

BNO Specimen Design Commissions Model Agreement (no relationship of authority)

This model agreement, approved by the Dutch Tax Administration, is used to record the absence of a relationship of authority (gezagsverhouding) with regard to a design commission. Because of the absence of authority of the employer, the Dutch Tax Administration considers that working under this model agreement implies that there is no employment agreement and the client is not obliged to pay wage tax and national insurance contributions. The certainty that the client does not have to pay wage tax and national insurance contributions only applies if (1) parties work in accordance with what they have agreed in this model agreement and (2) the yellow marked parts of this agreement are not changed.

This agreement has been approved by the Dutch Tax Administration on 11 January 2022 under number 90621.64842.1.0.

THE UNDERSIGNED:

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

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 Client operates in the field of
- the Contractor has worked as an independent [graphic/industrial, etc.] designer/illustrator/(interior)architect for [his/her] own account and risk since
- the Client needs a [graphic/industrial, etc.] designer/illustrator/(interior)architect;
- in this capacity, the Contractor is able and willing to carry out these activities;
- the parties opt, where applicable, not to apply the fictitious employment relationship of homeworkers and persons with equivalent status within the meaning of Articles 2b and 2c of the *Uitvoeringsbesluit Loonbelasting 1965* (Wages and Salaries Tax (Implementation) Decree 1965) and Articles 1 and 5 of the *Besluit aanwijzing gevallen waarin arbeidsverhouding als dienstbetrekking wordt beschouwd* (Identification of Working Relationships as Employment Decree) (Decree of 24 December 1986, *S tb.* 1986, 655) and for that purpose to draw up and sign this Agreement before payment is made;
- the Client and the Contractor wish to exclusively enter into a services agreement with each other within the meaning of Sections 7:400 *et seq.* of the Dutch Civil Code; and
- the parties wish to record in this Agreement the manner in which, and conditions under which, they will work together;

HEREBY AGREE AS FOLLOWS:

1. The commission

- 1.1 The Contractor and the Client intend to enter into one or more additional commission agreements for the production of one or more [designs/illustrations/...] or for the provision of certain design services (the "Commission Agreement").
- 1.2 If possible, the parties will describe in the briefing or in the Commission Agreement in as much detail as possible the purpose and scope of the commission and its intended result.
- 1.3 The Commission Agreement will be attached to this Model Agreement as an appendix. This Model Agreement is complementary to the Commission Agreement(s) and serves only to regulate the wage tax and national insurance contributions aspects.
- 1.4 The Commission Agreement will not prejudice this Model Agreement.
- 1.5 The Client will not be obligated to give commissions to the Contractor and the Contractor will not be obligated to accept commissions from the Client. The Client is aware that the Contractor also performs work for other clients.

2. Performance of the commission

- 2.1 The Contractor will use his/her best endeavours to perform the commission scrupulously and independently, to promote the Client's interests to the best of his/her ability and to aim for a usable result for the Client, in such a manner as may be expected of a reasonable and professional designer. The Contractor will keep the Client informed of the progress of the work insofar as necessary.
- 2.2 The Client will make every effort that is reasonably necessary or desirable to arrange for timely and correct delivery by the Contractor, e.g. by supplying or arranging for the supply in a timely manner of complete, sound and specific data or materials of which the Contractor states or of which the Client knows or should reasonably understand that they are required in order to perform the Commission.
- 2.3 The Contractor will independently organise the work specified in the Commission Agreement and will himself/herself determine within reason the time and duration of his/her work. Insofar as the performance of the commission so requires, consultation will take place with the Client and third parties involved in the commission, to ensure that the commission is optimally performed.
- 2.4 The Contractor will be entirely independent in performing the agreed work. He/she will perform the agreed work at his/her own discretion and without any supervision or management by the Client.
- 2.5 The Client may give feedback and instructions, also during the term of the Commission Agreement, regarding the proposed purpose of the commission, as described in the briefing or in the Commission Agreement, insofar as that does not affect the manner of performance of the commission. The Contractor may freely determine in what manner he/she will use that feedback and those instructions of the Client.

3 Other provisions

- 3.1 In the event of inconsistencies between the Commission Agreement(s) and this Model Agreement, the text of this Model Agreement will prevail, insofar as the text of the Commission Agreement(s) might give rise to a fictitious or actual employment relationship. In other cases the text of the Commission Agreement(s) will prevail.
- 3.2 This Model Agreement is based on to the Design Commissions Model Agreement assessed by the Dutch Tax Administration on 11 January 2022 under number 90621.64842.1.0.

