

10 Key Factors When Negotiating the Best Office Lease for Your Start-UP Company

By Richard Harroch

Office space is one of the largest expenses a growing company incurs. Negotiating the best lease possible can save your company enough to hire a few more employees or to launch a marketing campaign. Because no lease is standard, I have offered some suggestions below to help you become a little more lease-savvy and negotiate a favorable office lease.

Keep in mind that your ability to negotiate an office lease is dependent on how much leverage you have. Do your homework. Are other companies vying for the space? Has the space been vacant for a long time? Factors such as these may make the difference between your calling the shots or a landlord nickel and diming you throughout the lease process.

1. Space. To compare different office spaces, you have to know the exact usable square footage of each space you are considering. Usable square footage is less than rentable square footage because it deducts common areas such as public corridors, elevators, lobbies and bathrooms from the overall calculation.

2. Permitted use of the premises. An office lease typically has a section that sets forth the permitted uses of the leased space. It is to your advantage to make this clause as broad as possible, even if your intended purpose is initially narrow. Because your business may grow and your plans may change, you want the flexibility to use the space in any reasonable, legal manner. A broad permitted use clause (as for “all legal uses”) will make it easier to assign or sublet under the lease.

3. Term of the lease. Landlords are typically willing to make concessions for longer-term leases. Your company's needs may change, however, and you may find yourself locked into paying above-market rent if demand for rentals subsequently declines. Try to negotiate a shorter-term lease with renewal options — a two-year lease with four two-year renewal options, for instance, rather than a ten-year lease.

4. Rent and Rent escalations. Some landlords will give free rent for the first month or two of a lease. Fixed rent over longer-term leases is relatively rare. Sometimes, landlords insist on annual increases based on the percentage increases in the Consumer Price Index (CPI). If your landlord insists on rent escalations, try to arrange that a CPI rent increase does not kick in for at least two years. Then, try to get a cap on the amount of each year's increase. If you have to live with a rent escalation clause, consider a predetermined fixed amount, like \$2,000 a month the first year, \$2,200 a month the second year and \$2,400 a month the third year.

5. Common area maintenance, HVAC and operating costs. Take into account operating costs that the landlord may pass on to you. Some leases require the tenant to pay for cleaning, building security, electricity, HVAC (heating, ventilating and air conditioning), maintenance and repairs. If the landlord is charging you separately for these services, try to negotiate a fixed fee or cap on the amount. In addition, some landlords will charge extra for services supplied after-hours or on weekends. Since startup employees often spend nights and weekends working, these operating costs could add up quickly.

6. Tenant improvements. Your new space may need some improvements or alterations. Who pays for these improvements (a new paint job, new carpets, reconfiguring the space) depends on how tight the commercial office space market is in your city. Most form leases provide that the tenant can't make any alterations or improvements without the landlord's consent. Ask for a clause that says you can make alterations or improvements with the landlord's consent and that the consent won't be unreasonably withheld, delayed or conditioned.

7. Repairs, improvements and replacements. Be aware of a clause that says that at the end of the lease you have to return the premises in their original condition. Try to negotiate a clause that states the following: "The premises will be returned to the Landlord at the end of the tenancy in the same condition as at the beginning of

the tenancy, excluding (1) ordinary wear and tear, (2) damage by fire and unavoidable casualty not the fault of the Tenant and (3) alterations previously approved by the Landlord."

8. Assignment and subletting. Startup companies should negotiate enough flexibility in the assignment and subletting clause to allow for mergers, reorganizations and share ownership changes. Watch out for a clause that says a change in more than 50% of the company's stock ownership will be deemed an assignment that is prohibited without the landlord's approval. As the company grows and new people invest in the company, this clause can be inadvertently triggered.

9. Option to renew. Try to get the option to renew your rent at a fixed predetermined price, not based on a "fair market" price. It will save you money down the road — especially if the price of office space escalates dramatically.

10. Right of first refusal or first offer for additional space. A right of first offer obligates your landlord to present any space that becomes available in the building to you first before marketing it to third parties. A right of first refusal on space obligates the landlord to bring you any deals he is willing to sign with third parties for space in the building and allow you to match the deal and preempt the third party. However, most landlords will be reluctant to include such provisions in a lease unless the tenant is renting significant space.

Ultimately, if a prospective landlord is difficult to deal with during lease negotiations and makes unreasonable requests, you might want to consider leasing office space elsewhere. I strongly suggest having a good real estate broker and lawyer at your disposal, and do not sign anything without having them review the terms in advance.