person should use its own e-mail address or other operating resources. 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, works council of the Client, etc.), the Deployed Person acts and is recognisable as an external party – including, in particular, at the place of business of the Client. It is imperative to avoid any inclusion in internal telephone lists, organisational charts or other employee lists of the Client unless it is made very clear at the same time that the Deployed Person is an external party. Likewise, any e-mail signature or similar used by the Deployed Person within the Client company must clearly indicate the external status of the Deployed Person. The same applies to door plates, business cards or other handouts to third parties.

#### No equal treatment with employees of the Client

The Deployed Person is an external person in relation to the workforce in Client companies. This contradicts any involvement in social benefits provided by the Client such as subsidised canteen food, participation in Christmas parties etc. Furthermore, the Deployed Person shall not provide any cover for employees of the Client during periods of illness or holiday.

Likewise, the Deployed Person will not be granted by the Client any holiday or free days to be taken after a bank holiday etc.; the Deployed Person will choose holiday times on its own accord. In doing so, it is obviously permissible for the Deployed Person to take into account any project requirements and to further give any involved contact partners early notice of the intended holiday.

Our Sub-Contractor is liable according to the general principles of the German Civil Code regarding service contracts. Accordingly, there is no contractual privileged position as to liability under employment law. It therefore follows that the Sub-Contractor must take account of the corresponding liability risks in his charge-out rates.

## THE PRESENCE OF THE SUB-CONTRACTOR ON THE MARKET

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<sup>1</sup> 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.

Irrespective of the specific organisation of the respective project, the Sub-Contractor should largely fulfil the recognised characteristics for the status of a freelancer.

- The economically independent freelancer is characterised by the fact that within a given period of 12-24 months he has worked in parallel for at least one other Client. As Client you should make this possible.
- The Sub-Contractor wishes to work for various Clients, therefore he typically has a correspondingly independent presence on the market. This presence takes the form, for example, of a corresponding website or other forms of advertising presence in relation to existing or potential Clients.
- To the extent that the Sub-Contractor has already been a freelancer for some time, he will usually be established as an independent service provider on the market and can therefore produce references from assignments with other Clients.
- The Sub-Contractor shall realise the possibilities which present themselves to him, make profit from the relationship of supply and demand and negotiate his charge-out rates accordingly, unlike an employee who is classified in a remuneration system determined by a third party.

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

Hays is your consulting partner during this temporary project assignment and is available to you at any time. Take advantage of our long-standing experience in this area – we are happy to help you with any questions you may have on or beyond the provided information on freelance service providing. Your contact person at Hays will be glad to assist you or establish contact with our **Hays Compliant Sourcing**<sup>®2</sup> consulting team.

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<sup>2</sup> **Hays Compliant Sourcing**<sup>®</sup> is a consulting concept developed by Hays and is a registered word mark. We support you in designing legally compliant flexible forms of work in service contracts, statements of work and temporary employment contracts.