Agreed and executed in duplicate originals:

in [place] on [date]

.....
Client

.....
Contractor

Possible additional commission agreement(s):

- Design commission quotation/order confirmation
- Illustrators/animators agreement
- Periodicals design and layout agreement
- Design commission continuing performance agreement
- Commission agreement/freelance agreement for design agency (client)
- Commission agreement/freelance agreement for designer (contractor)

Explanatory notes on BNO Design Commissions Model Agreement (no relationship of authority)

1. For whom is this model agreement intended?

This model agreement has been drawn up by BNO (Association of Dutch Designers) and is intended for self-employed designers in all disciplines (graphics, communication, interaction, digital, industrial, spatial, interior, illustration, animation, etc.) and their clients. The model agreement can be used for situations where there is no relationship of authority with regard to a design commission. Because of the absence of the relationship of authority, the Dutch Tax Administration considers that working in accordance with this model agreement implies that there is no employment agreement and the client is not obliged to pay wage tax and national insurance contributions. The certainty that the client does not have to pay wage tax and national insurance contributions only applies if (1) parties work in accordance with what they have agreed in this model agreement and (2) the yellow marked parts of this agreement are not changed.

2. For what situations is this model agreement intended?

If the working relationship meets the following three criteria, an employment agreement exists (and therefore not a commission agreement):

1. the employer may give the employee binding instructions regarding the performance of the work in such manner that a “relationship of authority” exists;
2. the employee must perform the work in person; and
3. the employer must pay the employee remuneration for the work performed.

If one of these criteria does not apply, no employment agreement exists and no wage tax and national insurance contributions need to be withheld.

This BNO Design Commissions Model Agreement (no relationship of authority) may be used in a situation in which there is no relationship of authority between the contractor and the client (criterion 1). That is the case when the contractor may freely organise and perform the work, without working under the client's management and supervision.

The client is allowed to give feedback and instructions (also during the performance of the commission) regarding the objective of the commission, as described in the briefing or in the Commission Agreement, insofar as they do not relate to the manner of performance of the commission. No employment relationship exists provided that the contractor may freely determine how he/she will use that feedback and those instructions of the client.

BNO has developed another model agreement which has also been approved by the Dutch Tax Administration, for situations in which there is a relationship of authority but the contractor is not required to perform the work in person (criterion 2): the BNO Design Commissions Model Agreement (substitution allowed).

3. What does this model agreement regulate?

The BNO Model Agreement exclusively regulates the absence of an employment relationship. It has been drawn up in such a manner that the contractor and the client need to enter into the agreement only once. The model agreement guarantees the absence of an employment relationship for a period of five years.

All other agreements, the specific content of commission(s), the work to be performed and the conditions in question must be recorded in the separate commission agreement(s) and attached to the model agreement as appendices. The commission agreements may of course not prejudice the agreements recorded in the model agreement. All the BNO specimen agreements listed in (4) may be used in combination with this Model Agreement.

The agreement must of course be observed, in order to guarantee that self-employed persons who organise and perform their work in this manner with their clients will not be regarded as employees.

4. Commission agreement(s)

BNO has drawn up several specimen agreements* that can be used in combination with the BNO General Conditions (2021) to record design commissions, such as:

- Design commission quotation/order confirmation
- Illustrators/animators agreement
- Periodicals design and layout agreement
- Design commission continuing performance agreement
- Commission agreement/freelance agreement for design agency (client)
- Commission agreement/freelance agreement for designer (contractor)

The BNO specimen agreements and general conditions have been drawn up in such a manner that, in BNO's opinion, they do not conflict with this approved Model Agreement. That may not be the case if the factual circumstances are different, such as a different manner of organisation or performance of the commission.

5. More information

- BNO White Papers on model agreements (www.bno.nl/white-papers)*
- www.belastingdienst.nl/ozo;
 - General model agreements and Q&A
 - Assessment of Employment Relationships Guide (*Handreiking DBA*)
 - Practical diagrams/checklists

6. No liability for loss

Although the BNO Design Commissions Model Agreements and the explanatory notes have been drawn up 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 the Model Agreements and explanatory notes or from their use.

() Intended only for designers and design agencies affiliated with BNO (Association of Dutch Designers). BNO members may contact the advisers of BNO Advies for further information on the use and application of the BNO Design Commissions Model Agreements and the specimen agreements.*