

What do the Lease Clauses Mean?

The Date of the Lease

The date of the Lease must be written in **Item 1** of **Schedule 1**.

The date of the Lease may be different from the commencement date.

The commencement date must be written in **Item 4** of **Schedule 1**.

The Lessor

The Lessor is the person who owns the livestock.

The name of the Lessor and ABN must be written in **Item 2** of **Schedule 1**.

Contact details must also be written in **Item 2** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address must also be written in **Item 2** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address. **The Lessee**

The Lessee is the person who is leasing the livestock from the Lessor.

The name of the Lessee and ABN must be written in **Item 3** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address must also be written in **Item 3** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address.

The Guarantor

If the Lessee is a company the names of the directors and their contact details must be written in **Item 3(a)** of **Schedule 1**. This is important because Clause 21 specifies that the directors of the Lessee company agree to be liable for the rental payments and other obligations under the lease.

Each party has an obligation to make sure the other party has their current address.

The Recitals.

Clauses A and B explain the background to the Agreement.

Clause 1 - Interpretation

This clause provides specific definitions of terms as they apply in the Lease.

Note that some of the definitions require further detail to be written into the Schedules at the end of the Lease. In particular note that the definition of "Replacement Animals" must be

clearly specified in **Schedule 2**. The intention is that the age and the genetic profile of the animals be maintained during the term of the lease.

Clause 2 – Lease

This clause states that the terms and conditions in the lease document apply to the lease of the livestock.

See also **Clause 44** which states that the Lease contains everything that the parties have agreed about. Previous negotiations or correspondence are not a part of the Lease. It is therefore important that everything that you want to be included in the Lease is written in the Schedules.

Clause 3 – Commencement date.

The commencement date must be written in **Item 4** of **Schedule 1**.

Note that the commencement date may be different to the date of the Lease.

Clause 4 – The Term

This clause states the number of weeks, months or years of the Lease and when the Lease ends.

The termination date must be written in **Item 5** of **Schedule 1**.

The lease must be longer than two years for the Personal Properties Securities laws to apply.

Clauses 5 & 6 – Delivery of Livestock

The livestock may be delivered either on the commencement date or at another time as specified in **Item 6** of **Schedule 1**.

The party responsible for the cost of delivery should also be entered in **Item 14** of **Schedule 1**.

Clause 7 – Ownership of the Livestock

This clause confirms that the livestock as defined in **Schedule 2** belongs to the Lessor and that the Lessee agrees not to dispose of any of the Lessor's livestock other than as provided for in the Lease.

The clause also confirms that any calves are the property of the Lessee unless they are required to become Replacement Animals as defined in **Schedule 2**.

Clauses 8 to 11 - Warranties

These clauses provide warranties or guarantees that the livestock is free from any encumbrances and that the livestock supplied by the Lessor meets the description in **Schedule 2**.

Clause 11 allows the Lessee to return any livestock that are deemed to be unfit for the purpose within 7 days of delivery.

'Unfit for purpose' could be defined as follows:

"Cows which have developed clinical mastitis, are visibly lame, or are diagnosed as clinically ill by a veterinarian within 7 days of arrival are not fit for purpose as milking cows."

Cows which were leased as 'in calf' but by 7 days of arrival are found to no longer be pregnant do not have a calving pattern which is fit for purpose."

Clauses 12 & 13 – The Rental

The rental must be determined before the Lease is entered into and written in **Item 8 of Schedule 1**.

The time and manner of payment of the rental must be written in **Item 9 of Schedule 1**.

Item 10 of Schedule 1 provides for the parties to agree on a process for the review and adjustment of rental. This must be agreed before the Lease is entered into.

Item 11 of Schedule 1 specifies the rental review date.

Clause 14 – Renewal of the lease

Item 12 of Schedule 1 provides a procedure for the renewal of the lease.

Clauses 15 & 16 – Yield up

This clause confirms that there is no transfer of the livestock to the Lessee and ensures that the rental will be tax deductible.

