

GeC working instructions specific to contracts of mandate and consulting agreements

of 18th February 2019

Preamble

These types of contract concern collaborations/involvement with persons (or companies) (co-contractors) external to EPFL for tasks which are clearly defined and limited in time.

The present working instructions are accompanied by a template which will enable you to begin drafting a contract.

They support the [GeC Working instructions concerning general information relating to contracts](#).

Section 1. Factors to be addressed

Article 1 The status of the mandatary or consultant

¹ If independent (freelance):

- a) a certificate attesting the mandatary or consultant's affiliation to the Swiss Old-age and Survivor's Insurance scheme (AVS) must be requested. If such a certificate is provided with independent status, EPFL does not have to pay social insurance contributions (AVS, unemployment insurance, SUVA (accident insurance), etc.). If the certificate is not provided, point b) below applies.
- b) in advance¹: (i) check with the Research Office if the Unit concerned intends to report the payment of this person as an eligible expense in a research project; (ii) establish whether any potential conflict of interest may arise for the Unit concerned as described in LEX 5.8.3; (iii) where necessary, check with the DABS that regulations concerning public procurement have been respected;
- c) a *contract of mandate or consulting agreement* may be drawn up.
- d) invoices must be sent to the Finance department, accompanied by the certificate attesting the mandatary or consultant's affiliation to the AVS (in accordance with point a) above).
- e) the Finance department deals with matters concerning VAT.

² If not independent (freelance):

- a) in advance: (i) check with the Research Office if the Unit concerned intends to report the payment of this person as an eligible expense in a research project; (ii) establish whether any potential conflict of interest may arise for the Unit concerned as described in LEX 5.8.3; (iii) where necessary, check with Human Resources whether or not the person requires a residency permit. The mandatary or consultant is responsible for obtaining all residency permits necessary for the performance of the contract.

¹ Provisions in green concerning mandates relating to research only.

- b) social insurance contributions (AVS, unemployment insurance, SUVA (accident insurance), etc.) must be deducted and paid by EPFL.
- c) the type of contract must be determined in accordance with the instructions below.
- d) the mandatary or consultant is paid per hour or per month; payments are handled by HR.
- e) the mandatary or consultant may also be paid by invoice; payments are handled by HR.

Article 2 Determining the type of contract required

What is the person's mission?

- a) mandate: the mandatary is bound to personally provide the services agreed and/or to manage the tasks entrusted to him/her (subject to exceptions). The instructions given are less detailed and less binding than in an employment contract and the mandatary organises his/her own schedule, but deadlines may be set (see reporting). The contract may be terminated at any time.
- b) consulting: legally speaking, the same terms as for a mandate are applicable, but the contract may be called a *consulting agreement*.
- c) fixed duration employment contract (CDD or temporary contract²): there is a degree of subordination, a reporting relationship, no concept of independence (freelance), set working hours and a workplace, and social insurance contributions are the employer's responsibility. The person has the right to holiday and other elements linked to a contractual relationship (see the [HR](#) website).

Article 3 Teaching-related tasks

In the specific case of teaching-related tasks (lessons, practical workshops, student mentoring), the person must be hired as an external *lecturer* (employment contract)³. This falls under the authority of the [Registrar's Office \(SAC\)](#). AVS payments are made systematically. For informational purposes, teaching is governed by Article 17 of the Federal Act on the Federal Institutes of Technology (ETH Act, RS 414.110).

Section 2. Entry into force

Article 4 Entry into force

The present instructions entered into force on 18th February 2019.

General Counsel:
Susan Killias

² Temporary contract: temporary employment form and letter of justification, as well as payment per hour.
CDD: identical to CDI (employment contract of indefinite duration) in terms of contract, salary, job specification, etc. but of a fixed duration.

³ Directive concerning the allocation of teaching duties at EPFL; Polylex <https://polylex.epfl.ch/hr/lecturers/>, LEX 4.3.1.

EXAMPLE OF CONTRACT OF MANDATE OR CONSULTING AGREEMENT

This template is an example of a contract of mandate. Further templates are available from the EPFL Legal Counsel. Sections may be ordered differently, or in certain cases, combined under one heading. It may prove necessary to include additional points, such as clauses relating to data protection (Art. 16).

EPFL Headquarters: Bâtiment CE – 3.316, Station 1, CH – 1015 Lausanne (Art. 1)⁴

CONTRACT OF MANDATE ⁵

between the Ecole polytechnique fédérale de Lausanne, in 1015 Lausanne, hereinafter “the Principal”, represented by(full details of 2 people).

and

....., full name, date of birth, full address, hereinafter “the Mandatary”.

1. Under the present contract, EPFL entrusts to the Mandatary the following missions/services:
2. *Regarding the mandate duration: generally speaking, the contract is terminated when the Mandatary has provided all of the “services” requested of him/her. However, the following sentence may be included: “the contract is concluded for the period of until 2018, in accordance with the duration of the mandate” or “The purpose of the mandate allows for a predicted duration of until ...”. (and see Art. 6)*
3. The referent from EPFL is.... (Art. 10)
4. Termination and renewal (Art. 7)
5. Where appropriate, Art. 8
6. Financial clauses (Art. 11) *Ensure that the Federal Act of Public Procurement (FAPP) is applied where possible. If necessary, contact the [DABS](#).*
7. The Mandatary undertakes to dedicate the time necessary to the performance of the missions entrusted to him/her and to act in the interest of the mandate.
8. The Mandatary shall provide regular updates/updates according to the following deadlines.../ on the progress of his/her work (Art. 13) ... and of any problems encountered (Art. 12).
9. Confidentiality obligations are to be defined on a case by case basis, but in all cases, the Mandatary shall maintain confidentiality regarding the EPFL business and information to which he/she has access for the purpose of performing the mandate. Confidentiality obligations remain valid after the end of the mandate.
10. Results and Intellectual property: if the mandate concerns research or development services, the transferal of results obtained by the Principal during the performance of the mandate and related intellectual property rights must be provided for (consult the TTO if necessary).
11. The place of jurisdiction is Lausanne. (Art. 15)

⁴ The articles mentioned in the templates are those of the GeC working instructions concerning general information relating to contracts.

⁵ For a consulting agreement, replace “mandate” by “consulting”, “Mandatary” by “Consultant” and refer to EPFL as “EPFL” (as opposed to the “Principal”).

Signed in x original copies (Art. 5)

Location and date (Art. 5)

EPFL: double signature (Art. 3; see also Art. 4)