

General guidelines for renting offices and premises

BUSINESS LANDING SERVICE



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INTRODUCTION

The Business Landing Service of the Barcelona Business Support Office barcelona.cat/businesslanding aims to accompany Barcelona-based investment projects.

The portfolio of services offered to foreign companies that want to set up in Barcelona includes the search for suitable business locations, including **office buildings, warehouses or land.**

The purpose of this document is to provide general indications for renting offices and business premises in the city of Barcelona.

The document introduces main concepts associated to the **rental contract**, such as: duration of the contract, rent, grace periods and discounts, tenancy deposit, assignment and subleasing, works and repairs, or termination of the contract, amongst others.

It is important to bear in mind that, given the fact that a lease for real estate for non-residential use (offices/business premises) is a contract whose clauses are freely agreed between the parties, this document is merely indicative. Final conditions agreed by the landlord and the tenant will result from negotiation between the parties and from the situation of the market of commercial real estate at any given moment.



Lease for offices and real state

A lease for real estate for non-residential use (offices/ business premises) is a contract whose clauses are freely agreed between the parties or, failing that, is governed by the provisions of Title III of the Urban Leases Act 29/1994, of 24 November, and additionally by the provisions of the Civil Code. Therefore, any agreements between the parties (landlord and tenant) prevail over the law.

The body of a lease for non-residential use normally consists of the following points:

Parties

This section sets out the details of the signatories to the lease.

Leased property

It specifies the location of the property to be leased and the property tax reference number must be stated to identify it.

The business activity

The landlord may ask to see a business licence before signing the contract. So first of all you will need to check in the relevant government agencies that your business activity can be conducted in the property.

Once this check has been made, the business activity to be conducted in the property should be stated in the contract, since if it is not an authorised activity the contract may be terminated. We recommend defining your business activity as broadly as possible to avoid future problems. However, this point can be amended in an annex after signing the contract.

Agreements

They may be freely made so any agreement the parties come to can be included.



Reservation

Before signing the contract, the company interested in renting the office or business premises can reserve the property by paying a holding deposit. This means the property cannot be marketed and prevents other people from making an offer for it. This holding deposit is usually equivalent to one month's rent. The reservation document must contain at least the following items:

- The parties and their identification
- Location of the property and property tax reference number
- Business activity to be conducted in the property, as well as a clause suspending the contract if the business licence is not awarded
- Contract length (mandatory period for the landlord)
- Mandatory period for the tenant
- Notice period for terminating the lease
- Duration of the reservation
- Grace period and discounts
- Rent and additional charges
- % VAT and % Personal Income Tax (some activities are exempt)
- Rent review (state date)
- Agency fees (if there is a letting agency involved)

It is a good idea to get a draft copy of the lease to check what you are agreeing to before paying the holding deposit to reserve the property. However, in many cases this will not be possible as some landlords want the property to be reserved before drawing up a draft contract.



What's in the contract

Below are described main elements of the lease contract, as well as some guidelines that will help you when negotiating the agreement.

▷ TERM

The term of the contract is usually from 5 to 10 years. If the tenant company has to carry out very high initial investment it is usually possible to negotiate a longer period, which may even be as long as 25 years; e.g. premises which require major building work to adapt them to the activity, or businesses in which the customer base is closely linked to the location.

The term of the contract is mandatory for the landlord. In some cases, the landlord will also specify a mandatory period of 12 months for the tenant; in other words, if the tenant wants to terminate the contract before the end of the specified period, they will be penalised by having to pay all the rent for the time remaining to the end of the mandatory period. This penalty is not provided for by law but rather is a clause that is freely agreed between the parties.

▷ RENT

Rent for the property is determined by its location, floor area, features and the business activities that can be carried out in it.

- **Offices:** rents tend to be more uniform in terms of price per square foot, but be aware that buildings exclusively for office use have higher additional service charges than mixed-use buildings.
- **Commercial premises:** there are more factors involved in setting the rent, including location, frontage, ceiling height, floor area, layout and features.

