

This is a translation of the German original. In the event of any discrepancy,
the German text prevails.

Guide for Concluding Independent Contractor Agreements and Fee Agreements

1. General

In principle, all work performed and services provided for the University, including externally funded research projects, must be carried out by Universität Hamburg staff. However, if services or support are needed at short notice that employees of Universität Hamburg are unable to provide, an **independent contractor agreement or fee agreement** may, as a rule, be issued.

Staffing needs must be considered when determining if an independent contractor agreement or fee agreement is necessary, and an agreement may not be used as a substitute for permanently addressing human resource needs or avoiding employer obligations. Strict criteria must be applied as social insurance providers, internal revenue office audits, or lawsuits filed by the purported employee concerned may result in the employment relationship being defined as a covert employment relationship and thus as pseudo self-employment.

The awarding of independent contractor agreements and fee agreements is subject to the provisions of the German regulation for tenders below the threshold amounts (Unterschwel­lenvergabeordnung, UVgO) and Hamburg's procurement regulations (Hamburgische Vergaberichtlinie, HmbVgRL). The correct bidding procedure must be followed depending on the wage or fee payable, and the award decision must be appropriately documented.

The performance of any work or the provision of any service may only begin once the agreement has been signed by the principal's authorized representatives and the contractor.

Characteristics of an independent contractor agreement

- An independent contractor agreement is a bilateral agreement for which remuneration has been agreed, obligating the contractor to autonomously perform/provide individual, self-contained work and the principal to pay the remuneration (wages) agreed.
- The contractor must produce a particular work product or outcome rather than any activity.
- An independent contractor agreement may cover the production or alteration of an object as well as the achievement of a particular result effectuated by the stipulated work or service. Decisive for the achievement of a particular result is that the stipulated work product is created through the contractor's performance of work. This can be a tangible work product (e.g., manufacture of an item from materials provided by the customer) or an intangible work product (e.g., production of intellectual content for an opinion or peer review).
- Performance is nonrecurring and not continuous, with a specified scope of the work and the date of delivery.

Characteristics of a fee agreement

- Fee agreements preclude the awarding of an employment contract,
- must be rendered autonomously, and
- not requiring the provision of a specific outcome but rather the provision of the service itself.

Contact persons and assistance

Contact us by **email** at Werkvertrag@uni-hamburg.de or by post at Strategischer Einkauf (732), Mittelweg 124, 20148 Hamburg, Germany. Our offices are located on the ground floor at Mittelweg 124.

2. Who can be awarded an independent contractor agreement or fee agreement?

Universität Hamburg employees must report independent contractor agreements and fee agreements as additional gainful employment. Staff must complete the [Notice of Additional Gainful Work](#) and submit it to HR Services (Dept. 6) via the official channels. Professors must send the completed form to the dean, who will then forward it to the HR officer responsible.

The HR officer must then obtain authorization from the head of Human Resources as

Section 60 of the Hamburg state budget regulations (Landeshaushaltsordnung, LHO) provides that contracts between public employees and their employer may only be concluded with the permission of the head of that agency. Correction assistance services are excepted.

If the work to be performed within the scope of an independent contractor agreement or fee agreement is part of the duties normally carried out by full-time university employees or could be assigned to them as official duties, no independent contractor agreement may be awarded pursuant to Section 4 of the Hamburg regulations governing additional gainful work in higher education institutions (Verordnung über die Nebentätigkeit des beamteten wissenschaftlichen und künstlerischen Personals an Hochschulen, HmbHNVO).

Other Hamburg public sector employees must also submit an authorization for additional gainful work (from their agency head pursuant to Section 60 LHO) with their application.

Independent contractor agreements and fee agreements may be signed with **foreign nationals**, provided that they have the requisite residence permit¹ where required.

International students always require explicit authorization from the local immigration office. However, be aware that lawmakers have not clearly defined to what extent independent work is permitted while studying. The immigration authorities are responsible for reviewing each individual case to assess whether the activity jeopardizes a student's ability to achieve their study goals within a reasonable period of time. This requires verifiable documents, meaning if the contract has not yet been drawn up, the foreign national must submit documents from the higher education institution indicating the type of activity, time frame, and remuneration. Authorization must be granted before any work starts.

