



REINSW

REAL ESTATE INSTITUTE
OF NEW SOUTH WALES

COMMERCIAL LEASE

Suitable for small office buildings, factories and shop premises which are not the subject of the term of the lease (including the period of any option) does not exceed three years. *Retail Leases Act 1994* where the

This Lease is made in duplicate on 16 / November / 2017
at Newcastle in the State of New South Wales.

PARTIES

Between	Mito and Elena Tomeski	Landlord
	(Name, address and ABN) 21 Churnwood Drive, FLETCHER NSW 2287	
whose agent is	Colliers International (Newcastle) Pty Ltd (ABN: 43 079 237 415)	Agent
	(Name, business address and ABN) Ground Floor, 18 Honeysuckle Drive, Newcastle NSW 2300	
and	Days Building Construction Pty Ltd ABN: 31 165 243 523, ACN: 165 243 523	Tenant
	(Name, business address and ABN) Attention: Kate & Matthew Day, PO Box 60, MAYFIELD NSW 2304	
		Guarantor
	(Name, business address and ABN)	

GST REGISTRATION

The Landlord is registered for GST.

☐ Yes ☐ No

The Tenant is registered for GST.

☒ Yes ☐ No

PREMISES

The Landlord leases the premises known as Unit 14, 5-7 Channel Road, Mayfield West NSW 2304 (the Premises)
including all fixtures listed in the inventory which is signed by all parties and attached as part of this lease.

PERMITTED USE

The Premises shall be used only as Warehousing and office

RENT

Except as otherwise provided the rent shall be \$ 30,000 net plus GST (incl GST)
per annum commencing on 17 / 02 / 2018

and payable in advance by the Tenant on the first day of every day
to the Landlord / Agent at the above address or at any other reasonable place as the Landlord / Agent notifies in writing.

TERM

The term of the lease shall be Two (2) years

commencing on 20 / 11 / 2017 and ending on 19 / 11 / 2019

OPTION

Subject to Clause 29 of this lease the Landlord / Agent offers a renewal of this lease for a further term of One (1) years.

HOLDING OVER

Unless either party gives the other written notice of termination in accordance with Clause 30a, the lease shall continue as a periodic lease from month to month at the same rent or at a rent to which both parties agree.

OUTGOINGS (tick applicable box)

☒ The Tenant's percentage of outgoings to be paid in accordance with Clause 17a is 100 %

OR

☐ The Tenant's percentage of any increases in outgoings to be paid in accordance with Clause 17b is %

BASE YEARS

Municipal Rates: N/A

Water and Sewerage Rates: N/A

Land Tax: N/A

INSURANCE

The amount of cover for public liability referred to in Clause 15e is \$20,000,000.00

CONDITIONS

The parties agree to the conditions set out above and on the following pages and also to those conditions implied by Sections 84 and 85 of the *Conveyancing Act 1919*, which are not expressly negated or modified by this lease.

NOTE It is advisable for the Tenant to insure the Tenant's own property

COPYRIGHT JULY 2009

Originated and distributed by and printed and produced for the Real Estate Institute of N.S.W. in whom exclusive copyright vests.
WARNING Unauthorised reproduction in whole or in part is an infringement of Copyright.
www.reinsw.com.au



THE LANDLORD AGREES

Possession

1. To give possession of the Premises to the Tenant on the day on which the term of the lease commences.

Condition of Premises

2. To ensure that the Premises are in a reasonably fit condition for use at the commencement of the lease.

Security

3. To ensure that the external doors and windows contain locks and catches in working order at the commencement of the lease.

Insurance

4. To insure the Premises against damage arising from fire, lightning and explosion and other hazards (including earthquake, storm and tempest, water damage, impact, aircraft, riots / civil commotions and malicious damage).

Use of Premises

5. To allow the Tenant to use and occupy the Premises without unreasonable interference by the Landlord or their Agent.

Rates and Taxes

6. To pay council, water and sewerage rates, land tax and other levies promptly.

Lease Copy

7. To provide the Tenant within one (1) month after:
 - a notice of mortgage consent, if required;
 - b execution of the lease; and
 - c stamping, if applicable
 with a copy of the lease.