Before making a formal offer, you can ask a real estate consultant to give you a valuation to find out whether your offer is within market parameters. The consultant will carry out a comparative study of the availability and prices of similar properties in the area and analyse real estate indicators.

The rent in a lease for non-residential use is always subject to Value Added Tax (VAT), which means that the landlord will add VAT to each monthly bill. Both amounts (rent and VAT) must be stated on the receipt, which will also be the invoice. The receipt has to state the following: full name or company name of the parties, their addresses, their tax code (CIF) or tax ID number (NIF/NIE), what it is for, the address of the leased property, invoice number and series, tax base and rate.



The tenant can deduct the VAT in their VAT return filed with the Tax Agency.

Furthermore, under Royal Decree 20/2011 tenants that are corporations or civil-code partnerships, individual entrepreneurs or professionals have to withhold 20% of the rent and other associated charges (except VAT) and pay the amount of this withholding to the Tax Agency:

- When the landlord is an individual, the withholding should be paid under Personal Income Tax (IPRF).
- When the landlord is a legal entity (company), the withholding should be paid under Corporate Income Tax (IS).

In addition, every year the tenant has to give the landlord a certificate stating the amounts paid as withholdings before the start of the voluntary period for filing income tax or corporate tax returns.

Example:

Rent Breakdown

Rent	1,000 €
Service charges	25 €
Property tax	5 €
Total	1,030 €
VAT (+21%)	216.30 €
Tax withholding (-20%)	-206 €
TOTAL BILL	1,040.30 €



RENT REVIEWS

Every calendar year there will be a rent review, which consists of increasing the rent by the same percentage as the rise in the CPI (Consumer Price Index).

In the case of contracts for more than 5 years the landlord can stipulate additional reviews. There are two types:

- **Review at market prices.** This is an open review in which the price is determined by the market rate. This price may be the one suggested by the Chamber of Urban Property or the one agreed by the parties using the criteria they have freely chosen.
- **Review with an additional percentage.** To avoid the uncertainty of market reviews, often a fixed percentage increase is set. This option is usually the most recommended.

GRACE PERIODS AND DISCOUNTS

Grace periods

When the tenant has to carry out major building works to adapt the property before they can start their business activity, it is customary to ask the landlord for a grace period, i.e. a time during which no rent is paid so as to carry out the works and offset their cost.

Discounts

Another way of offsetting the cost of adapting the property is to take a percentage off the rent during the first few months, which need not necessarily coincide with the duration of the works. This reduction is known as a rent discount and is often based on a rent escalation.

▶ TENANCY DEPOSIT

The legal tenancy deposit for non-residential real estate leases is two monthly rent payments. The landlord has to give this tenancy deposit to INCASÒL (Catalan Land Institute) and give the tenant a copy of the lease with the tenancy deposit registration number printed on it within at most one month.

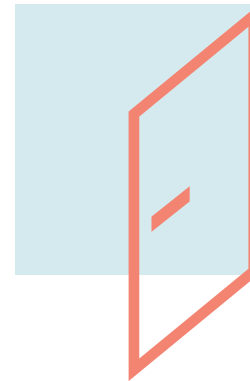
The tenancy deposit will be returned to the tenant at the end of the lease provided that there are no outstanding monthly rent payments, utilities are current in payment and the condition of the property is as agreed by the parties when they signed the contract.

▶ ADDITIONAL GUARANTEE

In some cases the landlord may require an additional guarantee. This can be a financial guarantee or a bank guarantee. However, maintenance of the guarantee will mean a monthly financial cost for the tenant, and this should be taken into account when negotiating the contract.

This guarantee is intended to cover possible contractual default by the tenant, particularly in the event of non-payment of rent and associated charges.

In leases with newly created companies it is advisable to have another group company as guarantor so it can make any payments that the tenant cannot meet.



▶ ASSIGNMENT (OR TRANSFER) AND SUBLEASING

Generally the landlord will exclude assigning and subleasing the property in the contract.

