

UK / USA Differences in Office Leasing Practice in  
London and New York  
January 2018

	UK	Item	USA
	<b>A. Leases – General</b>		
A1	The UK market has many layers of ownerships often based on old “Landed” Estate ownerships (e.g. Crown Estate ,Grosvenor Estate or The Corporation of London).Within one transaction there can be a number of superior parties to approve a transaction .	Hierarchy of interest/Ownership	The landlord is usually the owner of the land and building but there are exceptions and there may be a fee owner who has leased the land to the building developer/owner. In such a case, landlord is generally free to enter into arrangements without consent of ground lessor. A Subordination and Non-Disturbance Agreement (SNDA) should be sought from all current and future ground-lessees and mortgagees. Also, important to know if ground lease is nearing its end
A2	On larger units (10,000 sf plus) and on higher quality units landlords generally aim for lease terms of 10 years or up to 15 years sometimes with 5 year tenant only break options Tenant release and /or pre-fitted out space is often available on shorter leases or with break options.	Length of lease commitments	If existing installation is salvageable or the space is “pre-built” by landlord, a 3-5 year term is feasible. Otherwise, 10 years is more likely.
A3	Options to extend do exist and save Stamp Duty Land Tax relative to a longer lease. Breaks are subject to negotiation and market conditions  Some leases (usually longer-term leases) have legal rights to renew and/or compensation in the event of non – renewal.	Options to extend or break clauses	Options to extend are negotiable as are early terminations - breaks. Penalty will be payable for break normally being unamortized landlord costs of TI, free rent and commissions of landlord and tenant brokers, with interest element. May be a few month’s rent also.

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A4	Offices are based on “net” areas, which in simple terms is the carpeted floor space. It excludes such areas as common parts, WC accommodation etc. There are RICS guidelines, which are almost universally adopted.	Basis of Measurement	Offices areas are quoted in “rentable” square feet. There are no clear guidelines for this and the Tenant should both enquire as to the “loss factor” and self-measure the space. Loss Factor is usually 27% on full floor. There is a method for measuring Usable Square Feet – of the Real Estate Board on New York (REBNY) in New York - which includes all vertical penetrations such as columns and lifts. In New York it extremely difficult, virtually impossible, to negotiate the rentable square feet. Outside of New York, the NJ Waterfront and certain parts of Connecticut, the BOMA (Building Owners and Management) rules measurement standards
A5	Landlords usually in Category A condition (completed common parts, plus offices with air conditioning, raised floors and suspended ceilings plus contributions for carpets and floor boxes	Building specification	Varies. Can be the same as UK but Tenants usually specify different arrangements. This allows tenants to build their space as they see fit.
<b>B. Leases Specifics</b>			
B1	The tenant is responsible for a proportion of the cost of the maintenance of both the office and the building usually via a service charge and relative to the extent of their occupation. Tenant will repair items within its space.	Repairing Obligations	The landlord is generally responsible for the cost of the maintenance of the building. Tenant will normally repair items in its space that LL is not specifically liable for such as building systems.

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B2	<p>Tenant usually allowed to make minor alterations without landlord's approval and other non-structural alterations and initial fit-outs with landlord's approval. Structural alterations are not usually permitted.</p> <p>Formal licences approving alterations are annexed to leases</p>	Alterations	<p>Alterations provision is very important. Landlord's permission will be required for all alterations and it is best to append a basic plan to the agreement which should have a detailed "work letter agreement" appended describing initial fit out. Subsequent alterations affecting the structure will require approval but Tenant usually allowed to make minor alterations without landlord's approval and other non-structural alterations – normally a figure will be attached to that</p>
B3	<p>The tenant usually has rights to assign the entire lease (subject to Authorized Guarantee Agreements limiting the landlord's exposure on a first assignment) or to sub-let the entire or part at the open market rent. Sharing with Group companies is generally permitted.</p> <p>Tenant will keep 100% of any profit rent generated.</p>	Disposal of leases	<p>The tenant usually has rights to assign the entire lease or to sub-let the entire or part. Sharing with Group companies is generally permitted. Landlord will normally seek 50% of profits, if any.</p>
B4	<p>The tenant can be responsible for the rebuilding costs of the property if insurance does not cover the damage.</p>	Insurance Liability	<p>It is usually the Landlord's responsibility to insure the property. The tenant would probably only be liable in a case of its own negligence and will be obligated to have an umbrella (third party liability) policy of about \$5m global liability</p>

