

GUIDELINES FOR THE FREELANCE PERFORMANCE

OF A SERVICE CONTRACT

You have knowingly decided by working as a freelancer to take up corresponding market opportunities in the context of projects but to also accept the associated business risks. Hays shall accompany you in the process and shall always be available to you as a contact partner. Please make use of our long-term experience should you have any questions on the freelance performance of the contract, including beyond the scope of the information set out below.

You have been instructed by Hays with the performance of a project in the form of a service contract.

- You shall carry out the corresponding services either yourself,
- through a further instructed sub-contractor
- or allow them to be carried out by an employee who you have permanently employed.

Should the service be carried out neither by you nor by a permanently employed employee, please ensure that further instructed freelance sub-contractors also receive this document.

In order that the project can actually be carried out on a freelance basis, various criteria must exist. These criteria do not all have to be satisfied at once, but the following criteria should be predominantly found.

Freelance Performance of the Project

The service provider¹ shall work in the project without instructions on the basis of a defined, self-contained description of services, and shall not be integrated into the working organisation of the client. The question of whether the respective activity fulfils these requirements cannot be schematically established, but will instead be determined on the basis of an overall assessment of the following criteria which must each be predominantly satisfied in relation to the current project activity:

Binding service agreement – no gradual changes

The service to be provided by the service provider, as well as that defined in the individual project contract or upon its conclusion, is binding for all participants, including in particular for the client. A further specification by the client of the services to be provided is completely permissible provided the respective content of the services is already set out in an abstract form in the individual 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 on the one hand as well as your individual project contract with Hays on the other hand.

Provision of services without instructions

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

- “HOW” – nature of the provision of services

The client does not issue the service provider with any 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 the services. The continued issue of such instructions by the client will jeopardise the freelance performance of the project, in particular, the service provider shall endeavour to fulfil any legitimate implementation requests expressed by the client. In particular, the client may not issue the service provider with disciplinary instructions or authorise him, in order to achieve a certain project goal in a certain way or using a certain method, unless this concerns a certified inspection procedure, certain

¹ The term service provider shall hereinafter denote the person who actually provides the service and not necessarily the person with whom Hays has a contract.

DIN standards or other generally recognised codes of practice which form a measurable standard of quality for the provision of the services. On the other hand, 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 a freelance performance of a service is the right to flexibly arrange working hours. It is not required that the service provider actually arranges his working hours differently on an ongoing basis. What is important however, is that employees of the service provider's client do not arrange working hours for him which are not to his liking or that they impose an obligation on him for his 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 any employer of the service provider. This 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 service provider 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 respective client, the service provider should therefore choose his place of work which is flexible and suitable for the task. The service provider should for example as far as possible, work remotely if this suits the project. The service provider should avoid however any unilateral determination of the place of work of the service provider by employees of the client.

No work sharing cooperation with third parties

In the context of the freelance performance of the contract, the service provider shall work to fulfil a defined assignment. A consecutive but in terms of timing successive activity on the same matter together with other contractors or internal employees of the client is possible; or the respective contribution to the services by the contractor is however independently identifiable and distinguishable from the services of third 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.

Use of own operating resources

The freelance performance of a contract shall also be recognisable from your independent operational organisation. Therefore your own hardware and your own or your firm's e-mail address or other operating resources should be used by the service provider. Hardware and software provided by the client can indeed be deployed, but it only poses no risk to the freelance performance of the contract if such use is mandatory for technical reasons, data protection reasons or copyright reasons (licences etc.).

External relations within the project

The service provider acts in relation to third parties (suppliers of the client, the works council of the client etc.), so that he is recognisable as being external – including in particular at the place of business of the client. It is imperative to avoid any inclusion of the service provider in internal telephone lists, organisational charts or other employee lists of the client unless it is made very clear at the same time that he is an external party. Likewise, any email signature or similar used by the service provider within the client company, must clearly indicate his external status. The same applies to door plates, business cards or other hand-outs to third parties.

No equal treatment with employees of the client company

The service provider is an external person in relation to the employees of the client. This contradicts any involvement in social benefits provided by the client such as client subsidised canteen food, participation in its Christmas parties etc. Also the service provider should not provide any cover for employees of the client during periods of illness or holiday. Likewise the client will not grant the service provider holiday or

free days to be taken after a bank holiday etc., instead you or any employer of the service provider 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 as a freelancer on the market

You shall not act as a company which allows for the service to be provided by employees, instead you shall act as an independent person ("freelancer"), and 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 principals

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 principal in addition to the client. Unless a further principal 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 because this 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 homepage and regularly update its content, you form your own company (in the form of a GmbH for example), you employ at least one employee who is subject to social insurance contributions, and own 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, a business registration or a freelancer endorsement from the tax office and, for example, you have protected your business operation with public liability insurance.

Protection against the risks of illness, incapacity to work and nursing care dependency; sufficient provision for retirement

As a freelancer exempt from social insurance payments you have independently made provision to protect against the risks of illness, incapacity to work, including where applicable due to an accident at work, and nursing care dependency. We would like to point out in this connection, in particular in relation to the risk of an accident at work or a work-related disease, the possibilities of voluntarily insuring against such risks, including as a freelancer, with an employers' mutual insurance association.

The same shall apply for your provision for retirement, where you should aim as far as possible for at least the same level of protection as that granted under the statutory pension system.

If you have any questions, please contact your Hays contact partner

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