

Commercial Tenancy Agreement

Third Edition

This Tenancy Agreement is made between the Lessor and the Tenant. The Lessor leases to, and the Tenant accepts a Lease of, the Premises for the rent payable by the Tenant, subject to the terms of this Agreement. This Agreement comprises the Reference Schedule and Commercial Tenancy Agreement conditions.

THIS AGREEMENT COMPRISES THE REFERENCE SCHEDULE AND COMMERCIAL TENANCY AGREEMENT CONDITIONS.

DO NOT USE THIS DOCUMENT:

- **FOR RESIDENTIAL TENANCIES.**
- **FOR PREMISES COVERED BY THE *RETAIL SHOP LEASES ACT 1994* (Qld).**
- **WHERE THE TERM OF THE LEASE (INCLUDING OPTIONS) EXCEEDS THREE (3) YEARS.**
- **WHERE REGISTRATION UNDER THE *LAND TITLE ACT 1994* (Qld) IS REQUESTED BY THE TENANT.**

INSTRUCTIONS TO COMPLETE

1. The parties should be advised to seek legal advice about the Tenancy Agreement. Reference should be made to Sections 24 (3A) to (7) of the *Legal Profession Act 2007* (Qld) when preparing and completing this Agreement.
2. Unless amended, this Agreement provides for rent to be reviewed based on increases in the Consumer Price Index. It is not suitable for use where rent is to be reviewed to market or otherwise.
3. The only outgoings recoverable in this Agreement are local government rates, fire service levies, insurance, body corporate fees and levies (including but not limited to administrative fund levies and sinking fund levies), cleaning and garden maintenance. Unless amended, this Agreement is not suitable for use where additional outgoings are to be paid by the Tenant.
4. Ensure that all items are completed in the Reference Schedule
 - Item 1:** Full name/s of the owner/s of the property and their address. If the Lessor is a company, include ABN. DO NOT use a business name.
 - Item 2:** Full name/s of the Tenant. If the Tenant is a company, include its ABN. DO NOT use a business name.
 - Item 3:** The Premises must be clearly identified e.g. "Suite 3, 45 John Street, Spring Hill" etc. If not able to be identified by name, a sketch plan must be attached to the Agreement and the address must be included at Item 3.
 - Item 5:** Insert the period of the further tenancy, e.g. "6 months" or "1 year" or "not applicable". The total term of the lease including any options is not to exceed three years.
 - Item 7:** Insert the date on which the rent is to be adjusted by the CPI or "not applicable".
 - Item 8:** The Permitted Use should be stated clearly and concisely.
 - Item 9:** Insert the percentage of outgoings the Tenant is to pay, e.g. "25%" or "100%" or "Not applicable".

REFERENCE SCHEDULE**1****LESSOR:** NICKOLAS DE MARCO & OLGA DE MARCO**NAME:** ATF THE DE MARCO SUPERANNUATION FUND**ABN/ACN:** 112 770 226 101**ADDRESS:** C/- VIRTU SUPER
PO BOX 83**SUBURB:** MOUNT GRAVATT**STATE:** QLD **POSTCODE:** 4122**PHONE:** 133491452 **MOBILE:** **FAX:** 134228080 **EMAIL:** nick@stg.com.au**2****TENANT:****NAME:** STONE & TILE QLD PTY LTD**ABN/ACN:** 78114208463**ADDRESS:** 69 BRISTOL ROAD**SUBURB:** KEDRON**STATE:** QLD **POSTCODE:** 4031**PHONE:** 3861 4803 **MOBILE:** **FAX:** 33503430 **EMAIL:** accounts@stg.com.au**3****PREMISES:**☐ Annex a plan if available**ADDRESS:** 69 BRISTOL ROAD**SUBURB:** KEDRON**STATE:** QLD **POSTCODE:** 4031**Description:** Lot: REGISTERED PLAN 63172**4****TERM:****The Term of the Agreement is:** one ~~THREE~~ ☐ months ☒ years**DATE:** **DATE:**
commencing on: 1st JULY 2015 **and ending on:** 30 JUNE 2018**5****OPTION FOR FURTHER TERM:***Note: The term of the Lease (including options) should not exceed three (3) years.*12 x 3**6****RENT:**\$ 3,333 + GST**per:** ☒ month ☐ year☐ Select applicable box**7****ANNUAL RENT REVIEW DATES:**1 JULY 2016, 1 JULY 2017**8****PERMITTED USE:**RETAIL & WHOLESALE & WAREHOUSING**9****PERCENTAGE OF OUTGOINGS:**100% EXCLUDING INSURANCE

