

# Wilhelm Gilliéron

## AVOCATS

### LITIGES EN DROIT COMMERCIAL

Bail commercial et location de locaux dits « bruts » : tour d'horizon



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## Commercial leases and the letting of 'bare' premises: an overview

*Although not expressly regulated by the Swiss Code of Obligations, the lease of 'bare' or 'raw' premises is becoming increasingly common in commercial transactions.*

*What do we mean by this and what do we need to bear in mind when entering into such a contract?*

A. What is a 'gross' premises lease?

A lease of 'unfinished' premises is a bilateral agreement whereby the lessor transfers the use of unfinished or partially finished premises to the lessee, who must then take on and complete the finishing touches to the premises.

The lessor provides the basic fixtures and fittings, such as the structure of the building, the installation of running water, the heating system, etc. Any additional fixtures and fittings required by the tenant will be at the tenant's expense.

The majority of 'gross' leases are for commercial premises. However, it is not out of the question for such a contract to also apply to a dwelling, although this is less common.

These contracts are becoming increasingly popular, as they offer the following advantages:

For the lessor :

- Lower construction costs;
  - Maintenance of basic fixtures and fittings only;
  - Neutral' commercial premises that can easily be re-let;
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- Increased number of interested parties;

For the lessee:

- Tailor-made choice of rented premises without owning them;
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- Appropriate rent (the cost of the tenant's improvements cannot be taken into account by the lessor when calculating the return on the leased property);

The most common examples of such contracts are for medical practices, commercial halls operating specific industries or offices.

The tenant's facilities may include non-load-bearing interior walls, floor coverings, special lighting, high-voltage electrical installations, professional kitchens, etc.

In short, on the face of it, everything can be tailored to the needs of both lessor and lessee. In practice, however, such contracts often contain numerous legal subtleties that are often little known.

B. Drafting a commercial lease for 'bare' premises - what do you need to think about?

Case law requires that, for such a contract to be valid, there must be sufficient compensation in favour of the tenant.

This means that the tenant of 'bare' premises must be given something in return, which could take the form of a refund, a rent reduction, compensation at the end of the lease or an extended term of the lease, for example.

It is therefore strongly recommended that the lease contract specify that the rent agreed is for the transfer of the use of the property in its unprocessed state only.

The parties should also bear in mind the following points:

- What are the basic facilities and what are the additional facilities?

The lessor and the lessee must distinguish between the basic facilities that the lessor will be responsible for providing and maintaining and those that the lessee will provide and assume.

These should be expressly listed so that no questions of interpretation of the contract arise at a later date.

In practice, it is advisable to detail in the contract the lessor's basic fixtures and fittings and the lessee's additional fixtures and fittings, and in the appendix to the contract who is the owner of which structure, who is responsible for the maintenance of which part and consequently who is responsible for which repairs and their dismantling.

- Who pays for what?

The above-mentioned appendix to the contract will also help to clarify the breakdown of construction costs.

The use of a table to be filled in with simple crosses is strongly recommended, for the sake of clarity and to avoid any disputes.

The question of any compensation for added value provided by the tenant should also be specified in the contract. Any depreciation of the installations over time should also be included, as should any increase in value.

The amount of the rent should, of course, be included in the contract, but it should also be accompanied by a clause specifying whether the amounts paid by the tenant have been taken into account in setting the rent. It is therefore advisable to indicate the amount that would have been retained if the premises had been fully fitted out by the lessor, so that it can be shown that compensation has indeed been paid.

The tenant may also be required to provide financial guarantees to the landlord for the work undertaken. For example, the landlord may ask the tenant to provide security in the event of a legal mortgage on the part of the companies commissioned by the tenant.

- Does the tenant need the landlord's agreement to carry out the work?

Although it may seem obvious, the tenant must expressly agree to the premises being handed over to him in a 'raw' state.

For its part, the landlord must give its consent to the tenant so that he can carry out the desired finishing work. This means that the lessee cannot unilaterally choose its subcontractors, but must obtain the lessor's agreement to the choice of contractors before the work begins.

- When does the lease take effect?

The lease must specify whether the tenancy, and therefore the payment of rent, commences on delivery of the 'bare' premises or at a later date, and whether the tenant is exempt from paying rent while the work is being carried out.

- What happens at the end of the contract?

The parties may agree in the lease what is to happen to the tenant's fixtures and fittings.

Facilities financed by the lessee may be acquired by the lessor at the end of the contract. If the lessor is considering such an eventuality, he is strongly advised to state expressly in the contract that he waives the right to return the premises to their original state.

On the other hand, the tenant may also find himself obliged to deconstruct his fixtures and fittings. It is important that the contract specifies this and also sets out the consequences of any breach.

The question of compensation at the end of the lease should also be regulated to avoid any doubt.

- What about transferring the lease?

The tenant may transfer the lease to a third party (art. 263 CO). He will have to 'hand over his business' and will be prepared to pass on the unamortised amount of the work carried out at the beginning of the lease.

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Such contracts are often unclear and open to dispute.

To avoid such situations and to protect your rights, you are strongly advised to seek professional advice.

Wilhelm Avocats SA can [help you draw up your commercial leases and deal with any related disputes.](#)

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**Source : <https://www.wg-avocats.ch/en/actualites/commercial-leases-and-the-letting-of-bare-premises-an-overview/>**