

MODEL LEASE CLAUSE

Limit Tenant Remedies for Delayed Delivery of Space

The following Model Lease Clause was drafted with the help of New York City attorney A. Barry Levine and Chicago attorney Richard S. Rosenstein. Use it to protect yourself if you can't deliver possession of the space to the tenant on the lease's commencement date.

Paragraph a says you have no liability for any losses suffered by the tenant because you didn't deliver the space on the lease's

commencement date. Paragraph b lists four optional remedies for the tenant if delivery of the space is delayed. The remedies may be used singly or in conjunction with each other. Make sure you define "Commencement Date," "Force Majeure Event," and "Tenant Delay" elsewhere in the lease. Note that if you use option #2 in paragraph b, you should delete the last sentence of paragraph a.

Show this clause to your attorney before putting it into your lease.

FAILURE TO DELIVER POSSESSION

- a. No Liability.** If for any reason Landlord has not delivered possession of the Premises to Tenant on the Commencement Date, then Landlord shall not be liable to Tenant for any resultant loss or damage and this Lease shall not be void or voidable. No delay in delivery of possession of the Premises will extend the Term.
- b. Tenant's Remedy.** Notwithstanding anything in this Lease or the Work Letter to the contrary, if Landlord fails to deliver possession of the Premises to Tenant with the Landlord's Work substantially completed, as provided in the Work Letter, on the Commencement Date, then as Tenant's exclusive [remedy/remedies] for such failure to deliver,

[Option #1:] Tenant shall receive a credit against the Base Rent payable hereunder equal to one day's Base Rent for each day after the Commencement Date that Landlord fails to tender the Premises to Tenant with Landlord's Work substantially completed, excluding each day of delay caused by a Tenant Delay or Force Majeure Event.

[Option #2:] the Commencement Date shall be extended by one (1) day beyond the Commencement Date for each day of such delay by Landlord (excluding each day of delay caused by a Tenant Delay or Force Majeure Event), and the Expiration Date of the Term shall be similarly extended if required to effect the full period of the Term as contemplated pursuant to Clause [insert #] of this Lease.

[Option #3:] Tenant shall have the right to terminate this Lease by giving Landlord written notice of termination within [insert #, e.g., 10] days following [insert drop dead date, e.g., Aug. 1, 2006] (the "Drop Dead Date") (time being of the essence). This Lease shall terminate on the date that is [insert #, e.g., 30] days after Landlord's receipt of Tenant's termination notice (such date to be extended by a Tenant Delay or Force Majeure Event) (the "Termination Date") and thereafter neither party shall have any further liability to each other except that Landlord shall return the Security Deposit and any prepaid Rent to Tenant within [insert #, e.g., 5] days after the Termination Date. If Tenant fails to give Landlord such termination notice within the [insert #, e.g., 10]-day period or if Landlord delivers possession of the Premises to Tenant with

the Landlord's Work substantially completed before the Termination Date, then this Lease shall not terminate but shall remain in full force and effect, and Tenant shall have no further right to terminate this Lease.

[Option #4:] Landlord shall provide Tenant with temporary premises in the Building of a size adequate for Tenant's use ("Temporary Premises") as of the Commencement Date, as such date is extended by a Tenant Delay or Force Majeure Event. Tenant shall occupy the Temporary Premises under all of the terms and conditions of the Lease, except that:

- (i) Tenant shall accept the Temporary Premises in "as-is" condition;
- (ii) Tenant shall not be responsible for the payment of any Rent or utilities for the Temporary Premises;
- (iii) Tenant may not sublease all or any portion of the Temporary Premises; and
- (iv) Tenant shall be responsible for all costs of moving to the Temporary Premises and to the Premises.

Tenant shall vacate the Temporary Premises in broom clean condition, within [insert #, e.g., 10] days after the date Landlord delivers possession of the Premises to Tenant with Landlord's Work substantially completed (the "Delivery Date"). If Tenant fails to vacate the Temporary Premises within such [insert #, e.g., 10]-day period, it will be deemed, as of the Delivery Date, a tenant at sufferance and shall pay, in advance, a daily amount equal to \$[insert amount] per rentable square foot, as set forth in Clause [insert # of rent clause] of this Lease and any Additional Rent and other amounts due, and Tenant shall be bound by all of the other terms, covenants, and agreements of this Lease as the same may apply to a tenancy at sufferance and shall be responsible for any and all damages to Landlord resulting from said holdover, including special and consequential damages. In addition, at the election of Landlord, by notice to Tenant and not otherwise, Tenant's failure to vacate the Temporary Premises shall be deemed to be a default under the Lease entitling Landlord to exercise all of its remedies under the Lease for and on account of such default.