OTTO KRAUSE INCORPORATED

LEASE AGREEMENTS: CLIENT INFORMATION QUESTIONNAIRE

Information required for the drafting of a lease of residential or commercial premises, and for advice upon an existing lease — whether you are the landlord or the tenant

Client name	
File / matter reference	
Attorney dealing	
Date completed and returned	

HOW TO COMPLETE THIS QUESTIONNAIRE

This questionnaire may be completed on your computer. Click into any shaded block and type your answer. The block will expand as you type. It is not necessary to print the document or to complete it by hand. When you have finished, save the document and e-mail it back to this office.

Where you are unsure of an answer, simply leave the block blank. Many of these questions concern matters you may not yet have discussed with the other party, and that is perfectly normal. We shall go through the questionnaire once we receive it and contact you about anything which still needs to be resolved.

You are welcome to contact our offices directly at any stage should you experience any difficulty with any of the questions.

It is not necessary to attach any supporting documentation at this stage. A list of the documents we shall eventually require appears at the end of this questionnaire.

Everything you disclose in this questionnaire is protected by legal professional privilege and will be treated in strict confidence.

BEFORE YOU BEGIN

A lease is one of the most common agreements in commercial life and one of the most frequently signed without proper thought. It is also one of the few agreements in which the parties remain bound to one another, in close proximity, for years at a time. That is why it repays being drawn properly at the outset.

This firm acts for landlords and for tenants alike. We draw leases, we negotiate them, and we act in the disputes which arise out of them. What we cannot do is act for both parties to the same lease. If we already act for the other side, we shall tell you so at once.

The most useful thing you can do is to record everything which has been agreed, including the matters which seem obvious. Most lease disputes are not about the rental. They are about who was to repair the geyser, whether the deposit covered the damage to the carpets, whether the tenant was entitled to sublet, what was to happen when the tenant stopped paying, and whether the premises were in that condition when the tenant moved in. An agreement which is silent on those points leaves the answer to be argued about later.

Please do not sign anything, and do not allow occupation to be given or taken, until the lease has been signed. A tenant who is in occupation is very much harder to remove than one who has not yet moved in, and a landlord who has accepted rental has usually accepted a lease along with it, whatever the written document may say.

RESIDENTIAL OR COMMERCIAL: WHY IT MATTERS

The first question we shall ask is what sort of premises are being let, because the law which applies differs considerably.

A lease of a dwelling is governed by the Rental Housing Act, which requires the lease to be in writing if the tenant asks for it, regulates the deposit and the interest which must be paid on it, requires joint incoming and outgoing inspections, and establishes a Rental Housing Tribunal to which either party may complain at no cost. A residential lease will also usually be subject to the Consumer Protection Act, which limits the fixed term, gives the tenant a right to cancel on twenty business days' notice, and restricts what a landlord may recover on early cancellation. These are protections which cannot be contracted out of.

A commercial lease is, by contrast, largely a matter of what the parties agree. The Consumer Protection Act applies to a lease with a juristic tenant only where that tenant falls below the prescribed asset value or annual turnover threshold. In commercial leases the negotiation therefore matters a great deal more, and the tenant should not assume that the landlord's standard document is balanced.

Whichever kind of lease is involved, no tenant may be evicted except by order of court. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act applies to residential occupiers and requires a court to consider what is just and equitable, including the personal circumstances of the occupiers. Locking a tenant out, cutting off the water or electricity, or removing the doors is unlawful, however far the tenant may be in arrears, and it exposes the landlord to an urgent application and a costs order.

THE PRINCIPAL STEPS IN A LEASE

Not every matter passes through all of these stages. Most leases run their course without the last three ever becoming necessary.

Consultation and instructions. We take your instructions, establish whether the lease is residential or commercial and advise you on the legislation which will govern it and on the terms which are and are not negotiable.

The premises and the parties. We confirm who owns the property, who is to be the tenant, and whether any consent is required — from a bondholder, a body corporate, a home owners' association or, in the case of a sublease, the head landlord.

Agreeing the commercial terms. Rental, escalation, the term, the deposit, who pays for what and what the tenant may do with the premises are settled between the parties. We advise you on what is usual and on where the risk lies.

Drafting the lease. We prepare the lease, together with any annexures — a schedule of fixtures, house rules, a plan of the premises and, where required, a deed of suretyship.

Signature. The lease is signed by both parties and by any surety. Where the tenant is a company, close corporation or trust, we confirm that the person signing is authorised to do so.