Tax Receipts and Tax Invoices

8. To issue rent receipts and tax invoices (where applicable) showing the Tenant's name, the address of the Premises, the ABN of the parties, the amount received, the date of payment and the period for which the payment was made, and other such requirements as determined by the Australian Taxation Office.

THE TENANT AGREES

Rent

9. To pay the rent promptly and in advance and in the manner that the Landlord may direct from time to time.

Consents

10. To obtain at their own expense all necessary consents that may be required from local government or other authorities to carry on their proposed business at the Premises (being the use and /or fit-out for which the Premises are leased).

Charges

11. To pay all charges for gas, electricity and telephone and any water usage, garbage or sanitary rates or charges, relating to the Tenant's use of the Premises.

Care of Premises

12. To take care of the Premises and to keep them in a clean condition, and in particular:
 - a To make no alterations or additions to the Premises, including the erection of any sign or antenna, without the prior written consent of the Landlord.
 - b To do no decorating that involves marking, defacing or painting any part of the Premises, without the prior written consent of the Landlord.
 - c To put nothing down any sink, toilet or drain likely to cause obstruction or damage.
 - d To keep no animals or birds on the Premises, without the prior written consent of the Landlord.
 - e To ensure that rubbish is not accumulated on the Premises and to cause all trade refuse to be removed regularly and in a manner acceptable to the Landlord.
 - f To ensure that nothing is done that might prejudice any insurance policy which the Landlord has in relation to the Premises.
 - g To notify the Landlord promptly of any loss, damage or defect in the Premises.
 - h To notify the Landlord promptly of any infectious disease, or the presence of rats, cockroaches or similar pests.

Permitted Use and Occupation

13. a To use the Premises for the purpose stated on the front page of this lease and not for any other purpose.
- b Not to sleep or permit anyone to sleep on the Premises unless the Premises or a portion of the Premises is zoned for residential use.

Rules and Regulations

14. To ensure that the Tenant, the Tenant's employees, licensees and agents observe, obey and perform the rules and regulations forming part of this lease and such further rules and regulations as the Landlord may from time to time make and communicate to the Tenant (not being inconsistent with this lease) for the safety, care and cleanliness of the Premises and of the building.



Insurance

15. a To do nothing in the building or keep anything therein that would increase the insurance premium payable by the Landlord on the building except with the prior written consent of the Landlord.
- b To do nothing which would make any insurance policy void.
- c To insure all external fixed glass and window frames for which the Tenant is responsible.
- d To pay any insurance premiums payable by the Landlord increased as a result of the Tenant's actions.
- e To insure for public risk covering liability in respect of bodily injury, property damage, product liability and contractual liability arising from the occupation and use of the Premises by the Tenant for the minimum amount as noted on the front page of the lease.

Indemnity

16. a To compensate and meet all claims of:
 - i the landlord for the loss of or damage to part or whole of the Premises,
 - ii any person for the loss of or damage to their personal property, and
 - iii any person for personal injury or death as a result of any accident or neglect or a deliberate or careless act on the Premises or a breach of any conditions of the lease by the Tenant, their employees or agents or any person present on the Premises with the consent of the Tenant, their employees or agents.
- b In such circumstances the Tenant shall meet all claims whether they are made directly against them or against the Landlord. Any resultant repairs to the Premises or to any other parts of the building shall be carried out at the expense of the Tenant by a builder or tradesperson approved by the Landlord.

Outgoings *[Cross out the sub-clause below that is not applicable and ensure that both parties initial the change]*

17. a To reimburse the Landlord immediately, when requested, for the Tenant's percentage of outgoings noted on the front page of this lease for all local government rates, water, garbage and sewerage rates, land tax, insurance premiums, waste disposal costs, car park levies and such other outgoings relating to the property. Land tax shall be calculated on the basis that the land on which the building is situated was the only land owned by the Landlord.