INITIALS

10 DEPOSIT:

\$ N/A

11 LESSOR'S AGENT:

NAME:

N/A

ADDRESS:

SUBURB:

STATE: POSTCODE:

PHONE:

MOBILE:

FAX:

EMAIL:

ABN/ACN:

LICENCE NUMBER:

SPECIAL CONDITIONS

INITIALS

AGREEMENT MADE

Date: 1/7/15 EXECUTED as an Agreement.

EXECUTION BY LESSOR

Executed by: _____
in accordance with Section 127 of the *Corporations Act 2001* (Cth).

Director/Secretary

Director

Name of Director/Secretary (BLOCK LETTERS)

Name of Director (BLOCK LETTERS)

OR

SIGNED by

[Signature]
[Signature]
Signature of Witness

AS LESSOR in the presence of:

BARBARA LINCOLN
Name of Witness (BLOCK LETTERS)

Address of Witness: 37 ARALUEN ST

SUBURB: KEDRON STATE: QLD POSTCODE: 4031

EXECUTION BY TENANT

Executed by: _____
in accordance with Section 127 of the *Corporations Act 2001* (Cth).

Director/Secretary

Director

Name of Director/Secretary (BLOCK LETTERS)

Name of Director (BLOCK LETTERS)

OR

SIGNED by

[Signature]
[Signature]
Signature of Witness

AS TENANT in the presence of:

BARBARA LINCOLN
Name of Witness (BLOCK LETTERS)

Address of Witness: 37 ARALUEN ST

SUBURB: KEDRON STATE: QLD POSTCODE: 4031

COMMERCIAL TENANCY AGREEMENT CONDITIONS

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 Terms in Reference Schedule

Where a Term used in this Agreement appears in bold type in the Reference Schedule, that Term has the meaning shown opposite it in the Reference Schedule.

1.2 Definitions

Unless the context otherwise requires:

- (1) **"Agreement"** means this document, including any Schedule or Annexure to it;
- (2) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a Public Holiday or a Bank Holiday in the place where an act is to be performed or a payment is to be made;
- (3) **"Claim"** includes any claim or legal action and all costs and expenses incurred in connection with it;
- (4) **"GST"** means a goods and services tax or similar value added tax.
- (5) **"Land"** means the Land on which the Premises are situated;
- (6) **"Lessor's Property"** means any property owned by the Lessor in the Premises or on the Land and includes the property identified in any inventory annexed to this Agreement;
- (7) **"Premises"** means the premises described in Item 3 of the Reference Schedule and includes the Lessor's Property in the premises;
- (8) **"REIQ"** means The Real Estate Institute of Queensland Ltd;
- (9) **"Services"** means all utilities and services in the Premises;
- (10) **"Tenancy"** means the tenancy between the Lessor and the Tenant created by this Agreement;
- (11) **"Tenant's Employees"** means each of the Tenant's employees, contractors, agents, customers, subtenants, licensees or others (with or without invitation) who may be on the Premises, the Building or the Land;
- (12) **"Tenant's Property"** includes all fixtures and other articles in the Premises which are not the Lessor's; and
- (13) **"Term"** means either a periodic monthly tenancy or the period of months or years described in Item 4 of the Reference Schedule, as applicable, commencing on the date in Item 4 in the Reference Schedule.

1.3 Interpretation

- (1) Reference to:
 - (a) one gender includes each other gender;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns; and
 - (e) a statute, regulation or provision of a statute or regulation (**"Statutory Provision"**) includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision.

