

## **DISCLOSURE STATEMENT**

### **Form 1 - Disclosure statement under section 12 of *Retail and Commercial Leases Act 1995***

#### **Information for lessees**

Please read the following information carefully.

#### **What is a lease?**

A lease is a very important document. It is a legally binding contract between the lessor (landlord) and the lessee (tenant). It sets out the rights and obligations of the lessor and the lessee.

A document that binds the lessee to enter into a lease or to take a shop on lease for a renewed term should be treated as if it were the lease.

#### **What should I look for in a lease?**

The main features to consider are—

- the term of the lease;
- whether there is an option to renew or extend the lease (and the method of exercising any such option);
- the rent and the basis for rent reviews;
- the amounts that the lessee will have to pay in addition to rent eg fit out costs, maintenance and repair costs and shared operating expenses;
- the consequences of breaching a term of the lease.

Make sure you read the whole document and understand the obligations it will place on you, especially the extra charges in addition to rent that you will have to pay.

If the lease is a sublease, you should seek information about the lessor's rights and obligations under the head lease that are relevant to the lease of the shop.

#### **What information is the lessor required to give me?**

The lessor must give you a copy of the proposed lease and this disclosure statement. The disclosure statement must contain the matters set out in section 12 of the *Retail and Commercial Leases Act 1995*.

#### **What should I do before signing a lease or other binding document?**

Do not sign until you understand exactly what your obligations under the lease will be.

Before signing a lease or other binding document, you should obtain independent legal and financial advice.

- You should discuss the lease (or any agreement for a lease) and the disclosure statement with your own lawyer or leasing adviser.
- You should seek advice about the financial commitments under the lease from your own accountant or recognised financial or business adviser.
- You should also seek advice from an association representing the interests of lessees.

Before signing a lease or other binding document, oral representations made by the lessor or the lessor's agent on which you have relied should be reduced to writing and signed by or on behalf of the lessor.

Before signing a lease or other binding document, the lessee should sign an acknowledgment of receipt of the disclosure statement.

**1—Details of shop**

Address: [insert]

Lettable area: Approximately [insert]

The shop may only be used for: [insert]

**2—Term of lease**

Term of lease: [insert] years commencing on and from [insert date] (Commencement Date).

**3—Renewal or extension of lease**

[Tick 1 box.]

- ☐ There is no right to renew or extend the term of the lease.
- ☐ The lease gives a right to renew or extend the term of the lease as follows:  
one (1) right of renewal for a further term of five (5) years

**4—Access to shop**

Hours during which the lessee will have access to the shop outside trading hours:

Such times as are lawful for the Permitted Use.

Date on which the shop will be available for occupation: [insert] subject to execution of the lease

**5—Monetary obligations**

The lessee's obligations to pay rent, to pay or reimburse outgoings, to make or reimburse capital expenditure and any other monetary obligations imposed on the lessee are set out in Appendix A.

**6—Retail shopping centre details**

[Tick 1 box.]

- ☐ The shop is in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*. See Appendix B for details.
- ☐ The shop is not in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*.

**7—Consequences of breach**

The legal consequences of early termination of the lease by the lessee as set out in Part J (Default and Damages) and Part K (Termination and End of Tenancy) of the lease are as follows:

1. The lessee is liable for any arrears and all rent until the end of the term. This amount will be reduced if the lessor leases the premises to another tenant. The lessor must use reasonable endeavours to re-lease the Premises.
2. The lessee is liable for all other losses suffered by the lessor and all costs (including legal costs) incurred by the lessor resulting from the early termination.
3. The lessor may deal with and dispose of abandoned goods in accordance with the lease and the *Retail and Commercial Leases Act 1995*.
4. The lessor may draw on the personal guarantees as compensation for any loss or damaged suffered by the lessor.

The above is not a complete list of the consequences for early termination and does not limit the lessor's rights under the lease or otherwise. Please refer to the lease and seek independent advice.

The legal consequences of other breaches as set out in the lease are as follows:

1. If the lessee does not remedy the breach within a certain time, the lessor can terminate the lease.
2. If the lessor decides to terminate the lease because of the breach, the lessee may be liable for all rent until the end of the term. This amount will be reduced if the lessor leases the Premises to another tenant. The lessor must use reasonable endeavours to re-lease the Premises.
3. The lessee may be liable for all other losses caused to the lessor and all costs (including legal costs) incurred by the lessor because of the breach.
4. The lessor may choose not to terminate the lease but instead to sue the lessee for the lessor's loss. In this case the lessee must continue complying with the terms of the lease.
5. Any amount outstanding under the lease will accrue interest at a specified rate from the due date until full payment.
6. The lessor may draw on the personal guarantees as compensation for any loss or damaged suffered by the lessor.

The above is not a complete list of the consequences of breach and does not limit the lessor's rights under the lease or otherwise. Please refer to the lease and seek independent advice.

### 8—Warnings

Oral representations made by the lessor or the lessor's agent on which the lessee has relied should be reduced to writing and signed by or on behalf of the lessor before the lessee enters into the lease.

The lessee should obtain independent legal and financial advice before entering into the lease.

### Lessor's Details and Signature

#### Lessor:

**Signed** for and on behalf of **[INSERT]** (ACN **[insert]**) by:

.....  
Signature

.....  
Full Name

Date:     /     /

**Acknowledgment of receipt**

I acknowledge receipt of this disclosure statement including:  
[Tick 1 or more boxes as applicable.]