The deposit and the incoming inspection. The deposit is paid and, in a residential lease, invested in an interest-bearing account. The parties jointly inspect the premises and record their condition in writing before the tenant takes occupation. This document settles most deposit disputes before they arise.

During the term. Rental is paid, escalations are applied, maintenance is attended to and any renewal option is exercised in the manner and within the period the lease requires.

Breach and letter of demand. Where a party is in breach, written notice is given calling upon that party to remedy the breach within the period the lease allows. This step cannot be skipped, and a defective notice will usually defeat the cancellation which follows it.

Cancellation and eviction. If the breach is not remedied, the lease may be cancelled. Where the tenant does not vacate, an eviction application is brought. No tenant may lawfully be removed except upon order of court.

Outgoing inspection and the deposit. The premises are jointly inspected on vacation, the cost of any damage beyond fair wear and tear is deducted and the balance of the deposit, with interest, is refunded within the period prescribed.

PART A: YOUR PARTICULARS AND YOUR CAPACITY

In what capacity do you consult us? Mark the applicable block:

Capacity	Mark with an X
I am the landlord or the owner of the property	
I am the tenant	
I am a managing agent acting for the owner	
I am a proposed subtenant or the head landlord	
Other (please describe below)	

Full names and surname	
Identity number (or passport number and nationality)	
Physical address	
Cellphone number	
E-mail address	
If you act for an entity, give its full name and registration number	
Preferred language (English / Afrikaans / other)	
Is there an existing lease in place, or is this a new letting?	

PART B: THE PARTIES

The landlord

Full name of the landlord (as it appears on the title deed)	
Identity or registration number	
Physical and postal address for notices	
Contact number and e-mail address	

If the landlord is a company, close corporation or trust, who is authorised to sign?	
Is the landlord registered for value-added tax?	
Is a managing agent involved? Give the name, contact details and the extent of the agent's mandate	

The tenant

Full name of the tenant	
Identity or registration number	
Physical and postal address for notices	
Contact number and e-mail address	
If the tenant is an entity, who is authorised to sign, and is a suretyship required from the directors, members or trustees?	
Is the tenant registered for value-added tax?	
Have references, payslips, bank statements or a credit check been obtained in respect of the tenant?	
Will more than one tenant sign, and are they to be jointly and severally liable?	
Who else will occupy the premises?	

PART C: THE PREMISES

Physical address of the premises	
Full property description (erf or portion number, township, sectional scheme name and unit number)	
Is the property residential, commercial, industrial, retail, agricultural or mixed use?	
Is the whole of the property let, or only a portion? If a portion, describe it and state whether a plan is available	
Extent of the premises in square metres	
Is there a bond registered over the property? If so, with which bank, and has the bondholder's consent to the letting been obtained?	
Is the property in a sectional title scheme, a home owners' association or	

an estate? Are the conduct rules to be annexed to the lease?	
Which parking bays, storerooms, gardens or other areas are included?	
What fixtures, fittings, appliances or furniture are included? (A schedule should be annexed)	
Is the property let furnished or unfurnished?	
What is the present condition of the premises, and is any work to be done before occupation? By whom and by when?	
Is there an existing occupier who must vacate first?	

PART D: THE TERM

Commencement date of the lease	
Date of occupation, if different	
Duration of the lease (months or years)	
Termination date	
Is the lease to continue on a month-to-month basis after expiry, or to terminate absolutely?	
Is the tenant to have an option to renew? For what period, on what notice and on what terms as to rental?	
Is either party to have a right to cancel early? On what notice and subject to what penalty?	
What notice period is required to terminate a month-to-month lease?	
Is the tenant to have a right of first refusal to purchase the property, or an option to purchase?	

PART E: RENTAL, ESCALATION AND DEPOSIT

Monthly rental (state whether value-added tax is included or excluded)	
On what day of the month is the rental payable?	
Into which account is the rental to be paid?	
Is any rent-free period or reduced rental to apply at the beginning of the term? Give particulars	

What annual escalation is to apply, and on what date does it take effect?	
Is the escalation a fixed percentage, or linked to the consumer price index or to some other measure?	
Is interest to be charged on arrear rental, and at what rate?	
Amount of the deposit	
When is the deposit payable, and is it to be paid in instalments?	
For a residential lease, into what interest-bearing account is the deposit to be invested, and who holds it?	
Is any other amount payable in advance (the first month's rental, an administration or lease fee, a key deposit or an access-tag deposit)?	
For a commercial lease, is turnover rental to apply? If so, on what basis is turnover to be calculated and verified?	

PART F: MUNICIPAL CHARGES, LEVIES AND UTILITIES

Set out clearly who is to bear each charge. Disputes about these items are among the most common of all lease disputes.

