



ignition law

Commercial Leases

Heads of Terms

What should tenants look out for?

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“Heads of terms” refers to a document designed to provide the outline or framework to follow when drafting a new lease, including the key commercial terms. Having clear, comprehensive heads of terms in place at the outset can dramatically streamline the process of getting a transaction over the line, as it frontloads the negotiation of key points. Note that heads of terms are not usually intended to be legally binding or exhaustive. Here’s a short summary of some of the points which should be addressed from a tenant’s perspective:

1. **Parties:** names, addresses/registered offices and (if applicable) company numbers.
2. **Security:** some landlords will insist on some form of security (e.g. a guarantee) or, more commonly, a rent deposit. Commercial rent deposits are commonly between 2 and 6 months’ rent (plus VAT). If cash flow could be an issue, consider provisions seeking a return of the deposit before the end of the term.
3. **Property:** a plan and description that clearly identifies the extent of the property being leased.
4. **Additional rights:** identify any rights to use other land/areas of the building or estate e.g. the car park, signage, access routes, kitchenettes, washrooms, meeting rooms etc.
5. **Term:** specify the length of term and when it starts. Also agree whether there will be an automatic right to renew the lease at the end of the term.
6. **Breaks:** agree the dates on which you are entitled to break the lease, the length of notice periods for doing so, and any conditions that must be fulfilled to effectively invoke a break clause. Beware of onerous break conditions, as failing to fulfil these can result in you losing the right to break the lease.
7. **Rents:** agree the annual rent and specify whether it is exclusive of VAT, business rates, service charges, insurance premiums and any other applicable costs or charges.
8. **Rent-free Period:** specify whether there will be a rent-free period and if so, state the length.
9. **Rent reviews:** for longer leases, landlords will generally require the rent to be reviewed, normally every 5 years. Agree how rent reviews will operate, often these are upwards only and on an open market basis, but may be calculated in line with RPI or based on fixed increases.
10. **Full repairing and insuring (FRI) lease:** heads of terms often state that the lease is “FRI”. This means that the tenant will be responsible for repairing the property let and the Landlord’s cost of insuring the property and repairing the exterior and structural parts. You should try to limit this responsibility, e.g. by agreeing to restore it to its condition on the date the lease commenced, rather than restoring it to its condition as new, by attaching photos to the lease to evidence the condition of the property.
11. **Services and service charge:** if there is a service charge, try to negotiate a cap.
12. **Use:** agree what the premises can be used for and that you’ll have access during the necessary hours.
13. **Ability to assign/underlet:** confirm whether you will be able to assign and underlet the whole or part of the property. If the landlord needs to consent, clarify any conditions that will attach to this consent (e.g. the tenant may need to guarantee an assignee’s performance of the tenant covenants in the lease).
14. **Sharing occupation:** consider whether you may want to share occupation of the premises.
15. **Alterations:** the landlord will need to approve any alterations to the property, so discuss these as early as possible. Also consider whether planning permission is required for any works and if so, whether you need an agreement for lease, making the lease conditional on obtaining such permission.
16. **Signage:** discuss and agree your signage and include all signage in your plans for fitting out the property.
17. **Landlord works:** agree any repairs, refurbishments or other structural works that you require the landlord to arrange prior to completion, and who is responsible for the cost. Consider if an agreement for lease is needed, making completion of the lease conditional on completion of the landlord’s works.
18. **COVID-19:** parties are agreeing clauses in new leases to deal with the impact of COVID-19.

We would always recommend that the tenant’s solicitor reviews the heads of terms before they are finalised to check that no key commercial points or tenant protections have been missed, the heads of terms deal with your particular concerns, and all possible compromises have been considered.