OR

- ~~17. b To reimburse the Landlord immediately, when requested, for the agreed percentage of all increases in local government rates, water, garbage and sewerage rates, land tax, insurance premiums, waste disposal costs, car park levies immediately preceding the commencement of the lease. Land tax shall be calculated on the basis that the land on which the building is situated was the only land owned by the Landlord.~~

BOTH PARTIES AGREE THAT

Unforeseen Event

18. If something happens to the Premises so that the whole or a substantial part can no longer be occupied and the parties are in no way responsible, then either party shall have the right to terminate the lease on the giving of seven (7) days notice in writing.

Inspections

19. The Landlord or Agent shall inspect the Premises at the commencement of the lease and on its termination and take note of the condition of the Premises including the state of cleanliness, state of repair and working order of appliances.

Repairs

20. a The Tenant shall have repaired in a proper manner any damage to the Premises resulting from neglect or a deliberate or careless act or a breach of any condition of the lease by the Tenant or any person on the Premises with their consent.
- b Except as in Clause 20a, the Landlord shall carry out without delay all reasonable repairs necessary for the Tenant's ordinary use and occupation of the Premises, having regard to the condition of the Premises at the commencement of the lease and having regard for fair wear and tear.

Access

21. a The Landlord shall respect the Tenant's right to privacy.
- b The Tenant shall allow access to the Landlord or Agent:
 - i when it is reasonable that they or either of them should view the condition of the Premises or to carry out repairs, or
 - ii to erect 'to let' signs and to show the Premises to prospective tenants after notice terminating the lease has been given, or
 - iii to erect 'for sale' signs and to show the Premises to prospective purchasers, after the Landlord has given reasonable notice to the Tenant of their intention to sell.
- c The Landlord shall give the Tenant reasonable notice of the time and date for such access. As far as possible it shall be convenient for both parties.
- d The Landlord or Agent may have access to the Premises at any time on reasonable notice to the Tenant or without notice in the case of an emergency or to carry out urgent repairs.

Costs

22. a The Tenant shall pay their own legal costs and the reasonable legal costs of the Landlord in relation to the preparation of this lease.
- b The Tenant shall pay the stamp duty and registration fees (if any) payable in connection with this lease.
- c The Landlord shall provide the Tenant with a copy of any account presented to the Landlord in respect of any costs referred to in Clause 22a.

GST

23. Any amounts, including rent and outgoings, referred to in this lease which are payable by the Tenant to the Landlord, or on behalf of the Landlord, under this lease, are expressed inclusive of the Goods and Services Tax ("GST"), (if any), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this lease will be varied accordingly.

ms

Statutes

24. Each party shall observe as applicable to themselves all relevant statutes, statutory regulations and by-laws relating to health, safety, noise and other standards with respect to the Premises.

Notices

25. Any written notice required or authorised by the lease:
- Shall be served on the Tenant personally, or by pre-paid post or facsimile transmission to the Premises or by being left there in the post box, if any, at the Premises.
 - Shall be served on the Landlord or Agent personally or by pre-paid post or by facsimile transmission to their address as shown in the lease or as notified in writing or by being left in the post box, if any, at that address.
 - Shall be deemed to be served on the second business day after posting where it has been sent by pre-paid post.
 - May take effect on any day of the month if it relates to the termination of a periodic lease provided it gives the required length of notice.

Mitigation

26. Where there has been a breach of any of the conditions of the lease by either party, the other party shall take all reasonable steps to minimise any resultant loss or damage.

Disputes

27. In any dispute or proceedings between the parties, both parties shall act reasonably and without delay and make all admissions necessary to enable the real issues to be decided.

Notice

28. a After a notice terminating the lease or demanding immediate possession has been given, any acceptance of or demand for rent or money by the Landlord shall not of itself be evidence of a new lease with the Tenant nor alter the legal effect of the notice.
- b Where the Tenant unlawfully remains in possession after the termination of the lease, the Landlord shall be entitled, in addition to any other claim, to payments equal to the rent as compensation for the Tenant's use and occupation of the Premises.

