

maples **teesdale**



Heads of terms checklist for commercial property transactions

Sales and purchases of freeholds and leaseholds

Property - Define in as much detail as possible, by reference to a title number or plan where appropriate.

Parties - The seller should be as stated on any registered title. Mention any guarantor on the assignment of a leasehold interest.

Deposit and price - Is VAT payable? Is the deposit to be held by solicitors as agents?

Overage - Any overage terms need to be set out in detail including triggers, timing and longstop periods, release mechanism and security.

Consent - Does the seller need third party consent to complete (e.g. from a landlord or mortgage, or a planning permission)?

Conditions - Any conditions of completion (including appropriate long stop dates) need to be set out in detail. This can cover anything from resolution of title defects to obtaining consents to carrying out works.

Sales of part - What rights need to be granted or reserved (e.g. for access and service media)? What covenants need to bind the property and the retained land (e.g. user or development control)?

Timing - State the dates by which papers are to be issued and by which exchange and completion will take place. Deadlines might also be set for other pre-exchange due diligence tasks (eg surveys).

Costs - Is one party to pay the other party's costs? Do the costs include VAT, disbursements and/or in-house expenses?

Subjections - Is the deal subject to pre-exchange board approval, structural, environmental or other surveys, measurement or the provision of accounts by the buyer/guarantor?

Other matters - Anything else which is unusual or of particular importance to either party (e.g. construction warranties, outstanding rent reviews, rent top ups, apportionments, access prior to completion, capital allowances, confidentiality, etc). Consider referring draft heads of terms to solicitors.

Technology - Property due diligence should increasingly include telecoms and internet connectivity. Also, does the property have any internet domain names associated with it that need to be transferred?

Subject to contract - The relevant document or email chain should be expressed to be "subject to contract", other than in respect of any provisions which are intended to bind the parties immediately, such as exclusivity arrangements and costs contributions, which should be expressed to be binding.

Additional considerations on the grant of a new lease

Rent - Mention the frequency of payment and whether it is inclusive of utility charges, rates, VAT, service charge and/or insurance rent. Is a guarantor and/or rent deposit required?

Service charge and insurance rent - Provide budget figures and set out the basis of any service charge cap.

Rent review - Specify frequency and basis. For open market reviews cover whether upwards/downwards and the length of the hypothetical term. For index-linked rents cover caps and collars. For turnover rents cover what is included/excluded (e.g. in retail: click+collect, gift voucher sales, returns of goods bought at other stores).

Incentives - Specify any rent free periods or other inducements. Consider taking tax advice.

Term - Will the tenant have security of tenure?

Options to renew or to break - By who, when, with how much notice and whether conditional?

Repair - State who is responsible for each part of the property, its structure and plant and whether there is any qualification on the repairing obligation (e.g. by reference to a written or photographic schedule of condition).

Alterations - Cover structural, non-structural, internal and external works. Specify which alterations are permitted, prohibited or require consent.

Technology - Installation of telecoms and internet connections should be given equal priority to other fit out works in terms of who is responsible and timing, including the consequences of delay.

Use - How much flexibility will the tenant have? Will there be any exclusivity commitments for the landlord?

Dealings - Cover control of assignments, underlettings, charging and sharing of occupation of the whole of the premises and parts of it.

Insurance - Who insures? Will the rent be suspended in the event of damage or destruction and, if so, for how long? Can the lease be determined if the damage/destruction cannot be repaired within a specified period? Who bears the risk of uninsured damage?

Stamp duty land tax - Bear in mind the SDLT implications of the lease term, rent, method of rent review and options to break or renew.

Codes of practice - Take account of the recommendations in the BPF Code of Practice for Commercial Leases (www.bpf.org.uk) and the RICS Code of Practice for Service Charges in Commercial Leases (www.servicechargecode.uk).