

Glossary of Terms

**for
Renters
of
Commercial Space
in**

New York City



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ACCESS. All Class A and nearly all Class B buildings offer access 24 hours a day, 7 days a week, year round. Not all building services will be available outside “building hours.”

AIR CONDITIONING (See also “HVAC”) comes in different forms, but the choice in any one building will either be non-existent or very limited:

1. **Building Controlled.**

- a. Tends to be found in newer buildings in which air-conditioned was installed as original equipment.
- b. Is supplied during building hours during the “air conditioning season.” (see below) offers the tenant limited control over their environment – sometimes not even a thermostat.
- c. Is included in the rent.
- d. Requires a payment for after-hours use. Prices vary enormously, from a low of about \$25 to a high of \$300 or more per hour. This is not dependent on the size of your space, but on the overall area that has to be turned on in order to cool your space. In many cases a “Supplemental Unit” is the best choice in these circumstances (see below).

2. **Tenant-Controlled.**

- a. Tends to be found in older buildings that were built before the introduction of air-conditioning.
- b. Runs whenever the tenant wants it, at the temperature the tenant wants.
- c. Usually requires a unit situated in the tenant’s space.
- d. May be air-cooled or connected to the building’s supply of chilled or condenser water. Additional charges may be payable for chilled or condenser water outside building hours and these may be high if the system has to be turned on specially.
- e. Generally runs off electricity paid for by the tenant in addition to the rent.

3. **Supplemental Units.** Where a tenant is supplied with Building Central air-conditioning during business hours, it is often more economic to install a supplemental system for after-hours cooling. Such a unit may be air-cooled or may be connected (for a charge) to a 24-hour cooling tower if one exists. (Many higher-end buildings do not permit the unsightly venting required for air-cooled units.)

AIR-CONDITIONING SEASON. The time of year during which building air-conditioning is turned on. Approximately May 15 to October 1, but varies from building to building.

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ARCHITECT. If you are doing anything other than moving into a ready-built space or asking the landlord to move a couple of walls about, you will need one. The earlier in the process that they are brought in, the better. (See “Space Planners”)

ATTORNEY. You will need one to translate the terms and conditions of the business negotiations into legalese. Make sure that they are knowledgeable about commercial leasing, or you could be buying trouble.

BROKERAGE COMMISSIONS are normally paid by the landlord on commercial leasing transactions.

BUILDING HOURS refers to the hours of the day during which full building services are provided. While you may be able to gain access to your space 24 hours a day, 7 days a week, you may receive heat/air-conditioning only during Building Hours, the lobby may be attended only during Building Hours, and the freight elevator may only be available during some Building Hours. Typically Building Hours are 8 a.m. to 6 p.m.

BUILDING STANDARD refers to a set of specifications set forth by the landlord. It will apply to paint, carpet, doors, light fixtures, ceilings, window finishes, etc. (see “Workletter”)

CLASS OF BUILDING refers to the age, construction quality, modernity of building systems, services and maintenance standards of a building. In practice people’s opinion of the class of a building may differ, and landlords are naturally inclined to inflate the class of their buildings a notch or two. (See below for a description of classes.)

CLASS A buildings are the top tier of buildings built and maintained to the highest standard and with the most up-to-date systems. Think chrome and glass, modern infrastructure, computerized elevators, etc. (See “Class of Building.”)

CLASS B buildings include most pre-war buildings, however fancy, although some have been recently so thoroughly upgraded that they are now lower-end Class A. Older, less fancy, in some cases a lot more charming. (See “Class of Building.”)

CLASS C buildings are basically everything that doesn’t make it into Class B. Think side-street (mostly), unattended or only partly attended lobby, and generally more basic. (See “Class of Building.”)

CLEANING is provided in many office buildings (and all Class A buildings) as a service paid for in the rent. But many Class B buildings now being promoted as office buildings were formerly loft buildings and do not include cleaning in the rent. The value of cleaning is about \$2.50 per rentable square foot per year. This can make what at first sight seems to be a bargain actually rather less of one.

CONSTRUCTION PERIOD. This is a rent-free period prior to actual occupation of the space allowed to the tenant to build out its space. Obviously this only applies when the tenant (as opposed to the landlord) is organizing the construction.

CREDITWORTHINESS is not the same as still being in business after two years. Your creditworthiness, in the eyes of a landlord, will vary depending on market conditions and on his needs at the time.

DIRECT METER – see “Electricity”

DIRECT OPERATING ESCALATION – see “Escalations”

ELECTRICAL CAPACITY refers to the amount of power available in the premises and is generally expressed in terms of watts per square foot. A typical specification would be in the range of 4 to 7 watts per rentable square foot.

ELECTRICAL WIRING. Built space will already be wired for electricity, but possibly not adequately for your use. If you do not negotiate for the landlord to carry out any further wiring, it will be your responsibility to install it. Raw space will not be internally wired, and again the wiring of the space will be subject to negotiation as part of any Workletter, or will be your responsibility as tenant.

