

Moving Office Guide

Typical Heads of Terms



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Property Address

Address and floors of the proposed accommodation.

This description should include all areas to be demised and ideally show a Land Registry compliant plan.

Car Parking and any storage or other areas should be specified.

Superior Landlord

In some instances there is a superior landlord above the immediate landlord or lessor offering the accommodation. It is important their details are correct so that applications for approvals can be submitted expeditiously.

Landlord

This should detail the Registered Office of the landlord and appropriate contact details

Tenant

This should detail the Registered Office of the tenant and appropriate contact details.

Guarantee and/or Rent Deposits

As a rule of thumb a landlord will typically accept a tenant as a good covenant if they have achieved profits before tax equivalent to three times the rental commitment for three consecutive years and otherwise have a healthy

balance sheet.

In the absence of this, particularly where rent free periods are granted, landlords may seek a guarantee and/or rental deposit. In the event a rental deposit is sought, it is important to establish the mechanism and events. For example if a tenant anticipates improved profitability in the near term, then it may be appropriate to set profit tests which, if reached, the rent deposit will be returned.

It is important also to establish who holds the rent deposit and for whose benefit any interest may accrue.

Rent

Rent is often specified as a rate per square foot if the floor area of the premises has not been measured and agreed. If the floor area has been measured and agreed then an annual rent may be specified.

It is important to establish as to whether the property is VAT elected and thereby whether VAT will be charged on rent.

All commercial premises should be measured and the area agreed for calculating rent in accordance with the RICS/ISVA Revised Code of Measuring Practice. Different types of properties are measured by different methods - for example, office premises are typically measured by net internal area whereas industrial or warehousing are typically measured by gross external area or gross internal area depending on age.

Floor areas should always be verified by the tenant's representative.

Rent Free Period & Incentives

The rent free period agreed should be specified and whether this commences at a fixed date, from completion of legal formalities or possession, and whether such a rent free period is paid upfront or apportioned over a period within the lease.

Other incentives may be by way of a capital contribution or other means.

Lease

The type of lease should be specified including details of length of term and, importantly, whether the lease is to be inside or outside the provisions of the Landlord & Tenant Act 1954 Part II (as amended). This should also specify when the lease is intended to commence.

Within the lease it is important to establish the repairing obligations and any service charge or other contributions towards repairing and maintaining the entire building and site.

Where premises are not in full repair it may be appropriate to limit your repairing obligation by way of a Schedule of Condition. It is important to understand that if you enter into a full repairing lease, notwithstanding the fact that the premises when you acquire it may be in poor condition, you may be obligated to return it in a better condition than it was when originally acquired unless you secure appropriate protection.

Additionally the lease should specify dilapidations and reinstatement obligations, and should also detail obligations to decorate during and at the end of the lease.

Break Clauses

The lease terms should specify details of any

break clauses including intervals, notice period required and any conditionality. As a rule it is best to avoid any conditionality associated with break options.

Landlord's Works

Detail any landlord's works that are agreed, mechanism for execution/monitoring and envisaged date for completion.

Tenant's Works

Provide details of proposed works including fitting out and ensure that approvals are obtained before completion of legal formalities.

Additional Rights Required

Establish as to whether any additional rights are required over the premises outside the demised area for the installation, for example, of additional air-conditioning, satellite dishes, cables and other services.

Lease Structure

Rent Reviews:

Specify date and intervals of rent review, the assumptions to be adopted at rent review and provision for third party dispute via Arbitrator or Expert. It is important that the tenant has the right to initiate the rent review. (There are occasions where you can be disadvantaged if it is delayed).

Alienation:

Alienation is the ability to sub-let or assign. It is important to obtain as much flexibility as possible. As a minimum, one should have the right to assign the lease or sub-let the whole. For larger premises, or where premises may

adequately sub-divide, it may be beneficial to have the ability to sub-let part and to ensure that there are no onerous restrictions on further underletting.

There should be an automatic right within the lease for group sharing.

Services & Service Charge

Establish details of landlord's services and estimated service charge budgets.

Dependant upon the outcome of a building and services survey it may be appropriate, particularly for older buildings, to exclude capital items of expenditure or major repairs particularly for shorter leases. This should be specified following detailed consideration by your advisors and building surveyor.

Warranties

Establish as to whether any warranties are available at the premises and that you will have the benefit of the protection granted by these.

Alterations

Clarify the extent of alterations you are allowed. Internal non-structural alterations should be allowed subject to landlord's consent not to be unreasonably withheld. Typically structural alterations will not be allowed.

Use

Clarify the user provisions within the lease and that the proposed use of the premises complies with these.

Insurance

Clarify the insurance provisions. Typically a landlord insures the property and recovers a relevant proportion of the premium. Verify clauses relating to determination of the lease in the event the premises are destroyed.

Legal Costs

The heads of terms should specify who will be responsible for legal costs. Typically each party is responsible for their own legal costs with the tenant responsible for the cost in obtaining consents for their fit-out.

Conditions

It is important to detail within the heads of terms any conditions associated with the agreement including approvals and survey, and any agreement should be subject to contract.

Landlord's Solicitors

Detail landlord's solicitors full contact details.

Tenant's Solicitors

Detail full contact details for tenant's solicitors.

Timing

Set out envisaged or required timing.

Other Contacts

Under this heading you may detail landlord's and tenant's agents, and any other relevant contacts.

*All correspondence should be headed "Subject To Contract" and or "Without Prejudice". Terms are not binding in this instance until formally documented. This document is prepared as a brief guide and must not be relied upon or considered as comprehensive. Professional advice should always be sought.