

A tenant's checklist of heads of terms for commercial property leases

About this guide

The principal terms typically negotiated for inclusion in a commercial lease are the following:

1. Rent
 2. Demise
 3. Alienation
 4. Repair and decoration
 5. Insurance
 6. Alterations
 7. User
 8. Guarantees
 9. Costs
 10. Wayleave Agreements
 11. Stamp duty land tax
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1. Rent

- What annual sum is to be paid?
 - Is it all inclusive, or are there other items (eg service charge and insurance) to be paid in addition?
 - Is there to be a rent free period? When will the rent free period commence? This should be on completion of the lease or occupation, whichever is earlier.
 - Is the rent to be reviewed and if so, when? Will the rent be reviewed upwards or downwards, or upwards only?
 - Has the landlord waived exemption to value added tax (VAT) in respect of the property? If the landlord has waived such exemption, VAT will be payable on all payments due under the lease.
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2. Demise

- What is to be demised, ie the whole building (including structure) or a part of the building (excluding structural parts)?
- Term – what is the proposed length of the lease?
- Leases over seven years must be registered at the Land registry. Leases of less than seven years can be registered and where there are rights granted in the lease they will need to be registered. In such cases, plans identifying the demise will be required that comply with Land Registry requirements.

- Will the tenant have the statutory right to renew the lease pursuant to the provisions of the Landlord and Tenant Act 1954?
 - Is the lease to contain the right of either the landlord or the tenant to determine the lease during the term and if so, how much notice is required and is the exercise of the break right conditional upon any matter?
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3. Alienation

- Will the tenant be permitted to assign the whole of the property?
 - Will the tenant be permitted to underlet the whole or part of the property?
 - Will the tenant have the right to share occupation of the property with associated companies?
 - If the tenant is a partnership, or trustees, does the lease provide for automatic vesting in new partners/trustees and for the release of retiring parties?
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4. Repair and decoration

- Is the tenant to be required to keep the property in good and substantial repair and condition?
- Can the obligations of the tenant be limited to the state and condition of the property at the commencement of the term? If so, a schedule of condition recording the condition of the property at the commencement of the term will need to be agreed with the landlord.
- Who is to be responsible for any damage arising from an inherent defect?
- Is damage by an insured risk (and terrorism if not an insured risk) to be excluded from the tenant's liability?
- What are the internal and/or external decorations intervals?
- What are the repairing obligations (if any) of the landlord?

- Carrying out a survey will indicate the potential liabilities in respect of this area.

5. Insurance

- Who is to maintain insurance?
- What happens in the event of destruction or damage?
- What information is the tenant to be entitled to receive?
- Who pays the premium?

6. Alterations

- Will consent be required to any proposals?
- Any works must be disregarded on rent review

7. User

- Check that the user is acceptable to the tenant and having regard to any potential assignee / undertenant.
- Does the property have planning permission for the permitted user?

8. Guarantees

- Will the landlord require security for the compliance by the tenant of the lease terms e.g. a rent deposit sum or a surety to the lease?

9. Costs

- Negotiating the letting documentation.
- Obtaining a survey.
- Preliminary enquiries relating to the property of the landlord.
- Searches and enquiries of the local authority (including checking the planning position) and various utilities in certain areas.
- Checking the planning position and identifying any necessary consents or licences.
- Obtaining consents (where necessary) from superior landlords and/or mortgagees to the

proposed letting and consent to works (where necessary) from any superior landlord and/or the landlord.

10. Wayleave Agreement

- What data cabling etc arrangements do you require?
- What existing facilities are in the building?
- How will you arrange provision of services – what consents will be required?

11. Stamp Duty Land Tax

- Stamp Duty Land Tax (SDLT) may be payable by the tenant depending on level of rent, length of term and exemptions (e.g. charities).

About us

If you have any questions about this guide or any other matters please do not hesitate to contact one of the following members of our Real Estate team.

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The points above are typical for a standard leasehold transaction and are intended as a guide only. The nature of any transaction will vary, and detailed advice should be obtained in respect of any proposed transaction. No liability will be accepted for any reliance on this material.

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