- (2) All monetary amounts are in Australian dollars, unless otherwise stated.
- (3) If a party consists of more than one person, this Agreement binds them jointly and each of them severally.
- (4) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) A party which is a trustee is bound both personally and in its capacity as a trustee.
- (6) "Including" and similar expressions are not words of limitation.
- (7) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (8) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.
- (9) Where this Tenancy permits or requires the Lessor to do something, it may be done by a person authorised by the Lessor.
- (10) Sections 105 and 107 of the **Property Law Act 1974 (Qld)** do not apply to this Tenancy.

2. TERM AND HOLDING OVER

2.1 Term

The Lessor lets the Premises to the Tenant for the Term.

2.2 Monthly Tenancy

If the Tenant continues to occupy the Premises after the Term with the Lessor's consent then:

- (1) the Tenant does so as a monthly Tenant on the same basis as at the last day of the Term; and
- (2) either party may terminate the monthly tenancy by giving to the other one (1) month's notice expiring on any day.

3. RENT AND RENT REVIEWS

3.1 Rent

The Tenant must:

- (1) pay the Rent by equal monthly instalments in advance on the first day of each month;
- (2) pay the first instalment on the signing of this Agreement;
- (3) if necessary, pay the first and last instalments apportioned on a daily basis; and
- (4) pay all instalments as the Lessor directs.

3.2 Definitions

In Clause 3.3:

- (1) **"Index Number"** means the Consumer Price Index (All Groups) for Brisbane published by the Australian Bureau of Statistics. If that index no longer exists, "Index Number" means an index that the Chief Executive Officer of the REIQ decides best reflects changes in the cost of living in Brisbane; and
- (2) **"Review Date"** means a date stated in the Reference Schedule on which the rent is to be reviewed.

3.3 Rent Review

(1) Application

This Clause 3.3 applies if Review Dates are inserted in Item 7 of the Reference Schedule.

(2) Review

The Rent must be reviewed on each Review Date to an amount represented by A where:

$$A = \frac{B}{C} \times D$$

Where B = the Index Number for the quarter ending immediately before the relevant Review Date.

Where C = the Index Number for the quarter one (1) year before the quarter in B; and

Where D = the Rent payable immediately before the Review Date.

4. OUTGOINGS

4.1 Tenant to Pay Outgoings

- (1) The Tenant must pay the Lessor the whole, or where a percentage is stated in Item 9 of the Reference Schedule that percentage of the Outgoings for the Premises, or the property of which the Premises is part as applicable.
- (2) Outgoings are payable to the Lessor within fourteen (14) days of production to the Tenant of a copy of the Lessor's assessment notice or account.

4.2 Outgoings

For the purposes of this Clause Outgoings means the following charges levied or expenses payable in respect of the Premises or property of which the Premises is part:

- (1) rates and other charges levied pursuant to a law;
- (2) insurance premiums payable by the Lessor;
- (3) Body Corporate fees and levies (including but not limited to administrative fund levies and sinking fund levies);
- (4) the cost of cleaning any areas adjacent to the Premises that are used by the Tenant; and
- (5) maintaining any gardens on the Land.

5. USE OF THE PREMISES

5.1 Permitted Use

The Tenant must only use the Premises for the Permitted Use.

5.2 Restrictions on Use

The Tenant must not:

- (1) disturb the occupants of adjacent premises;
- (2) display any signs without the Lessor's consent which must not be unreasonably withheld;
- (3) overload any Services;
- (4) damage the Lessor's Property;
- (5) alter the Premises, install any partitions or equipment or do any building work without the Lessor's prior consent;
- (6) do anything that may invalidate the Lessor's insurance or increase the Lessor's premiums; or
- (7) do anything illegal on the Premises.

6. MAINTENANCE AND REPAIR

6.1 Repair

The Tenant must:

- (1) keep the Premises in good repair and condition except for fair wear and tear, inevitable accident and inherent structural defects; and
- (2) fix any damage caused by the Tenant or the Tenant's Employees.

6.2 Cleaning and Maintenance

The Tenant must:

- (1) keep the Premises clean and tidy; and
- (2) keep the Tenant's Property clean and maintained in good order and condition.

