

# BNO Specimen Commission Agreement/Freelance Agreement for design agency (client)

BNO has drawn up two model agreements for design commissions that have been approved by the Dutch Tax Administration. Provided that parties work in practice in accordance with what they have agreed upon in the model agreement, it offers certainty that there is no employment contract and that client is not obliged to pay income tax. This Commission Agreement must be attached to the Model Agreement in question as an appendix and will form an integral part of that Model Agreement. See also the "Freelance agreement or employment contract?" BNO White Paper and the BNO White Papers on Model Agreements under the Wet DBA (Assessment of Employment Relationships Deregulation Act).

## THE UNDERSIGNED:

1. ....  
having its registered office at ..... [address]  
registered with the Chamber of Commerce of ..... under number .....  
legally represented by its .....[position], Mr./Mrs .....  
referred to below as the "Design Agency";

and

2. ....  
having his/her registered office at ..... [address]  
registered with the Chamber of Commerce of ..... under number .....  
referred to below as the "Contractor",

## WHEREAS:

- the Design Agency operates in the field of .....
- the Contractor has worked as an independent ..... [graphic/industrial, etc. designer/illustrator etc.] for [his/her] own account and risk since .....
- the Design Agency wishes to give the Contractor a commission to perform design or other work yet to be specified, which commission the Contractor wishes to accept;
- the parties have recorded the manner in which they will work together on a model agreement approved by the Dutch Tax Administration; and
- the parties wish to record the details of the commission and other agreements in this Agreement;

## HEREBY AGREE AS FOLLOWS:

### 1 Subject and Term of this Agreement

1.1 The Design Agency hereby commissions the Contractor, which commission the Contractor hereby accepts, to perform the following work/produce the following designs:

.....  
.....

1.2 The date of commencement of the commission is ..... 202..... The commission will in any event end by operation of law on ..... 202.., without any notice of termination or other act by the parties being required, or on such earlier date on which the commission is completed.

*[Optional / Unless otherwise provided, this agreement may not be terminated prematurely]:*

Either of the parties may prematurely terminate this Agreement subject to a notice period of [one month] In the event of early termination by the design firm, the contractor shall not be entitled to payment of the fee referred to in article 2 of this agreement for the remaining term referred to in article 1.1, nor to any form of compensation.

- 1.3 If one of the parties does not comply with one or more obligations under this agreement, or does not do so on time or properly, and does not ensure proper compliance with this agreement within 14 days after the other party has given it written notice of default, the other party may terminate this agreement without observing a notice period.
- 1.4 If one of the parties is in a state of bankruptcy, applies for a moratorium or discontinues its business, the other party has the right to terminate this agreement without a notice period, all this without prejudice to its rights.

## **2 Fee**

- 2.1 The Contractor will receive a fee from the Design Agency for the work performed in the amount of EUR ..... (excluding VAT) (per time unit/for the entire project).
- 2.2 Any expenses incurred by the Contractor will be reimbursed, provided that they have been approved by the Design Agency in writing beforehand.
- 2.3 The parties agree on a payment schedule: the Contractor will invoice .....
- 2.4 The Contractor will send an itemised invoice, increased by VAT. The invoice must in any event state the Chamber of Commerce registration number and the Contractor's VAT number. The Design Agency must arrange for payment within 30 days of receipt of the invoice.
- 2.5 The Contractor shall indemnify the Design Agency if the Design Agency is held liable for the payment of taxes and/or contributions by the competent authority or authorities. At the first request of the Design Agency, the Contractor shall immediately refund to the Design Agency any payment made or costs incurred by the Design Agency in connection therewith. In such event, and if so instructed by the Contractor, the Design Agency shall take reasonable actions in defense of such claims at the expense of the Contractor.

## **3 Independence of the Contractor**

- 3.1 This Commission Agreement forms part of the approved BNO Design Commissions Model Agreement (no relationship of authority) dated 11 January 2022 with number 90621.64842.1.0, which the parties signed on .....[DATE], and to which it will be attached as an Appendix.  
*OR*

This Commission Agreement forms part of the approved BNO Design Commissions Model Agreement (substitution allowed) dated 11 January 2022 with number 90621.64842.2.0, which the parties signed on .....[DATE], and to which it will be attached as an Appendix.

