



Information on Concluding Contracts for Service or Work and Labour

The information provided in this leaflet may help to evaluate the necessity and type of the potential contract.

The contractor or service provider should not start their work prior to the contract closing. The contract for work and labour or service (complete contract incl. all required documents) shall be submitted in time with the HR Department, but at least **4 weeks** prior to the start of the intended contract period.

Contracts for work and labour or service with employees of the University of Göttingen regarding tasks within their scope of duties and functions or may be assigned to them as an official task within the scope of the employer's right to give instructions **are not permissible.**

Issuing a contract for work and labour or service with persons under age of 16 years are not permissible.

Self-employed contractors or freelancers (e.g. translators, programmers, interpreters), who may state accounts themselves must not fill out or file an application.

Note for foreign contractors: For taking up work in Germany, a valid residence permit is required. An additional sheet containing a statement on the occupation is enclosed to the residence permit. Every self-employed activity qualifies as an occupation. **The actual activity must be permissible.**

For defining the types of contract, the actual circumstances, not the superficialities of the contract nor the used terminology are decisive. One must be able to ascertain, if a contract for service or work and labour has been concluded or if a hidden employment shall be established, which constitutes tax liability and usually compulsory security insurance alongside. Generally, employment contracts shall be concluded and the issuing of contracts for service or work and labour should be an exception.

It has to be checked carefully, which type of contract is at hand. Es ist sorgfältig zu prüfen, welche Vertragsform vorliegt. In fact, the types of contract do not differ in their legal effectiveness, but in their subject.

Contract for service

- The contractor owes the performance of a service to the client/customer.
- The performance may be autonomously or not, dependently or not, self-determined or directed by others.
- The payment of the compensation occurs on a regular basis and is not performance-related.
- Generally, the contract is concluded for a limited period, otherwise it must be terminated.

Contract for Work and Labour

- Defining which work or job shall be performed (e.g. immovable objects like buildings or incorporeal achievements like software, construction plan and expert opinion).
- Payment is performance-related.
- Bringing about of a certain achievement towards an agreed fee.
- Private law contract.
- Contractor works independently, is not bound to instructions from the client/customer regarding place, time and choice of devices, methods, instruments and resources.
- The contractor bears the full entrepreneurial risk.
- The contractor is liable for their social security.

Self-employment is among others defined by the free organisation of the performance, self-determined working time, autonomy of decision and own entrepreneurial risk.

German law applies for all rights and duties. If the classification of the assigned task/performance as work and labour or service is not clearly definable in its nature, the regulations for contract of work and labour pursuant to sections 631 et seqq. German Civil Code prevail in case of uncertainty.

The fee contract is another special type of contract, for which the HR department is not responsible. The departments/institutions themselves conclude free contracts.

Fee Contract

- Contract partners are mainly freelancers (lecturers, artists, lawyers, journalists and authors).
- Payment is made for a service.
- The calculation of the fee is made based on the hours worked (normal case) or sometimes performance-related.