Renewal

29. a The Tenant shall give to the Landlord or the Agent not more than six (6) months and not less than three (3) months prior to the expiration of the term granted in this lease notice in writing if the Tenant wishes to take a renewal of the lease for the further term offered. Provided the Tenant has duly and punctually paid the rent and shall have duly performed and observed on the Tenant's part all the conditions and agreements contained in this lease up to the expiration of the term granted, then the Landlord will at the cost of the Tenant grant the Tenant the further term at a rent which would at such time be current market rental of the Premises.
- b If any dispute between the Landlord and the Tenant arises as to the current market rent then it shall be determined by the President of the Real Estate Institute of New South Wales or his/her appointee. The rent in the future term is not to be less than the market rent payable in the previous term just prior to the expiration of this lease and the lease shall be subject to all other conditions as are contained in this lease with the exception of the Option Condition. The costs of such rental determination shall be borne in equal shares by the parties unless otherwise agreed.

Termination

30. a Upon the expiry of the lease term or where the lease has become a periodic lease from Month to Month, either party may terminate it by giving one (1) Month's written notice to the other party.
- b The Landlord shall have the right to re-enter the Premises peacefully or to continue the lease as a periodic lease from week to week:
- where the Tenant has failed to pay rent for a period in excess of fourteen (14) days, whether formally demanded or not;
 - where the Tenant has seriously or persistently breached any of the conditions of the lease; or
 - upon the Tenant and/or Guarantor being declared bankrupt or insolvent according to the law or making any assignment for the benefit of creditors or taking the benefit of any Act now or hereafter to be in force for the relief of bankrupts or insolvents. (Section 85 (1) (d) of the *Conveyancing Act 1919*, as amended, is hereby varied accordingly.)
- c If the Landlord intends to exercise their right to continue to lease as a periodic lease from week to week, they shall serve the Tenant with a written notice stating the reason and informing the Tenant of the variation to the lease. Upon serving of the notice, the lease shall continue with all its conditions, except for the term and holding over conditions, as a periodic lease from week to week which may be terminated by seven (7) days written notice from either party.
- d The Landlord shall have the right to re-enter the Premises without giving notice if there are reasonable grounds to believe the Premises have been abandoned.
- e The Tenant shall have the right to terminate the lease if the Landlord has seriously or persistently breached any of its conditions. The Tenant shall give the Landlord written notice of a reasonable period, of no less than fourteen (14) days indicating at the same time the nature of the breach.
- f Any action by the Landlord or the Tenant in accordance with Clause 30 b., c., d. or e., shall not affect any claim for damages in respect of a breach of a condition of the lease.
- g Upon termination or expiry of the lease the Tenant must remove their own fixtures and shall remove their signs provided that any damage or defacement occasioned to any part of the Premises in the course of such removal shall be remedied by the Tenant immediately or, if they fail to do so, by the Landlord and at the Tenant's expense.
- h Upon the termination or expiry of the lease for any reason the Tenant shall promptly and peacefully give the Landlord vacant possession of the Premises in the condition and state of repair required by clauses 12 and 20 a. of the lease and shall, at the same time, hand over all keys.

Parting With Possession

31. a The Tenant shall not assign or sub-let or part with possession of the Premises or any part thereof except with the written consent of the Landlord.
- b The Landlord shall not withhold consent unreasonably, provided that the Tenant gives the Landlord fourteen days notice and the Tenant pays any reasonable expenses involved in the Landlord giving consent.

Cleaning

32. a The Landlord will employ the caretaker or any other person or persons the Landlord may think fit to clean all or any of the offices or rooms in the building of which the Premises form part.
- b The Tenant will from time to time pay to the Landlord the sums demanded by the Landlord for cleaning the Premises and such sums shall be added to the rent and be paid at the same time and in the same manner as the rent and be recovered in the same manner as the rent is recoverable.
- c The Landlord shall not be responsible to the Tenant for any loss of property from the Premises however occurring or for any damage done to the furniture or other effects of any Tenant by the caretaker or any employees of the Landlord or by any other person or persons whomsoever.

Strata Title Conversion

33. The Landlord may register a strata plan insofar as the same relates to the building or any part of it. The Landlord will if required by law request the consent of the Tenant to the registration of the strata plan such consent must not be unreasonably withheld by the Tenant and if requested the Tenant will provide their written consent to the strata plan to the Department of Lands or any other government authority. After registration of the strata plan the Tenant will comply with any by-laws which are not inconsistent with the terms of this lease.