Charge	Payable by landlord	Payable by tenant
Rates and taxes		
Refuse removal and sewerage		
Water		
Electricity		
Sectional title or estate levies		
Special levies		
Security and access control		
Garden and common area maintenance		
Insurance of the building		
Insurance of the contents		
Operating costs or an operating cost recovery (commercial leases)		
Other (specify)		

Are the utilities separately metered, or is consumption to be apportioned? If apportioned, on what basis?	

Are the meter readings at commencement to be recorded in the lease?	
Is a prepaid meter installed?	
Is the tenant to be charged any administration fee on the recovery of utilities?	

PART G: USE, ALTERATIONS AND MAINTENANCE

For what purpose may the premises be used, and is any other use to be prohibited?	
For a commercial lease, is the tenant to be given exclusivity against a competing business in the same building or centre?	
Are the trading hours to be regulated?	
May the tenant sublet or cede the lease, and on what conditions?	
Which repairs and maintenance are the responsibility of the landlord?	
Which repairs and maintenance are the responsibility of the tenant?	
Who is responsible for the geyser, the roof, the plumbing, the electrical installation, the borehole, the pool and the garden?	
May the tenant make alterations or improvements, and must they be removed at the end of the lease? Is the tenant to be compensated for them?	
Are pets permitted? Are there any restrictions as to number, type or size?	
Is smoking permitted on the premises?	
On what notice may the landlord inspect the premises?	
Is an electrical compliance certificate, gas certificate, electric fence certificate or plumbing certificate required, and who is to obtain it?	

PART H: INSURANCE, RISK AND SECURITY

Who is to insure the building, and for what perils?	
Is the tenant to insure its own contents, stock and plate glass?	
Is the tenant to carry public liability cover, and in what amount?	
Is the tenant to be required to produce proof of cover annually?	
Who bears the risk of damage to the premises by fire, flood, storm or theft?	
What is to happen if the premises are destroyed or so damaged that they cannot be used?	
Is a deed of suretyship required, and from whom?	
Is any bank guarantee, cash retention or parent company guarantee required in place of or in addition to a deposit?	

PART I: BREACH, CANCELLATION AND DISPUTES

How many days should a party be given to remedy a breach after written notice?	
How is notice to be given, and to what address or e-mail address?	
Is the landlord to be entitled to accelerate the balance of the rental upon cancellation?	
Is a penalty or a cancellation charge to apply, and how is it to be calculated?	
Is any dispute to be referred to mediation or arbitration rather than to court?	
Which court is to have jurisdiction?	
Is the defaulting party to pay legal costs, and on what scale?	

Where there is already a dispute

What is the nature of the dispute?	
What amount, if any, is in arrears, and for what period?	

Has a letter of demand been sent? On what date and by what means?	
Has the lease been cancelled? On what date and on what basis?	
Is the tenant still in occupation, and does the tenant have any dependants or children living at the premises?	
Has any complaint been lodged with the Rental Housing Tribunal or any other body?	
Has any step been taken which may be unlawful — the disconnection of services, a lock-out, or the removal of the tenant's goods?	

PART J: SPECIAL CONDITIONS

Set out any further term which has been agreed or which you would like included, however minor it may seem.

PART K: ANY OTHER INFORMATION

Please set out anything else you consider relevant, or any concern you have about the other party or the transaction.

PART L: DECLARATION BY THE CLIENT

I, the undersigned, confirm that the information furnished in this questionnaire is true and correct to the best of my knowledge and belief, and I instruct Otto Krause Incorporated to act upon it in the preparation of the lease and the related documents. I undertake to inform my attorneys forthwith should any of the information change or should I become aware that any of it is incorrect or incomplete.

Full names	
Signature (you may type your name here and sign the printed copy at our offices, or attach a scanned signature)	
Place	
Date	

ANNEXURE: DOCUMENTS TO BE FORWARDED IN DUE COURSE

Document	Available? (Yes / No / Will obtain)
Title deed or a recent windeed search in respect of the property	
Identity documents of the landlord and the tenant	
Registration documents of any entity which is a party	
Resolution authorising the signatory to sign	
Any existing lease, addendum or renewal	
Sectional title or estate conduct rules	
Bondholder’s consent to the letting, where required	
Plan of the premises, where only a portion is let	
Schedule of fixtures, fittings and furniture	
Incoming inspection report and photographs	
Electrical, gas, electric fence and plumbing certificates	
Proof of the tenant’s income, bank statements and references	
Proof of insurance	
Correspondence between the parties, where a dispute has arisen	