Subleasing

On some occasions it will be possible to agree on domiciling other group companies, or other companies that perform the same business activity, in the leased property.

In this case, and although this is not specified by law, the landlord may ask for an increase in the monthly rent before they will accept the sublease of part of the property which was excluded in the contract.

Assignment or transfer

Contract negotiations for prime locations or business activities for which it is difficult to get a licence (such as nightclubs, bars, restaurants, hostels, etc.) may include the option for the tenant to assign the contract or transfer the business. In this case the landlord usually sets some conditions such as:

- A percentage increase in the rent (estimated at between 5% and 20%) or updating the rent according to market rates.

and/or

- A percentage of the value of the transfer (at present it is usually about 10%).



▶ OTHER CHARGES ASSOCIATED WITH THE MONTHLY RENT

Service charges (caretaker, cleaning, etc.)

These charges are usually passed on in the rent, especially in the case of offices, as the tenant benefits from the services and/or condition of the building. In the case of premises which do not have access to the staircase used by the residents of the building, it may be possible to agree not to pass on the service charge, but this will have to be negotiated by the tenant and the landlord.

IBI (Property Tax)

This is a tax on the ownership of the property and not on its use. In general whether or not IBI is passed on in the rent depends on the negotiations between the parties.

▶ WORKS AND REPAIRS

Works

a) Adaptation of premises so the tenant can start their business activity

Commercial premises or units will often require adaptation so that the tenant can carry out their business activity or to upgrade facilities and systems to comply with business licence regulations. Offices are normally fitted out and ready for immediate start-up of the business activity, although given that they will form part of an owners' association (*comunidad de vecinos*) it is advisable to find out first whether the association's bylaws allow the business activity to be carried out on the property.

It is a good idea to list the works to carry out in the contract, since this is something to bear in mind with respect to grace periods and discounts (see point "Grace periods and discounts"). Moreover, at the end of the contract any improvements/adaptation will be left behind for the landlord unless otherwise agreed.

Another important issue to check before renting premises is where your sign will go. You will need to check both the urban lease regulations and the bylaws of the owners' association to make sure your corporate image can be put on the front of the premises.

b) Maintenance, extension or remodelling works undertaken by the tenant

The contract must specify how the tenant has to tell the landlord about any future maintenance, extension or remodelling works they want to do so the landlord can give their approval.

c) Works undertaken by the landlord

The Urban Leases Act states that work on the building can be passed on in the rent, so before renting an office or premises it is advisable to check with the landlord whether works are planned for the building where the property is located.

Repairs

As a general rule, and as long as it has not been otherwise agreed in the contract, repairs due to the daily use of the property are paid for by the tenant and structural repairs by the landlord; the latter are regulated by the Urban Leases Act.

▶ UTILITIES AND SYSTEMS

It is very important to check that all systems are working properly and that utilities are connected and functioning, since once the contract has been signed the tenant will have to meet the cost of purchase, upkeep, repair and replacement of meters and also pay utility bills. If the property does not have connected and functioning utilities and appropriate installations, you will need to have an electrical system design (*proyecto eléctrico*) done, upgrade the entire system to comply with current regulations and get an inspection certificate (*boletín de instalaciones*). In many cases these will be a significant additional cost. If you notice any such problems before signing the contract, you can negotiate with the landlord so they get utilities connected and upgraded or alternatively have the cost taken off the rent in a grace period.

▶ TERMINATION OF THE CONTRACT

If the tenant wants to terminate the lease before the expiry date, they must give the landlord notice by registered post, although proof of sending and reception can be made in writing (email).

The notice period is not stipulated by law so it can be freely agreed between the parties and usually varies between 2 and 4 months.

▶ CEE (ENERGY PERFORMANCE CERTIFICATE)

The landlord is required by law get a CEE and has to give the tenant a copy of it or proof that it has been applied for when the contract is signed.

The energy performance certificate certifies the energy efficiency of the property, although the award of a business licence is never contingent on this efficiency.

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