Interpretation

34. a 'Agent' in context with 'Landlord' includes the Landlord's estate agent or managing agent and any other person authorised to act on behalf of the Landlord.
- b 'Landlord' includes the heirs, executors, administrators and assigns of the Landlord, and where the context permits includes the Landlord's Agent.
- c 'Tenant' includes the executors, administrators and permitted assigns of the Tenant.
- d 'Fixtures' includes fittings, furniture, furnishings, appliances, plant, machinery and equipment.
- e 'Month' means calendar month.
- f 'Term' means the term of this lease.
- g Where the context permits, words expressed in the singular include the plural and vice versa and words referring to a person include a company.
- h Where two or more Tenants or Landlords are parties, the terms and conditions of the lease shall bind them jointly and severally.
- i When this lease is signed by both parties and witnessed, it shall operate as a deed at law from that time.
- j Headings in bold have been inserted to assist the parties but they do not form a legal part of the lease.

Guarantor's Liability

35. In consideration of the Landlord leasing the Premises to the Tenant in accordance with this lease, the Guarantors for themselves and each of them and each of their executors and administrators unconditionally agree that they and each of them will be (with the Tenant) jointly and severally liable to the Landlord for the payment of the rent and all other monies payable by the Tenant, and also for the due performance and observance of all the terms and conditions on the part of the Tenant contained or implied. AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that the Landlord may grant to the Tenant any time or indulgence and may compound or compromise or release the Tenant without realising or affecting the liability of the Guarantors.

ms

SPECIAL CONDITIONS

Special conditions forming part of this lease are to be signed by both parties and attached.

RULES AND REGULATIONS

1. No sign, advertisement or notice shall be inscribed or painted or affixed on any part of the outside or the inside of the Premises except of such colour, size and style and in such place upon or in the building as are approved in writing by the Landlord. Upon request by the Tenant, interior signs on glass doors and on the directory tablets will be provided for the Tenant and at the Tenant's expense by the Landlord.
2. The Tenant shall not obstruct the entrance passages, halls, staircases, or fire escapes of the Premises or use them or any part of them for any purpose other than for going in and out of the Premises.
3. The Tenant will not obstruct or interfere with the rights of other Tenants or in any way injure or annoy them or conflict with the regulations of any public authority or with the terms of any insurance policy upon the building or its contents.
4. The Tenant shall not install or position any heavy equipment or article without first obtaining the written consent of the Landlord, such consent may prescribe the maximum weight and the position in which such heavy equipment or article may be placed or secured; the Tenant shall make good at the Tenant's expense all damage caused to the building or any part of it by the introduction, installation, presence or removal of any heavy equipment or article of which the Tenant has ownership, custody or control. Before any safe or heavy article is moved into the building due notice must be given to the Landlord and the moving of it in and about the building shall only be done under the supervision of the Landlord or Agent.
5. In the event of any emergency or other eventuality whereby the toilets or washrooms on any floor are not available for use the Landlord may temporarily withdraw the right of exclusive use of all or any of the toilet or washroom areas and services not affected so as to ensure availability of these facilities to all occupants of the building, and no rental adjustment will be made during such temporary arrangements.
6. In carrying goods or furniture in the lifts priority shall at all times be given to passenger traffic.
7. All doors and windows of the Premises shall be securely fastened on all occasions when the Premises are left unoccupied. The Landlord reserves the right for the Landlord's Agents, employees, servants and workmen to enter and fasten them if they are left unfastened or insecurely fastened.

PLEASE READ THIS LEASE THROUGH CAREFULLY BEFORE AND AFTER SIGNATURE

We hereby enter into this lease and agree to all its conditions.

