

Model Lease Agreement for Dairy Property Quick document guide

The **model Lease Agreement** has been prepared as a template which can be modified to suit individual circumstances. It has been drafted so that it will stand up to legal analysis. It is recommended that the parties work with a dairy adviser to develop their agreement. Prior to signing, both parties should consider obtaining independent financial and legal advice.

This **model Lease Agreement** is made up of 2 distinct sections, each of which is needed to make up the complete document.

The Lease Agreement - standard clauses

This section contains standard clauses which apply to every lease agreement. These clauses lay the foundation for the agreement. This part of the document does not require anything to be added (other than signatures, of course).

There are also some explanatory notes about the clauses in a separate Info Sheet.

The Schedules

All the details of the specific lease are set down in the Schedules. For example, Schedule 1, Item 4a describes the land, Schedule 2 describes the buildings and other improvements which will be leased, and Schedule 4 details the major assets and their condition at the start of the agreement. These must be filled out.

Check you have 3 documents downloaded:

1. **The Lease Agreement – standard clauses (PDF)** for you to print.
2. **The Schedules (4pgs - word document)** for you to fill out to complete the Agreement. The details for this section will have been worked out (and recorded) in the **Checklist** (Tool C) if you have used that.

Also

3. **The Information Sheet (9pgs - PDF)** giving explanatory notes on the standard clauses. This is for your information only - it does not need to be in the final document.

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PROPERTY LEASE AGREEMENT

LEASE OF REAL ESTATE made on the day set out in **Item 1** of **Schedule 1**

BETWEEN

The Lessor as stated in **Item 2** of **Schedule 1**.

and

The Lessee as stated in **Item 3** of **Schedule 1**.

The Guarantor as stated in **Item 3(a)** of **Schedule 1**.

RECITALS

A The Lessor is the legal owner of a freehold interest in land.

B The Lessee has agreed to lease the Land on the terms and conditions of this Lease.

THIS DEED NOW WITNESSETH as follows:

Interpretation

1 In this Lease unless a contrary intention appears:

- (a) **Land** means all of the land as described in **Item 4(a)** of **Schedule 1**;
- (b) **Property** means all of the Land as described in **Item 4(a)** of **Schedule 1** and water entitlements described in **Item 4(b)** of **Schedule 1** and the buildings, structures, fixtures, assets and improvements as described in **Schedule 2**;
- (c) **Purpose** means the use of the land as described in **Schedule 3**;
- (d) **Termination date** means the last day of the term as stated in **Item 7** of **Schedule 1**;
- (e) **Water Entitlement** means water entitlements, licences, authorities, and approvals relating to the Land current at the commencement date as described in **Item 4(b)** of **Schedule 1**.

Lease

2 The Lessor agrees to lease the Property to the Lessee on the terms and conditions of this Lease.

Commencement date

3 This Lease commences on the date stated in **Item 6** of **Schedule 1**.

The Term

4 This Lease will be in force for the term stated in **Item 7 of Schedule 1**.

Exclusions

5 The Property specifically does not include the land, buildings, structures, fixtures, assets and improvements specified in **Item 5 of Schedule 1**.

The Rental

6 The Lessee agrees to pay the Lessor the rental stated in **Item 10 of Schedule 1** to be paid at the times and in the manner specified at **Item 11 of Schedule 1**.

7 The rental will be reviewed and may be adjusted in the manner stated in **Item 12 of Schedule 1** at the times stated in **Item 13 of Schedule 1**.

Condition and maintenance of the Property

8 The condition of the Property will be recorded in **Schedule 4** prior to the commencement of this Lease.

9 Maintenance of the Property will be in accordance with the specifications contained in **Schedule 5**.

Insurance and Indemnity

10 The Lessee at the Lessee's sole cost and expense, will keep current and be responsible for at all times a policy of:

- (a) public risk insurance applicable to the Property for an amount not less than the amount stated in **Item 14 of Schedule 1**; and
- (b) other operational insurances

taken with a reputable insurer noting the Lessor's interest in the policies.

11 The Lessor will maintain insurance applicable to the Property and public risk insurance applicable to the Property for an amount not less than the amount stated in **Item 14 of Schedule 1** at all times during the term of the Lease.

12 Each party will present evidence of these insurances to the other party within 2 weeks of the commencement date.

Lessor's Obligations

13 The lessor will at all times during the term of the Lease and any extension of the Lease:

- (a) give the Lessee quiet possession and enjoyment of the Property without any interruption so long as the Lessee complies with the terms of this Lease;
- (b) pay rates to the local authority in respect of the Land if required to do so in **Item 8 of Schedule 1**;
- (c) pay water rates to the appropriate authority if required to do so in **Item 9 of Schedule 1**;
- (d) at its own expense, obtain the written consent from all mortgagees or debenture holders to enter into this Lease;
- (e) take out and keep current all Water Entitlements required for the Lessee to carry out the Purpose of the Lease;
- (f) permit the Lessee to use water from any dam located on the Land in their absolute discretion;
- (g) take out and maintain insurances in accordance with clause 11 of this Lease.