6.3 Lessor's Right to Inspect and Repair

- (1) The Lessor may enter the Premises for inspection or to carry out maintenance, repairs or building work at any reasonable time after giving notice to the Tenant. In an emergency, the Lessor may enter at any time without giving the Tenant notice.
- (2) The Lessor may carry out any of the Tenant's obligations on the Tenant's behalf if the Tenant does not carry them out on time. If the Lessor does so, the Tenant must promptly pay the Lessor's costs.

7. ASSIGNMENT AND SUBLETTING

7.1 The Tenant must obtain the Lessor's consent before the Tenant assigns, sublets or deals with its interest in the Premises.

7.2 The Lessor must give its consent if:

- (1) the Tenant satisfies the Lessor that the new tenant is financially secure and has the ability to carry out the Tenant's obligations under this Tenancy;
- (2) the new tenant signs any agreement and gives any security which the Lessor reasonably requires;
- (3) the Tenant complies with any other reasonable requirements of the Lessor;
- (4) the Tenant is not in breach of the Tenancy; and
- (5) the Tenant pays the Lessor's reasonable costs of giving its consent.

8. TENANT'S RELEASE AND INDEMNITY

8.1 The Tenant occupies and uses the Premises at its own risk. The Tenant also carries out building work in the Premises at its risk.

8.2 The Tenant releases the Lessor from and indemnifies it against all Claims for damages, loss, injury or death:

- (1) if it:
 - (a) occurs in the Premises;
 - (b) arises from the use of the Services in the Premises; or
 - (c) arises from the overflow or leakage of water from the Premises;

except to the extent that it is caused by the Lessor's deliberate act or negligence; and

- (2) if it arises from the negligence or default of the Tenant or the Tenant's employees, except to the extent that it is caused by the Lessor's deliberate act or negligence.

8.3 The Lessor must do everything reasonable to ensure the Services operate efficiently during normal working hours but the Lessor is not liable if they do not.

8.4 The Tenant releases the Lessor from and indemnifies the Lessor against any Claim or costs arising from anything the Lessor is permitted to do under this Tenancy.

9. DEFAULT AND TERMINATION

9.1 Default

The Tenant defaults under this Tenancy if:

- (1) the Rent or any money payable by the Tenant is unpaid for fourteen (14) days;
- (2) the Tenant breaches any other term of this Tenancy;
- (3) the Tenant assigns its property for the benefit of creditors; or
- (4) the Tenant becomes an externally-administered body corporate within the meaning of the *Corporations Act 2001* (Cth).

9.2 Forfeiture of Tenancy

If the Tenant defaults and does not remedy the default when the Lessor requires it to do so, the Lessor may do any one or more of the following:

- (1) re-enter and take possession of the Premises;
- (2) by notice to the Tenant, terminate this Tenancy;
- (3) by notice to the Tenant, convert the unexpired portion of the Term into a tenancy from month to month;
- (4) exercise any of its other legal rights;
- (5) recover from the Tenant any loss suffered by the Lessor due to the Tenant's default.

10. TERMINATION OF TERM

10.1 Tenant's Obligations

At the end of the Term the Tenant must:

- (1) vacate the Premises and give them back to the Lessor in good repair and condition;
- (2) remove all the Tenant's Property from the Premises;
- (3) repair any damage caused by removal of the Tenant's Property and leave the Premises clean; and
- (4) return all keys, security passes and cards held by it or the Tenant's Employees.

10.2 Failure to Remove Tenant's Property

If the Tenant does not remove the Tenant's Property at the end of the Term, the Lessor may:

- (1) remove and store the Tenant's Property at the Tenant's risk and expense; or
- (2) treat the Tenant's Property as abandoned, in which case title in the Tenant's Property passes to the Lessor who may deal with it as it thinks fit without being liable to account to the Tenant.

11. DAMAGE AND DESTRUCTION

11.1 Rent Reduction

If the Premises are damaged or destroyed and as a result the Tenant cannot use or gain access to the Premises then from the date that the Tenant notifies the Lessor of the damage or destruction the Lessor:

- (1) must reduce the Rent and any other money owing to the Lessor by a reasonable amount depending on the type and extent of damage or destruction; and
- (2) cannot enforce Clause 6.1 against the Tenant; until the Premises are fit for use or accessible.