- 3.2 In the event of inconsistencies between this Agreement and the Model Agreement, the provisions of the Model Agreement will prevail.
- 3.3 If a third party or the Design Agency incurs loss as a result of errors by the Contractor or by persons engaged by the Contractor in the performance of the work for the Design Agency for which the Contractor is liable, that loss will be for the Contractor's account and risk. *[Optional: The Contractor must take out appropriate professional liability insurance].*
- 3.4 The Contractor is responsible for its own equipment, software and fonts. If and insofar as equipment, software or fonts of the Design Agency are used, only the Design Agency may install the necessary software or fonts.

## **4 Confidentiality**

- 4.1 During the term of this Agreement and after its termination the Contractor may not in any manner disclose to third parties any details regarding or related to the business of the Design Agency or its clients if he/she can or should reasonably understand that disclosing those details might harm the interests of the Design Agency and/or its clients.
- 4.2 If the Contractor loses documents, data carriers or other media, or suspects that a hack has

occurred whereby confidential or personal data of the Design Agency or its clients may fall into the hands of unauthorised persons, the Contractor must immediately inform the Design Agency accordingly.

*[Optional provision:]*

*4.3 If the Contractor violates the provisions of this article, he/she will forfeit for each violation, , without notice of default or summons being required, an immediately payable penalty of EUR 10,000 for each breach, to be increased by EUR 1,000 for each day that the breach continues, without prejudice to the design agency's right to claim compliance with the relevant article and/or to claim full compensation from the contractor instead of this penalty if the damage suffered by the design agency exceeds the aforementioned penalty amounts.*

## **5 Intellectual property**

*[Please note: the Dutch Tax Administration regards a transfer of rights as a possible characteristic of a relationship of authority/employment relationship. Choose between a licence or a transfer.]*

- 5.1 Unless otherwise agreed, all intellectual property rights that apply to or can be created on the results of the Contractor's work will be vested in the Contractor. The Client will be granted an exclusive licence to use the design insofar as it relates to the right of publication and multiplication in accordance with the commission given as described in Article 1. The Client must state the Contractor's name insofar as reasonably possible.
- 5.2 Title to any working drawings, prototypes, models, moulds, design sketches, films and other material or files, electronic or other, made by the Contractor in the context of the commission, will remain vested in the Contractor.
- 5.3 The Contractor may use the outcome of the work for promotional or publicity purposes of his/her own, provided that he/she observes the Client's reasonable interests.

*OR (transfer of rights)*

- 5.1. All intellectual property rights that apply to or can be created on the results of the Contractor's work will be vested in or must be transferred to the Design Agency. To the extent reasonably possible, the Design Agency must ensure that the name stated on the design is as follows: "Design Agency's name", "Contractor's name".
- 5.2. Title to any working drawings, prototypes, models, moulds, design sketches, films and other material or files, electronic or other, made by the Contractor in the context of the commission, will be vested in the Design Agency. On termination of this Agreement the Contractor must immediately hand over to the Design Agency all materials and files and all copied information regarding the Design Agency and its clients.
- 5.3. By signing this Agreement the Contractor transfers the intellectual property rights referred to in the preceding paragraphs to the Design Agency, which transfer the Design Agency hereby accepts.
- 5.4. Without the Design Agency's permission works in respect of which the copyrights are vested in the Design Agency may not be published either during the term of this Agreement or after its termination.

## **6. Miscellaneous provisions**

- 6.1. This Agreement is governed by Dutch law. The court of the place where the Design Agency has its registered office will have exclusive jurisdiction to hear and decide on any claims pursuant to or arising from this Agreement.
- 6.2. Departures from and additions to this Agreement are valid only if agreed on in writing
- 6.3. If a provision of this Agreement is declared void, that will not have any consequences for the other provisions of this Agreement. In that case the parties will replace the void provision(s) in accordance with the purpose and scope of the invalid provision.

**Agreed and executed in duplicate originals:**

in ..... [place] on ..... [date]

.....  
Design Agency

.....  
Contractor

*Although this specimen agreement has been drafted with the utmost care, BNO accepts no responsibility for harm or loss of any kind whatsoever that might arise from any defect in the terms of this specimen or from its use.*