If the parties agree that at the end of the lease the Lessee will purchase the stock for an agreed residual price then the parties need to agree on a price and enter into a formal separate Agency agreement which will enable the Lessee to sell the livestock after the expiry of the lease or to purchase the livestock from the Lessor.

Clause 16 provides for the parties to agree in **item 14 of Schedule 1** about which party will transport the stock from the Lessee's property at the end of the lease.

Clause 17 – Management and care of the Livestock

This clause confirms that it is the Lessee's responsibility to care for the Livestock in accordance with industry practice during the term of the lease.

Clauses 18 & 19 – Replacement Animals

Schedule 2 should contain a detailed description of each animal, its age, genetics, and its reproductive status.

These clauses require the Lessee to ensure that the age and genetic profile of the livestock as detailed in **Schedule 2** is maintained to the Lessor's reasonable satisfaction throughout the term of the lease and for the Lessee to report this to the Lessor at the end of each financial year.

Clause 20 – Lessee's Obligations

This clause specifies the Lessee's obligations which apply generally to the Lease.

Clause 21 – Guarantee

This clause provides that if the Lessee is a company, the directors agree to be liable for the rental payments and to ensure that the Lessee meets the other obligations under the lease.

Clauses 22 to 27– Inspection of the Livestock

Clause 22 permits the Lessor or a person authorised by the Lessor to inspect the livestock and the livestock records from time to time during the term of the lease provided the Lessor has given the Lessee reasonable notice.

Dates for inspection should be entered at **Item 16 of Schedule 1**.

More frequent inspection is permitted by Clause 24 if the livestock are found to be in an unsatisfactory condition.

Clause 23 provides for the Lessor to obtain an independent report detailing the condition of the livestock and any remedial action which needs to be taken and Clause 25 requires the Lessee to comply with any recommendations.

Any expenses are to be paid by the Lessee within 7 days. (Clause 27)

If the Lessee does not agree with the recommended action the Dispute Resolution procedure in **Clause 40** should be adopted. (Clause 26)

The types of records to be available should be specified in **Item 17 of Schedule 1**. These may include: stock register, calving records, mastitis records, breeding and reproductive records such as insemination details and pregnancy test results, animal husbandry records, and Milk Recording reports. Access may be in hard copy or electronically.

Clauses 28 to 33 – Security Interest

These clauses confirm that the Personal Property Securities Act (2009) (the PPS Act) applies to the lease. As of 20 May 2017 the legislation applies to leases for a term of more than two years. Leases for an indefinite term will not be deemed to be PPS leases unless and until they run for a period of more than 2 years.

The legislation will continue to apply to leases of 2 years or less which were entered into prior to 20 May 2017.

The PPS Act creates the PPS Register which is like a “noticeboard” where property owners can register their security interest in most forms of property owned by them. It does not apply to land or water.

Registration of a security interest provides notice of the Lessor’s interest in the livestock while it is in the possession of the Lessee.

Potential purchasers are able to search the Register to determine the ownership of the property.

Clause 30 provides that the Lessee consents to the registration of the Lessor’s interest in the livestock and that the Lessor ranks first in order of priority of the security interests.

Clause 31 requires the Lessee to assist the Lessor to register the Lessor’s interest in the livestock and to exercise any rights the Lessor may have.

Clause 33 provides for the Lessee to consent to the Lessor searching the Register at any time for information about the Lessee.

Clause 34 – Termination by the Lessee

This clause provides for termination by the Lessee before the end of the Lease.

The Lessee must give the Lessor notice of any breach and then provide the Lessor at least 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessee cannot proceed to terminate the lease.

Any termination notice must be in writing and be delivered to the Lessor at one of the addresses listed in **Item 2 of Schedule 1**.

See also **Clause 49** which specifies how notices should be delivered.

Clauses 35 to 37- Termination by Lessor

These clauses provide for termination by the Lessor before the end of the Lease.

This can only occur if the Lessee fails to meet the obligations contained in the lease, failure to pay the rental, or in circumstances where the Lessee is wound up or has an administrator, receiver or manager appointed to it or is placed under official management (**Clause 35**).

Note that the Lessor has to give the Lessee 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessor cannot proceed to terminate the lease.