¹Citizens of the European Union (EU) and European Economic Area (EEA) do not need a residence permit—the EEA comprises the EU member states, Iceland, Liechtenstein, and Norway.

Foreign nationals wishing to enter the country for the purpose of taking up gainful work should familiarize themselves with the entry requirements well in advance. Up-to-date information is available on the [German Federal Foreign Office website](#).

In Hamburg, you can also contact the [central immigration authorities office](#).

Additional information is available in our “Foreign Nationals” information sheet.

Students: Pursuant to Section III subsection 8.2 of the guidelines for employing research and student assistants (Richtlinie für die Beschäftigung von wissenschaftlichen und studentischen Hilfskräften), paid activities other than studying, including any work as a research or student assistant, may not exceed 19 hours per week or 86 hours per month.

Academic tutors are excluded and may work more than 19 hours per week provided they do not enjoy privileged student employee status (e.g., enrolled in a master’s degree program) under German social security legislation.

Independent contractor agreements and fee agreements are therefore rarely awarded to students, as they should not already be working at the University as a student employee or tutor. Awarding independent contractor agreements and fee agreements is only permitted if the orderly completion of studies is not jeopardized and the scope of an independent contractor agreement or fee agreement does not require a university degree.

Entrepreneurial start-ups: Persons in receipt of a grant pursuant to Sections 93 and 57 of Book III of the German Social Security Code (SGB III) are considered self-employed and thus responsible for their own social security contributions unless exempted on their own request or because freelance activities are marginal.

Independent contractor or fee agreements may be awarded without concern in such cases.

3. Undisclosed or covert employment (pseudo self-employment)

Contractors must be **independent** when discharging contractual obligations and may not currently or prospectively be incorporated into the University’s operations.

Pseudo self-employment results in the agreed remuneration becoming subject to compulsory social security contributions and income taxes. Should contracted activities subsequently be deemed subject to compulsory social security contributions and income taxes, Universität Hamburg, as the employer in fact, is obliged to pay all compulsory social security contributions (for low-wage marginal activities, the flat-rate amount) and income taxes. Subsequent recourse against the contractor is generally precluded. Therefore, it is absolutely imperative to check whether the activity is truly independent **before** awarding any agreement.

The following conditions must be satisfied in order to award an agreement:

- The contractor must not be bound by any orders or instructions in the production of any work or provision of any service; however, specific terms regarding the characteristics of the good or service may be agreed in the contract.
- Work should generally be performed outside of University premises to ensure independence in self-employment.

- It is also a sign of a lack of independence if a contractor is required to maintain specific working hours and must perform work or provide services personally—that is, the contractor is prohibited from subcontracting to third parties.
- Work repeatedly or regularly carried out by University employees is an indication of dependent employment and thus an indication of an obligation to pay compulsory social security contributions. German social security legislation assumes that activities based on an independent contractor agreement are actually a dependent employment relationship subject to compulsory social security contributions if the contractor is or was performing the same tasks as an employee.

For this reason, employees (including former employees) may not be given an independent contractor agreement or fee agreement where the subject matter is substantially similar to the contractor’s actual or former official employment duties.

- An obligation to pay social security or pension insurance contributions may arise if the contractor:
 - does not or only rarely employs any staff
 - only has one client in the long term.

If the activity is otherwise clearly independent, then the independent contractor carrying out employee-like activities is subject to pension insurance contributions and must pay these themselves.

Strategic Purchasing (732) will determine the compulsory social security contribution status based on the information provided in the requisition request form. If several boxes in the left column are checked, this could be an indication that an independent contractor agreement is not appropriate because the relationship is a dependent employment relationship subject to compulsory social security contributions. In case of doubt, Strategic Purchasing (732) will request a status determination procedure and a decision by the German pension insurance fund (Deutsche Rentenversicherung).

4. Requisition request

If you wish to conclude an independent contractor agreement, contact

- the independent contractor agreement section of Strategic Purchasing directly with your questions. The team will gladly answer your questions and provide alternative contract options as required. If a review determines that an employment relationship involving compulsory social security contributions exists, Strategic Purchasing (732) will contact HR Services (Dept. 6) to clarify the matter.
- In the case of a requisition request, contact the person within Strategic Purchasing (732) responsible for independent contractor agreements. Provided the requisition request is completed in full and signed before the planned start of work, a contract can be awarded. Ideally, submit documents via email (werkvertrag@uni-hamburg.de) or, alternatively, in paper format.

