

# Heads of terms



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“A well-drafted heads of terms can avoid commercial discussions and delays down the line”



Heads of terms set out the key commercial terms that have been agreed between the parties.

A well drafted set of heads of terms will help the transaction run smoothly and avoid unnecessary commercial discussions and delays down the line.

#### **What can you expect in heads of terms?**

These are key terms you would expect for a lease transaction for a floor of an office block.

- Property – a detailed description and accurate plans are crucial. Both sides should be clear as to exactly what is being demised.
- Parties – the names, company registration numbers and registered addresses of the landlord and tenant. If there is a guarantor involved, its details should also be listed here.
- Term – how long is the lease for? If there are any break rights, are they landlord or tenant or both? These should be set out here, together with any conditions to the break.
- Security of tenure – is the lease to benefit from the security of tenure provisions of the Landlord and Tenant Act 1954? If so, the tenant has a right to

automatic renewal of the lease. If not, the tenant must vacate the property unless it negotiates a new lease with the landlord.

- Rent – what is the annual rent? Is this an inclusive rent – including service charge and insurance? What is the frequency of payment – quarterly or monthly basis are the norm. Is there a rent-free period?
- Rent review – is there a rent review and, if so, how often and on what basis? The usual basis is open market rent or using the RPI index.
- Rent deposit – does the tenant need to provide a rent deposit? What is the amount and what are the repayment terms?
- Service Charge – if the property is part of a building, service charge is likely. What is the proportion payable and how is this calculated? Is there a service charge cap?
- Insurance – the landlord usually insures the building with the tenant contributing towards the premium. What is the tenant's proportion? Is terrorism covered?
- Use – what is the permitted use of the property?

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- Repair – the tenant is usually responsible for the repair and maintenance of its internal demise and the landlord for the common parts and external and structural elements of a building. Is the tenant’s repairing obligation limited to a schedule of condition or is it full repair?
- Alterations – what is the tenant permitted to do? External and structural alterations are usually prohibited. Internal and non-structural alterations are normally permitted with landlord’s consent, not to be unreasonably withheld or delayed. Does the tenant have to remove all alterations at the end of the lease?
- Alienation, that is, the ability to dispose of the property – is the tenant able to assign, underlet or share its property?
- Other specific rights granted or reserved – these include car, motorcycle or bicycle parking rights; rights to use any communal shower and changing room facilities; rights to use the personnel / service / goods lifts; rights to use communal garden / rooftop space; and rights to use communal toilets in the building. What is available and offered will depend on the type of building and bargaining power of the parties.
- Conditions – do the parties need to obtain board approval? Are there any third-party consents, such as the landlord’s bank / lender or the superior landlord’s consent?
- Advisers’ details – the details of the parties’ agents and solicitors usually appear at the end.

### **Lease Code 2020**

The RICS Lease Code 2020, which came into effect on 1 September 2020, has a template heads of terms and checklist and also sets out lease negotiation best practice and a guide for landlords and tenants.

### **Conclusion**

Agreeing these key commercial points at the outset will help the transaction run smoothly. It is well worth seeking advice from professional advisers when you are negotiating any heads of terms.