Any termination notice must be in writing and be delivered to the Lessee at one of the addresses listed in **Item 3 and 3(a) of Schedule 1**.

See also **Clause 49** which specifies how notices should be delivered.

If the Lease is terminated before the due date the lessor can enter onto the land and take possession of the livestock.

Clause 36 permits the Lessor to break open any lock or gate but such action should not be taken lightly. It is strongly recommended that this be a last resort when all other avenues have been exhausted. The Dispute Resolution procedure (**Clause 40**) should be considered.

Clause 37 requires the Lessor to take steps to ensure that any losses sustained by the Lessee are minimised. In this circumstance, any action taken by the Lessor cannot be taken to mean that the Lessor accepts the Lessor's default.

Clauses 38 & 39 – Insurance and Indemnity

These clauses require the Lessee to take out public risk and other operational insurances.

The amount of public risk insurance must be entered at **Item 13** of **Schedule 1**.

The Lessee's policy should note the interest of the Lessor in the policy.

Note that Clause 39 requires the Lessee to provide evidence to the Lessor that the insurances have been taken out.

Clause 40 – Dispute Resolution

This clause provides a detailed dispute resolution procedure involving mediation or if that fails arbitration.

The main purpose of this clause is to encourage the parties to resolve disputes as they arise as quickly as possible in an informal manner.

Clause 41 – Assignment

Assignment is when a party transfers their rights and responsibilities under a contract to another party.

This Lease does not allow the Lessee to transfer the Lease unless the Lessor agrees.

Clause 42– Other Terms and Conditions

Because this agreement is a template agreement there may be specific matters which the parties want to add to the Lease.

This clause allows them to do so provided the terms and conditions are written in **Schedule 3**.

Clauses 43 - Costs of the preparation of this Lease

Each party is responsible for their own legal costs.

Clause 44 – Whole Agreement

This clause means that the Lease contains everything that the parties have agreed about.

Previous negotiations or correspondence are not a part of the Lease.

For this reason it is very important that all documents which have been created such as the **Checklist (Tool F)** are included in the Schedules to this Agreement and signed by the parties at the bottom of each page.

Clause 45 – Variation

This clause confirms that the Lease cannot be changed unless all parties agree and put this agreement in writing.

Clause 46 - GST

This clause provides for the law about GST to apply.

Note that the rental is GST EXCLUSIVE.

Clause 47 – Severability

This clause means that if a clause in this Lease is found not to be valid or enforceable it can be taken out of the Lease leaving the remainder of the Lease intact and still applicable.

Clause 48 - Applicable Law

Animal welfare laws and property laws vary from state to state so it is recommended that the law of the state where the livestock are to be located apply. The state should be written in **Item 15 of Schedule 1**.

Clause 49 - Notices

The purpose of this clause is to avoid disputes about whether a notice has in fact been given to the other party.

If a notice, such as a notice about a breach of the Lease, has to be given to the other party it must be in writing and be delivered in one of the ways laid down in this clause.

Each party has an obligation to make sure the other party has their current address if this changes from the addresses listed in **Items 2, 3 and 3(a) of Schedule 1**.

If notices are sent by email or fax a hard copy of the email or fax and the transmission receipt or notification should be kept.

Clause 50 – General

These clauses are general interpretation clauses which apply to all leases.

Signing Clauses

It is important that all parties sign the Lease and if applicable that any company seals are attached.

In addition each party should sign and date at the bottom of every page including all of the Schedules and any attachments to the Schedules so that it is clear that these are included in the Lease.

Schedules

The Lease is designed to be a template agreement which applies generically.

Information and particulars which are specific to the individual leasing arrangement must be therefore be written into the relevant Schedules which are at the end of the Lease.

In the Leasing Resources Pack, **Checklist (Tool F)** has a cross reference to the appropriate Schedule and Item of this model agreement in the right hand column.

Information written in **Checklist (Tool F)** should be copied into the relevant Schedule.

The **Checklist** can be included as part of the lease if each page is signed and dated and it is attached to the Schedules.