11.2 Tenant May Terminate

The Tenant may terminate this Lease by notice to the Lessor unless the Lessor:

- (1) within three (3) months of receiving the Tenant's notice of termination, notifies the Tenant that the Lessor will reinstate the Premises; and
- (2) carries out the reinstatement works within a reasonable time.

11.3 Exceptions

Clauses 11.1 and 11.2 do not apply where:

- (1) the damage or destruction was caused by or contributed to, or arises from any wilful act of the Tenant or the Tenant's Employees; or
- (2) an insurer under any policy effected by the Lessor refuses indemnity or reduces the sum payable under the policy because of any act or default of the Tenant or the Tenant's Employees.

11.4 Lessor May Terminate

If the Lessor considers the damage to the Premises renders it impractical or undesirable to reinstate the Premises or the Building, it may terminate this Lease by giving the Tenant at least one (1) month's notice ending on any day of the month. At the end of that month's notice, this Lease ends.

11.5 Dispute Resolution

- (1) Any dispute under this Clause 11 must be determined by an independent qualified Valuer appointed by the Chief Executive Officer of the REIQ at the request of either party.
- (2) In making the determination, the Valuer acts as an expert and the determination is final and binding on both parties.
- (3) The cost of the determination must be paid by the parties equally unless otherwise decided by the Valuer.

11.6 Lessor Not Obligated to Reinstate

- (1) Nothing in this Lease obliges the Lessor to reinstate the Building or the Premises or the means of access to them.
- (2) When reinstating the Building or the Premises, the Lessor is entitled to change their design, fabric, character or dimensions to comply with any law or lawful requirement.

11.7 Antecedent Rights

Termination under this Clause 11 does not effect either parties' accrued rights before termination.

12. DUTY

- 12.1 The Tenant must pay stamp duty on this Lease, if applicable, and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Lessor.

13. GOODS AND SERVICES TAX

- 13.1 If a GST is imposed on any supply made to the Tenant under or in accordance with this Tenancy, the amount the Tenant must pay for that supply is increased by the amount of that GST.

14. OPTION FOR FURTHER TENANCY

- 14.1 If a further Term has been inserted in Item 5 of the Reference Schedule and the Tenant:

- (1) wishes to lease the Premises for the further term;
 - (2) gives notice to that effect to the Lessor not less than three (3) months before and not more than six (6) months before the Term expires; and
 - (3) has not breached this Tenancy;
- the Lessor must grant a Further Tenancy ("Further Tenancy") to the Tenant on the same terms as this Tenancy except for the Rent.

- 14.2** (1) The Rent for the Further Tenancy will be an amount to be agreed between the Lessor and Tenant and failing agreement three (3) months before the Term expires the market rent for the Premises determined by an independent qualified Valuer (acting as an expert) nominated by the Chief Executive Officer of the REIQ at the request of either party.
- (2) The Valuer's determination is final and binding on the parties.
- (3) The Valuer's costs must be paid by the Lessor and Tenant equally. Either party may pay the Valuer's cost and recover one-half of the amount paid from the other party.
- 14.3** Before transferring any interest in the Land, the Lessor must obtain a signed deed from the transferee containing covenants in favour of the Tenant that the transferee will be bound by the Terms of this Lease and will not transfer its interest in the Land unless it obtains a similar deed from its transferee.
- 14.4** This Clause 14 will be omitted from the Further Tenancy.

15. DEPOSIT AND COMMISSION

- 15.1** The Tenant must pay the Deposit to the Lessor's Agent on signing this Agreement.
- 15.2** The Deposit must be applied against the Rent payable by the Tenant on the commencement of the Term.
- 15.3** The Lessor agrees to pay the Agent's commission to the Lessor's Agent and authorises the Agent to draw the commission on the commencement of the Term from money received from the Tenant in payment of Rent.

16. NOTICES

- 16.1** Any notice required to be given to any person under this Agreement must be:
- (1) in writing; and
- (2) given in accordance with Section 347 of the *Property Law Act 1974* (Qld).