



The Commercial Lease Occupier Guide – Your Questions Answered

Renting commercial space is a huge responsibility to any business. The success and future of your business may ride on certain terms of the lease. But, if you're new to the process, before you approach a landlord, you should understand how commercial leases differ from the more common residential variety. And, before you sign anything, make sure you understand and agree with the basic terms of the lease, such as the amount of rent, the length of the lease and the configuration of the physical office space.

One of Rapport's many skills and services is the ability to handle the very early stages of a relocation process; often up to a year before relocating.

As an independent, multi-disciplinary workspace management and design consultancy working with both tenant occupiers and landlords; we independently lead and undertake day to day duties for our clients that can help take the pain away from intrinsic planning and legalities, leaving our clients to focus on other areas of their role and business.

These can include:

- Project Execution Plan
- Advising commercial agent to seek suitable office space if required
- Managing briefings and scope definition process
- Appointment of design consultants
- Preparing Employers requirements and tender documentation
- Implementing change controls
- Financial Accounting

What is a lease and what are its complexities?

A lease is an enforceable legal document that defines the rights and obligations of the Landlord (Lessor) and the Tenant (Lessee) for the leasing of commercial property for a fixed term at a specified rent. The parties need to be fully aware of what they contain to understand fully their respective obligations.

It is imperative that before signing your lease you have consulted with a:

- Commercial Property Consultant who is skilled in advising on commercial premises and the marketplace and who can successfully negotiate all commercial terms to protect the current and future commercial position of your business and;
- Solicitor, who is skilled in preparing and negotiating the legal terms of your lease to protect the current and future legal position of your business.

A lease is a binding contract in law which sets out the terms and conditions of the tenancy agreement between landlord and tenant.

It defines the rights and obligations of both parties and is, therefore enforceable - you cannot simply walk away from a lease.

A first draft of the lease will usually be drawn up by the landlord's solicitor as a basis for discussion between the parties.

What is a Green Lease?

Sustainable green buildings stem from the efficient management of occupant activities. Green leases provide a pro-active, sustainable, yet flexible method for landlords and tenants of commercial buildings to explore opportunities and improve building performance providing shared bottom-line business benefits.

A NEW OR EXISTING LEASE

The pattern of property tenure may be complex and is not always a simple matter of a tenant taking a lease direct from the property owner (the freeholder).

Take the following situation:

- An investor owns the freehold of the building.
- A tenant takes a lease from the freeholder.
- A second tenant later takes an assignment of this lease from the original tenant, becoming the assignee and assuming the responsibilities of the original lease.
- The assignee later grants a sub-lease over parts of the building that are surplus to requirements to a sub-tenant.

If you, as a prospective tenant, are taking a lease on a building you might be negotiating a new lease with the freeholder.

On the other hand, you might be entering the chain lower down and taking an assignment of an existing lease, or perhaps a sub-lease.

With the new lease, you should be able to negotiate the terms to match your requirements (though you will not necessarily get everything you want!).

With an existing lease, you will be bound by the conditions that it already contains and you have to decide before signing whether you can live with these or not.

These complexities emphasise the need for professional advice, as no two situations are identical.

The information above has been provided by the Royal Institution of Commercial Surveyors site www.rics.org

YOUR QUESTIONS – OUR ANSWERS

The following are simply questions our clients have asked us which we hope you will also find useful.

Q. What is a Heads of Agreement?

A. A Heads of Agreements (HOA) is a definition of the proposed terms of a contract that is signed before the due diligence phase, but not legally binding for the parties to go through with the transaction.

Generally or unless otherwise stated in writing, the HOA is non-binding on either the Lessor or the Lessee and is therefore not enforceable as a contract by one party against the other.

Q. What is the Net Lettable Area (NLA)?

A. This is the total quantum of space (Sqm) that you have agreed to lease from the Lessor. In all cases, you should confirm that the NLA is correct through attaining a survey from a qualified surveying company (Rapport Solutions can arrange this). The survey document will identify the plan of your premises and the calculated NLA.

Q. How much space do I need?

A. The amount of commercial space a Lessee will require will depend on the structure of the company's operations, current and future headcount and shared facilities (i.e.: IT, communications, breakouts, storage requirements).

Rapport Solutions provides a comprehensive space programme that enables tenants to calculate how much space they need today and into the future. Lessees may also compare their space requirements against competing industries.

Q. What is the Lease Commencement Date?

A. This is the legal date on which your lease starts.

Q. What is the Rent Commencement Date?

A. This is the legal date on which your rent starts – it may differ from the Lease Commencement Date if you have negotiated a rent-free period.