- ☐ Appendix A—Monetary obligations under lease
- ☐ Appendix B—Retail shopping centre details
- ☐ Attachment—Shop fitting or refitting obligations
- ☐ Attachment—Fixtures, plant or equipment obligations
- ☐ Attachment—Sinking fund obligations
- ☐ Attachment—Proposed changes to shopping centre
- ☐ Attachment—Current tenant mix
- ☐ Attachment—Proposed changes to current tenant mix
- ☐ Attachment—Details of tenant association

**Lessee's Details and Signature**

**Signed** for and on behalf of **[INSERT]** (ACN  
**[insert]**) by:

.....  
Signature

.....  
Full Name

Date:     /     /

**IMPORTANT NOTICE****EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE**

**The lessor does not warrant that the premises you are about to rent will for the duration of your lease be structurally suitable for the type of business you intend to carry on.**

**Appendix A—Monetary obligations under lease****Part 1—Rent****1—Base rent**

The base rent payable for the shop is or is calculated as follows:

[insert] per annum (exclusive of GST) payable on and from the Commencement Date by equal calendar monthly instalments equivalent to one twelfth of the rent always in advance.

**2—Basis on which base rent may be changed**

The base rent may be changed on the following basis:

During the Initial Term: CPI each anniversary of the Commencement Date

**3—Other rent**

Other rent payable for the shop is or is calculated as follows:

Not applicable

**Part 2—Capital expenditure****4—Permissible obligations (section 13 of *Retail and Commercial Leases Act 1995*)**

The lessee will be liable for capital expenditure as follows:

*[Tick 1 or more boxes as applicable.]*

- ☐ to pay or reimburse the cost of making good damage to the premises arising when the lessee is in possession or entitled to possession of the premises
- ☐ to fit or refit the shop as set out in the attachment marked "Shop fitting or refitting obligations"  
*[The attachment must include sufficient details to enable the lessee to obtain an estimate of the likely cost of complying with the obligation.]*
- ☐ to provide fixtures, plant or equipment as set out in the attachment marked "Fixtures, plant and equipment obligations"  
*[The attachment must include sufficient details to enable the lessee to obtain an estimate of the likely cost of complying with the obligation.]*
- ☐ to contribute to a sinking fund to cover major items of repair or maintenance as set out in the attachment marked "Sinking fund obligations"  
*[The attachment must include reasonable details of the lessee's obligations.]*

**Part 3—Outgoings****5—Categories and estimate of annual liability**

Subject to clause 5.1 below, the lessee will be liable to pay or reimburse outgoings as follows:

<b>Category of outgoings</b>	<b>Estimate of lessee's annual liability (excl GST)</b>
council rates	[insert]
water rates	[insert]
electricity	[insert]
gas	[insert]
telephone	[insert]
ESL	[insert]
energy management systems	[insert]
air conditioning/ventilation	[insert]
building intelligence and emergency systems	[insert]
fire protection	[insert]
security	[insert]
signs	[insert]
insurance	[insert]
pest control	[insert]
cleaning	[insert]
audit fees	[insert]
management costs	[insert]
maintenance and repairs	[insert]
<b>Total</b>	

The Lessor estimates outgoings payable by the Lessee to be approximately [insert]

[Tick 1 box.]

- ☐ The lessee is liable for the full amount of the outgoings.
- ☐ The lessee is liable for a proportion of the outgoings calculated according to the following formula:  
*[If different according to category, provide category and formula in each case.]*

#### 6—Margin of profit

[Tick 1 box.]

- ☐ The amount the lessee is required to pay towards outgoings does not include a margin of profit for the lessor.
- ☐ The amount the lessee is required to pay towards outgoings includes a margin of profit for the lessor as follows:  
*[Provide the percentage profit or the basis on which the profit is to be calculated.]*

#### Part 4—Other monetary obligations

##### 7—Other

[Tick 1 box.]

- ☐ The lessee will not be liable for any other kinds of monetary obligations.
- ☐ The lessee will also be liable for the following kinds of monetary obligations:  
*[Provide details of other kinds of monetary obligations and, if possible, an estimate of the annual cost of complying with those obligations.]*
  1. all charges for gas, electricity, telephones, communication services and water in relation to the Premises and which the lessee has requested or connected or used and other charges for the supply of services to the Premises;
  2. any fees for registration of the lease;
  3. the lessee's own costs, fees and expenses in relation to negotiation and preparation of the lease;
  4. all reasonable legal and other expenses incurred by the lessor in connection with a request from the lessee for a consent or approval;
  5. GST on all payments due under the lease;
  6. all reasonable legal or other expenses incurred by the lessor in connection with the preparation, stamping or registration of any instrument varying, extending or surrendering the lease except if the *Retail and Commercial Leases Act 1995* applies to the lease the lessee must only pay half of the lessor's legal costs in having the lease prepared;
  7. all reasonable legal or other expenses incurred by the lessor in connection with a proven default or breach of the lease by the lessee, including the preparation and service of any notices and whether or not the lessor proceeds to sue or terminate the Lease or the default or breach is thereafter made good;
  8. the costs of insuring **[insert]**; and
  9. otherwise in accordance with the lease.