

MODEL LEASE CLAUSE

Verify Tenant's Right to Terminate Lease or Pay Reduced Rent

The following clause was drafted with the help of Dallas attorney T. Andrew Dow. Put it in your lease if your lease doesn't have a gross sales audit clause.

Paragraph a gives you the right to audit the tenant's gross sales statement for the performance period indicated in the lease after getting the tenant's notice to exercise its kickout right or reduced rent remedy. Paragraph b says that if the tenant doesn't dispute your audit results by a set deadline, it's deemed to have accepted them. Paragraph c requires the

appointment of an independent auditor to determine the tenant's gross sales if you and the tenant dispute each other's gross sales findings.

Select the appropriate wording from the choices offered in our clause, depending on whether you're using the clause in conjunction with a performance kickout right or a reduced rent remedy. Show the clause to your attorney before putting it into your lease near the right to which it applies. **CLL10084**

AUDIT OF GROSS SALES STATEMENT

- a. Landlord's Audit Right.** Landlord shall have the right to audit Tenant's statement of Gross Sales within [*insert #, e.g., 90*] days of Landlord's receipt of a notice from Tenant indicating its intent to exercise its [*Termination Right/Reduced Rent Remedy*] under Clause [*insert # of kickout right or reduced rent clause*] hereof, and Landlord shall provide Tenant with the results of such audit ("Audit Results").
- b. Audit Results.** If the Audit Results reveal that Tenant's Gross Sales are in excess of the amount required for the exercise of the [*Termination Right/Reduced Rent Remedy*], then Tenant shall have the right to dispute the Audit Results by sending Landlord, within [*insert #, e.g., 10*] days after Tenant's receipt of the Audit Results, written notice specifying the reasons Tenant is disputing the Audit Results (the "Notice"). If Tenant fails to send the Notice within said [*insert #, e.g., 10*]-day period, then the Audit Results shall be deemed to have been approved and accepted by Tenant as correct, and Tenant's notice of its intent to exercise the [*Termination Right/Reduced Rent Remedy*] shall be withdrawn and [*choose one:*] *this Lease shall continue in full force and effect or Tenant shall not be entitled to reduce its rent under Clause [insert # of reduced rent remedy clause] hereof.*
- c. Resolution of Dispute.** If Landlord and Tenant each dispute the other's findings, then Landlord and Tenant jointly shall elect an independent auditor to determine the actual Gross Sales for the relevant period. The costs of the third-party audit shall be borne by the non-prevailing party. In the event the independent auditor determines that Tenant's Gross Sales were understated to the extent that Tenant is not entitled to exercise the [*Termination Right/Reduced Rent Remedy*], then Tenant's notice of its intent to exercise the [*Termination Right/Reduced Rent Remedy*] shall be withdrawn and [*choose one:*] *this Lease shall continue in full force and effect or Tenant shall not be entitled to reduce its rent under Clause [insert # of reduced rent remedy clause] hereof.*