Q. What is the Lease Term?

A. This is the legal period of your lease depending on the negotiated lease term.

Q. What is an option to renew and how does it work?

A. An option is the Lessee's opportunity to extend the existing lease by the term identified in the option clause within the lease document – this may be one to 15 years.

At approximately six to 12 months before your lease expiry, you will be advised to provide notice to your existing Lessor that you either wish to renew your lease for the option period or vacate the premises.

Q. What is the Commencing or Starting Rental (£/Sqm p.a.)?

A. This is Gross or Net Rent that you agreed to pay over the Net Lettable Area from the Rent Commencement Date over the first year of the lease.

Q. What is a Rent Review?

A. The rent should be structured annually over the period of the lease term. The method of review may involve CPI or specified incremental (%) increases to the rent at the beginning of each year.

In some cases, there may be a Market or Rent Review at the start of a specified year and this is where a Lessee is required to negotiate revised rental terms with the Lessor or their agent. There are several types of Market/Rent Review clauses:

- Ratchet Upwards: This is where the rent cannot fall below the current passing rent at the time.
- Cap and Collar: This is where you have previously negotiated that the rent may rise to a capped rate (specified) or fall below the current market to a collared rate (specified).

Q. What are Building Outgoings?

A. The outgoings include statutory costs (i.e.: land tax and rates) and expenses incurred by the Lessor for maintaining your building (i.e.: insurance, cleaning, building maintenance).

Lessees are responsible for paying outgoings and they are apportioned in relation to the Net Lettable Area leased.

Q. What is Lessee Incentive and how is it structured?

A. An incentive may be provided to the Lessee by the Lessor. This is a quantum of money to assist towards the Lessee's overall OPEX and CAPEX liabilities incurred during the lease.

Lessee incentives are generally provided in one or a combination of three structures:

- Fit-Out Contribution: Monies utilised towards the total cost of your new fit-out.
- Rent Free: Monies applied from the Lease Commencement Date over a select period of time (i.e.: six months' rent free). Please note unless defined the Lessee may still be responsible for paying outgoings during the rent-free period.
- Rent Abatement: Monies applied as a rental reduction against the Lessee's total rent over a select period of the lease (i.e.: two years) or over the entire period of the lease.

Q. What is a Bank Guarantee and how much should I reserve?

A. Bank guarantees are required by the Lessor to protect their interests should a Lessee default in the payment of the rent during the course of the lease.

At present many Lessors seek bank guarantees ranging between three to 12 months – this quantum and the structure of payment over the course of the lease is negotiable.

Lessors may also seek additional guarantees to cover a proportion of the total incentive provided – this quantum is negotiable.

Q. What are Dilapidations?

A. Prior to the expiration date of the lease the Lessee may be required to make good or reinstate the premises back to a pre-specified state. In most cases this will involve:

- Removal of the Lessee's fit-out
- Reinstatement of the tenancy back to a base building condition including but not limited to mechanical and electrical works, ceiling tiles and paintwork
- Removal of all redundant cabling

Q. Who pays for legal costs?

A. In preparing the lease document, it is a common practice that the Lessee and Lessor are responsible for their own legal cost. Stamp duty is generally paid for by the Lessee.

Q. What's Assignment and Subleasing?

A. An assignment is the legal transfer of all lease and financial liabilities over a specified area of the leased property, in part or whole, to a third party Lessee. The original Lessee is not held liable by the Lessor once the lease is assigned to another Lessee.

A sublease to a new Lessee (known as a Sub-Lessee) remains under the original legal agreement of the original Lessee (known as the Head Lessee) who remains responsible to the Lessor for all lease and financial liabilities.

It should be noted that should a Lessee wish to assign or sublease their premises in part or whole, the Lessee must receive approval from the Lessor and that the assignee or sub-lessee may be required to offer the same or higher financial credentials and covenant capable of fulfilling the Lessee's obligations.

In all cases the Lessor cannot unreasonably withhold approval.

Q. What is a Right of First Refusal and how does it work?

A. Your Commercial Property Agent will negotiate a clause enabling the Lessee to attain a Right of First Refusal over adjacent, adjoining or continuous space.

This means that at any given time and providing that the specified space is available (untenanted) the Lessee will be offered by the Lessor the right to either lease the space or refuse it.

DISCLAIMER

This guide does not constitute legal advice and is provided for general information purposes only. No warranty whether express or implied is given in relation to such a guide.

You can speak with Rapport on; **01252 712590** or email us for advice on utilising your current space, an office move, design or fit-out at; **info@rapport-solutions.org.uk**