If you want to commission a person to act on behalf of a company, submit a purchase order to the Procurement Team responsible. This involves commissioning an individual employed and deployed by a company. The contract and payment go to the company not the individual. The assignment does not constitute additional gainful work for the individual, who is remunerated separately.

You should also contact the Procurement Team responsible when commissioning a legal entity (GmbH, GbR, etc.).

Be aware that the resource manager responsible must specifically sign the requisition request form to confirm the required financing has been secured and (in the case of external funding) the funding provisions allow an independent contractor agreement to be awarded for the matter covered by the requested agreement.

Under no circumstances may work for which the awarding of an agreement is being requested begin until the agreement has been signed by the contractor and an authorized member of the Strategic Purchasing team. This must be ensured by the person submitting the request. Failure to do so may have legal consequences for the Free and Hanseatic City of Hamburg (FHH) and give rise to disciplinary action and claims for damages.

5. Contract award

- The awarding of contracts for goods and services using independent contractor agreements or fee agreements is determined in accordance with the total contract value and documented in the requisition request.

up to EUR 5,000	no comparable offers; direct engagement
from EUR 1,000	at least 3 tenders or direct engagement if: <ul style="list-style-type: none"> a) the total contract value is less than EUR 25,000 and the contractor has reliably obtained the required <u>market knowledge</u> through other means →Detail the contractor’s market knowledge in the requisition request. b) the performance of the service is particularly <u>urgent</u>² c) the service can be performed <u>only by one specific company</u> d) there are <u>less than 3 tenders</u>.
from EUR 50,000	Contact Strategic Purchasing (732) before you publish the call for tenders.

Be sure to include all anticipated costs for procurement (e.g., travel expenses) when estimating the total contract value. This means all items that generate costs for Universität Hamburg during the contractual period must be taken into account. Value-added tax is not included.

6. Agreement

Without exception, all agreements must be awarded in writing by Strategic Purchasing (732).

A commitment will be saved in SAP once the agreement has been awarded so that the amount appears in the SharePoint account statement.

² Circumstances outside Universität Hamburg’s control that could not have been foreseen make performance/provision particularly urgent.

7. Wage/fee payment

The wage stipulated may only be paid on the basis of an itemized invoice that

- clearly states the scope of work/services rendered
- confirms orderly performance of the work/service.

The invoice must contain an invoice number and the contractor's tax number. The value-added tax payable must be indicated as required.

Invoices must be sent to Strategic Purchasing (732), which will process the payment.

Payment in installments is only permitted if partial deliveries and the corresponding proportions of the total work value have been agreed with the contractor, performed in full, and are free from defects.

8. Disclosure notices

As soon as the payments from independent contractor agreements and fee agreements with Universität Hamburg with a contractor reach EUR 1,500 per year, the University will prepare the **disclosure notice** stipulated in Section 2 of the German transaction reporting regulations (Verordnung über Mitteilungen an die Finanzbehörden durch andere Behörden und öffentlich-rechtliche Rundfunkanstalten) in conjunction with Section 93a of the German internal revenue code (Abgabenordnung) and submit it to the internal revenue office responsible.

All payments associated with the independent performance of work, the provision of services, or the delivery of goods (including teaching contracts and all types of fees) must be reported.

9. Breaches of contract and warranty

Pursuant to Section 634a subsection 1 of the German Civil Code (BGB), claims for defects relating to independent contractor agreements expire after **2 years** (or 5 years for construction projects) in the case of work involving the manufacture, maintenance, or alteration of an object or the provision of planning or supervision services. To avoid any financial disadvantage for Universität Hamburg and any indemnity claims that may arise, the requester must inspect all work upon receipt for conformity with the agreement and assert any warranty claims in a timely manner if the work is not completed or deficient. Strategic Purchasing (732) should be consulted in such cases.

In the case of fee agreements, partial performance (i.e., quantitatively inferior performance) can lead to a reduction of the fee due to partial nonperformance (Sections 275, 326 in conjunction with Section 441 subsection 3 BGB) or partial offsetting with a possible claim for damages pursuant to Section 280 BGB.