ELECTRICITY is delivered:

1. **Via Direct Meter.** This way you pay what is on the meter direct to the utility company.
2. **Via Submeter.** This way you pay the landlord what is on the meter plus a percentage “handling” fee (typically 10%). This is not always more expensive than a Direct Meter, as the landlord of a large building may be able to negotiate better rates than you can on your own.
3. **As Rent Inclusion.** This way you pay a fixed annual charge per rentable square foot. Typically this will be in the range of \$2.90 to \$3.50.

ESCALATIONS come in two basic flavors:

1. **Real Estate Taxes.** Almost all leases have these. Tenants pay their “proportionate share” of any increase in Real Estate taxes over a base year approximately equal to the first year of their tenancy.
2. **Operating Expenses.** This is where the creativity comes in. The theory is that as it gets more expensive to run the building, so tenants pay their part of that increase. Now let's see what they've come up with:
 - a. **Direct Operating Expenses.** The best for the tenant in times of low inflation. If operating expenses go up, the tenant pays his “proportionate share.” If they don't, he doesn't pay. Often hard for a small tenant to get.

- b. **Porter's Wage Formula.** For every penny the porter's hourly wage goes up, so proportionately does the rent per square foot - most commonly "penny-for-penny". Thus if the porters' wages go up from \$15 per hour to \$17 per hour, the rent goes up \$2 per square foot. Not so bad in times of low wage inflation, this can have a serious ratchet effect when the opposite is the case, out of all proportion to the actual increase in operating costs of which the porters' wage is only a part. The effects can be particularly grim if the formula includes fringe benefits. Less punitive in percentage terms when the original rent is a relatively high number.
- c. **Percentage.** Increasingly common, and quite unpleasant. 3% compounded over a 10 year term adds up. We have even heard of people asking for 4%. Indeed, people have even been known to pay it.
- d. **Consumer Price Index.** Self-explanatory. Clearly a crap-shoot, like everything apart from Direct Operating Expenses. Tends to be attached to a straight percent minimum.

FINANCIALS. The landlord will require full financial and general information about your company before agreeing to terms or drawing a lease. You may have competition for your chosen space, so assemble this information *before* you get to the stage of making a proposal. It is in your interests to provide as much detail as possible in order to convince the landlord that you are a creditworthy prospective tenant or for him to assess your likelihood of success if you are a startup. Make sure that it is neatly presented and is fully comprehensible to someone who knows nothing about your business, and, preferably, that it is expressed in dollars. Audited statements carry vastly more weight than something that you put together on Quickbooks the day you send it in. Do not expect the landlord to spend hours trying to understand ill-presented financials- he will move on to the next proposal instead. And do not attempt to conceal the true situation of your company.

FREE RENT. Depending on market conditions, it may be possible to negotiate a period of free rent. In a landlord's market this may be as little as one month; in a tenant's market as much as a year, or even more on a long lease. If it is more than a month or two, the abatements will normally be spread over the term of the lease. (See "Construction Period")

GOOD GUY CLAUSE. This is a form of personal Guaranty whereby the guarantor undertakes to pay any unpaid rent so long as the tenant remains in possession of the premises. It is therefore less onerous than a full guaranty where the guarantor undertakes to pay the rent for the full term of the lease whether or not the tenant remains in possession.

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GROSS LEASE. A gross lease, as distinguished from a “Net Lease,” includes real estate taxes, heating and building services in the base rent. Office and loft leases are nearly always of this type. (See “Net Lease”)

HEATING. Typically office buildings provide central heat during “building hours” in the “heating season” and residual heat during cold weather. (See “Building Hours;” “Heating Season;” and “HVAC”)

HEATING SEASON typically runs from October 1 to May 14th (the inverse of the Air-Conditioning Season).

HVAC. Heating, Ventilating and Air-Conditioning. (See “Air-Conditioning” and “Heating.”)

LANDLORD’S WORK describes any building or decorating work carried out in the space by the landlord at his expense prior to the tenant’s occupation of the space. It is totally negotiable. The agreement that governs this is called the “Workletter” and is an integral part of the lease. It can run the gamut from nothing at all to a full build-out of the space, depending on market conditions. It can be set up in either of two basic ways:

1. The Landlord builds the space out using his own contractors. You can elect to have more than the basic work done, in which case you will pay the extra.
2. You build out the space, and the landlord either gives you a cash contribution to the work, or free rent in lieu of the cash.

In the end the tenant pays for the work, and the landlord amortizes the cost over the term of the lease. If you ask for a lot of work, therefore, the landlord will be less flexible when negotiating the rent, and may look for a larger security deposit. (See “Workletter, ” “New Building Installation” and “Building Standard”)

LEASE TERMS are typically 3, 5, 10 or 15 years, but there are no rules. The longer the term the more time the landlord has to amortize expenses, and the more concessions he will be likely to concede.

LOSS FACTOR. This is the difference between “Rentable Square Feet” (the area for which the tenant pays) and “Usable Square Feet” (the carpetable area which the tenant actually occupies) expressed as a percentage of the Rentable Square Feet. The Loss Factor was originally intended to represent the tenant’s share of the common areas of the building, including the lobby, elevator shafts, common corridors, risers, freight entrance, etc. In a few buildings it still does this fairly accurately. But in New York there is no law laying down the criteria for calculating the Loss Factor, so many landlords have been unable to resist the temptation to be creative and are constrained only by the pressures of the market. You cannot negotiate the Loss Factor.