SIGNED BY THE LANDLORD

in the presence of:	
_____ Name of Witness	_____ Signature of Landlord
_____ Signature of Witness	

SIGNED BY THE TENANT

in the presence of:	
<u>Steve Spear</u> Name of Witness	<u>[Signature]</u> Signature of Tenant
<u>[Signature]</u> Signature of Witness	

SIGNED BY THE GUARANTOR

in the presence of:	
_____ Name of Witness	_____ Signature of Guarantor
_____ Signature of Witness	

THE COMMON SEAL of	THE COMMON SEAL of	THE COMMON SEAL of
was hereunto affixed by the authority of the the Board of Directors and in the presence of:	was hereunto affixed by the authority of the the Board of Directors and in the presence of:	was hereunto affixed by the authority of the the Board of Directors and in the presence of:
_____ Secretary	_____ Secretary	_____ Secretary

FORM OF SURRENDER OF LEASE

In consideration of \$ _____ (the receipt of which is hereby acknowledged), I _____
surrender and convey to the Landlord the lease to the intent that the residue of the term of the lease term shall merge in the reversion and be extinguished contemporaneously with the execution of this agreement.

Signed _____	Date / /
Witnessed _____	Date / /

[Signature]

ANNEXURE A - SPECIAL CONDITIONS

Commercial Lease Between:

Landlord: Mito and Elena Tomeski

and

Tenant: Days Building Construction Pty Ltd

For The Premises Known As

Unit 14, 5-7 Channel Road, Mayfield West

(Page 1 of 2)

Charges

Clause 11 is deleted and the following clause is inserted in lieu.

11. The tenant agrees to pay all other charges including but not limited to, water, gas, electricity, telephone, garbage or sanitary rates or charges, relating to the Tenant's use of the premises.

Cleaning

Clause 32. is deleted and the following clause inserted in lieu thereof:

32. The Tenant shall have the premises regularly cleaned at the Tenant's own cost.

Insurance

36. Add to Clause 15 the following:

- 15.f The insurance policies in 15.c and 15.e must:
- i. contain the address of the premises;
 - ii. show the Tenant as the "Insured"; and
 - iii. note the Landlord as an interested party.

Outgoings

37. Outgoings will be payable from the Lease Commencement Date.

Security Deposit

38. a. The Lessee will provide a Security Deposit in favour of the Lessor in the sum of \$5,500 (equivalent to two (2) months of the net annual commencement rent inclusive of GST) at the Rent Commencement Date of 17 February 2018.
- b. The Security Deposit will be held by the Lessor until the Lessee has no further obligations under the Lease or at Law.
- c. The Security Deposit amount is to be varied at the commencement of the Option Term so that it equates to two (2) months of the market determined net rent inclusive of GST.

Rent Review Method

39. On each anniversary of the lease commencement date, throughout the Lease, the annual rent shall be increased by CPI.

Property Access

40. The Lessee can access the property between the Lease Commencement Date and the Rent Commencement Date for measuring up, however, they cannot occupy the property and operate their business from the premises during this time.

ANNEXURE A - SPECIAL CONDITIONS

Commercial Lease Between:

Landlord: Mito and Elena Tomeski
and
Tenant: Days Building Construction Pty Ltd

For The Premises Known As
Unit 14, 5-7 Channel Road, Mayfield West

(Page 2 of 2)

41. Early Termination by Tenant

- (a) The landlord and tenant acknowledge that a Contract for the sale of the Premises is to be entered into by the Landlord (as vendor) and Day Bare Pty Ltd ACN 622 860 799 (as purchaser) (the Sale Contract).
- (b) At the time of entering into the lease, the Sale Contract has not been entered into between the vendor and the purchaser.
- (c) Notwithstanding any other clause or term of this lease, the parties agree the tenant may, by notice in writing to the landlord, terminate this lease with immediate effect in the event that the Sale Contract is not entered into for any reason or, if entered into, is not completed for any reason.

42. Fire Regulations

The Lessee will be responsible for ensuring that the premises comply with all fire regulations that are required by the Newcastle City Council, the NSW Fire Department or any other government authority and ensure that all relevant annual Fire Statement Certificates are forwarded to Newcastle City Council. The Lessee will also be responsible for ensuring that all fire extinguishers, fire blankets and other equipment and exit signs are in property working order and are maintained and updated as required by the relevant authorities and legislation.

SIGNED BY THE LANDLORD

In the presence of:	_____	_____
	Name of Witness	Signature of Landlord

	Signature of Witness	

SIGNED BY THE TENANT

In the presence of:	<u>Steve Spar</u>	<u>[Signature]</u>
	Name of Witness	Signature of Tenant
	<u>[Signature]</u>	
	Signature of Witness	