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B5	At the end of the lease (or break if earlier) the tenant is responsible for removing partitions and other fittings and re-carpeting and re-decorating and for returning the space in repair	Dilapidations / Reinstatement	Most leases will have a restoration provision for special alterations only such as IT rooms, kitchens, staircases etc. Otherwise, there is normally no restoration clause except that all personal property (such as desks) should be removed Important to know up front what is restorable and what is not: no re-carpeting and redecorating.
B6	Planning law prescribes Use Classes. Most UK offices are B1 though D1 and D2 users occupy similar buildings  Leases usually prescribe acceptable uses and occupier types	User	Leases usually prescribe acceptable uses and occupier types. The categories differ somewhat from London and most office buildings are in a C5 zoning area Some leases will provide that the tenant cannot take possession until a TCO (Temporary Certificate of Occupancy) is issued if the use contradicts the existing CO because the use is, for example, not pure office, or greater floor loads are required. SAMPLE CO ATTACHED
<b>C. Costs</b>			
C1	Rents quoted do not include: 1. VAT (at 20%, tax which may be refundable) 2. Rates (a local property tax) 3. Service Charges (maintenance of building by landlord) 4. Tenant usually pays costs of electricity and other utilities consumed within demise 5. Rents are payable quarterly	Rent & other costs What is included / excluded	Rents quoted (modified gross) normally include: 1. Local Real Estate taxes (similar to Rates) 2. Building Operating Expenses does not include electricity and there is no vat Over the <b>base year</b> of the lease, tenants will pay a proportionate increase in Operating Expenses and Taxes. So e.g. if in 2 <sup>nd</sup> year OpEx and Taxes increase by \$2.00 per sq. ft so will occupancy costs.

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C2	The lease usually allows for rent increase every 5 years and almost always on an upwards only basis.	Rent Increases	Rent will be fixed in advance. Normally in 10 year leases there will be one “step-up” of an amount (normally about \$5) half way through
C3	The tenant pays the full cost of this but is very likely to receive a rent free period or other inducement to assist with the costs. Subject to negotiation and market conditions  A 10 year lease may secure up to a 24 month inducement	Fit out / build out/and inducements	Landlord will typically contribute about \$70 psf (maybe more) towards fit-out and there will be a free rent period dependent on term of lease. 10 year lease may have as much as 12 months free which will be added to term  A 10 year lease may secure up to a 12 month’s rent free period
C4	Defined financial metrics are usually applied to establish if a surety to lease is required. In smaller lettings to less financially robust companies rent deposits, parent company guarantees or bank guarantees are sought by Landlords or less generous inducements may be offered	Surety	Defined financial metrics are usually applied to establish if a surety (called “security” in the US) to lease is required. In smaller lettings to less financially robust companies rent deposits, parent company guarantees or bank guarantees (“Stand-By Letters of Credit” in US) are sought by Landlords or less generous inducements may be offered
C5	The tenant pays a fee by negotiation. Usually based on a % percentage of annual rent or amount per sq.ft plus a % of the amount of saving negotiated off the landlords quoting terms as a “one off” fee. Tenant pays fee/commission to Agent.	Agent Broker fees / Commission	Landlord usually pays all commissions. Only time tenant pays is when subleasing space to third party

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C6	Each party usually pay their own costs together with approval costs for licences.	Lawyer's Fees / Approval costs	Each party pay their own costs together with approval costs for licenses.