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NET LEASE. A Net Lease is one where the tenant takes on the entire responsibility for the payment of all the expenses of running a property *in addition to* the payment of rent, including maintenance costs, real-estate and other taxes, wages, etc. The opposite of a Net Lease is a “Gross Lease,” and Net Leases are generally only encountered in cases that involve the renting of entire buildings or of condominium units. (See “Gross Lease”)

NEW BUILDING INSTALLATION describes the building out of a piece of space to “Building Standard.” In general it is implied that this will be carried out by the landlord at his expense, before the commencement date of the lease. (See “Building Standard”)

OPTIONS. New York City has always been a market in which it has been more difficult for tenants to negotiate options and other rights to renew and/or expand than in other markets around the country.

PORTER’S WAGE FORMULA – see “Escalations”

PREBUILT. Prebuilt spaces have been built out speculatively with generic layouts and are ready for immediate occupancy. Can be a good quick solution if your needs are fairly standard.

PROPORTIONATE SHARE generally refers to your space’s area expressed as a percentage of the total rentable square feet in the building. In practice, sadly, if you add up all the proportionate shares in a building you are unlikely to arrive at a total equal to or less than 100%. What a surprise.

PROPOSAL. When you wish to make an offer on a space we as your brokers will draw up a non-binding proposal, which we will submit on your behalf. As a minimum it will specify the following:

- Tenant
- Building
- Space
- Rentable Square Feet
- Rent Per Square Foot
- Term
- Lease Commencement
- Rent Commencement
- The way the electricity will be paid for
- Escalations

REAL ESTATE TAXES. All Real Estate Taxes are included in the base rent at the start of the lease. In almost all cases, leases include an escalation clause stipulating that the tenant will pay its proportionate share of Real Estate Tax increases in future years. (See “Escalations”).

REFERENCES -- See “Financials.”

RENT – Rent is expressed in dollars per rentable square foot per annum (See “Rentable Square Feet.”) At the beginning of the term it will normally include all real estate taxes and the operating costs of the building. In many office buildings it will also include cleaning, which is worth \$2.50 to \$3 per square foot per year. It will almost invariably include heat in the winter, and may or may not include Air conditioning in the summer. It will probably not include electricity. In loft buildings sprinkler and garbage removal charges may be additional. Rent will be subject to escalations, which will normally kick in one year after commencement. Where the term is longer than 5 years, there are likely also to be one or more “Rent Bumps” during the course of the term. (See “Air Conditioning,” “Electricity” and “Escalations”)

RENT BUMP – describes an increase in the rent which is built in to the lease. For example a ten year lease may have a rent of \$40 for years 1 through 5, and \$45 for years 6 through 10

RENT REVIEWS – see “Escalations.”

RENTABLE SQUARE FEET – is the area on which your rental payment is based. What you actually get is “Usable Square Feet.” The difference between the two is called the “Loss Factor” and is expressed as a percentage of the “Rentable Square Feet.” (See also “Loss Factor”)

SECURITY DEPOSIT. Unless you are a long-established, rock solid, profitable company with significant assets and a long history of paying rent on time, you will almost certainly have to provide one. Landlords are inconsistent on this one, and may ask for as little as three months’ rent, or as much as a year’s. Maybe we can negotiate a “burn down” whereby it is reduced over a period of years after an initial period, but don’t rely on it. Deposits can be in the form of a Letter of Credit, which are more attractive to the sophisticated landlord as they do not constitute assets in the event the tenant declares bankruptcy.

SPACE PLANNERS earn their crust by helping you get the maximum possible use out of your space as built.

SQUARE FOOTAGE – comes in two varieties: “Rentable Square Feet” and “Usable Square Feet.” The difference between them is called the “Loss Factor” and can be over 30%. See the separate entries for details.

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SUBLEASING. You will want your lease to contain as liberal a sublease provision as possible. Generally landlords retain the right to turn down subtenants if they think that they are insufficiently financially sound or if their use is inappropriate to the building. Often they will include provisions allowing them to “recapture” the premises if the tenant approaches them for permission to sublet, or to take all or part of any profit that may result from an increase in the rent. Clearly a landlord is more likely to recapture during a period of rising rents, and consequently sublet spaces are much less frequently available during such periods.

SUBMETER – see “Electricity”

USABLE SQUARE FEET – What you actually occupy. (See “Rentable Square Feet” and “Loss Factor”)

VOICE AND DATA WIRING. Generally speaking the tenant is responsible for this, although in some cases outlets may have already been installed (but not necessarily wired.)

WORKLETTER. The Workletter is the part of the lease describing in greater or lesser detail the work that the landlord will carry out in the space prior to its occupation by the tenant. It’s value is expressed in terms of \$ per rentable square foot . This must be negotiated at the stage of the initial proposal. The value of the Workletter will rise and fall depending on the strength of the market and the creditworthiness of the tenant. (See “Landlord’s Work”)