Lessee's Obligations

- 14 The Lessee will at all times during the term of the Lease and any extension of the Lease:
- (a) pay the rental as stated in **Item 10 of Schedule 1** in the manner laid down in **Item 11 of Schedule 1** or as amended under clause 7 of this Lease provided that in the event of damage by fire, lightning, flood or tempest rent will abate until the Property is restored;
 - (b) pay rates to the local authority in respect of the Land if required to do so in **Item 8 of Schedule 1**;
 - (c) pay water rates to the appropriate authority if required to do so in **Item 9 of Schedule 1**;
 - (d) only use the Property for the Purpose or Purposes described in **Schedule 3**.
 - (e) use the Land in a good and husband-like manner;
 - (f) carry out any cultivation and stocking of the Land in accordance with good farm management and animal welfare practices;
 - (g) maintain and leave the Property in good and tenantable repair (having regard to the condition at the commencement of this Lease) except for damage from flood, storm, tempest and reasonable wear and tear;
 - (h) maintain the Property in accordance with the specifications contained in **Schedule 5**;

- (i) comply with all laws relating to the use or occupation of the Property;
- (j) at the end of the Lease return the Property to the Lessor;
- (k) at or prior to the expiration of the Lease remove any fixtures installed by the Lessee;
- (l) promptly give notice to the Lessor of service by any authority of a notice or order affecting the Property;
- (m) not do anything or permit anything to be done on the Property which may become a nuisance or annoyance or cause damage or inconvenience to the Lessor or tenants or occupiers of neighbouring properties;
- (n) take out and maintain insurances in accordance with clause 10 of this Lease;
- (o) not do anything or permit anything to be done which may render any insurance void or voidable;
- (p) upon termination of this Lease deliver up to the Lessor all access keys and devices.

Guarantee

15 If the Lessee is a company, then in consideration of the Lessor entering into the lease at the request of the directors of the Lessee, the directors named in **Item 3(a)** of **Schedule 1:**

- (a) guarantee to the Lessor that the Lessee will punctually pay the rent and other money payable under the lease;
- (b) guarantee to the Lessor that the Lessee will perform its obligations; and
- (c) undertake to the Lessor that, with the Lessee, they will be liable separately and together to the Lessor for the payment of rent and other money and the performance of the Lessee's obligations.

Entry by the Lessor

16 The Lessor or its authorised agent may during the term at a reasonable time of the day upon giving the Lessee 2 days notice in writing (or at any time without notice in the case of an emergency) enter for the following reasons:

- (a) to view the state of repair of the Property;
- (b) to carry out repairs or agreed alterations;
- (c) to do anything necessary to comply with notices or orders of any authority,

provided that in exercising these rights the Lessor must use its best endeavours to minimise any disturbance to the Lessee in its occupation and use of the Property.

- 17 The Lessor may serve the Lessee a notice in writing specifying any defects and requiring the Lessee to effect repairs within a reasonable time.

Termination by Lessee

- 18 The Lessee may terminate this Lease immediately by notice in writing:
- (a) if the Lessor breaches any of the obligations in clause 13 of this Lease;
 - (b) any rights or entitlements attaching to or connected with the Land (for example, Water Entitlements) to which the Lessee is entitled to enjoy under the Lease are cancelled, revoked or withdrawn;
 - (c) upon the Lessor breaching any other condition of this Lease and failing to rectify such a breach within 30 days of receiving notice in writing from the Lessee of such breach.

Termination by Lessor

- 19 The Lessor may terminate this Lease and re-enter the Property if:
- (a) the rental is unpaid;
 - (b) the Lessee fails to meet its obligations under this Lease;
 - (c) the Lessee is wound up or has an administrator, receiver or manager appointed to it or is placed under official management;

provided that the Lessor has first served a notice on the Lessee specifying the nature of the breach and if the breach is capable of remedy requiring the Lessee to remedy the breach and/or make compensation in money for the breach and the Lessee has failed to make good the breach within 30 days of receipt of the notice.

Renewal of this Lease

- 20 Renewal of this Lease will be in accordance with the procedure outlined in **Item 15 of Schedule 1**.
- 21 Unless the parties agree otherwise, the new Lease will be subject to the same terms and conditions, including any variations made during the term of this Lease, as are contained in this Lease except:
- (a) the commencement date will be the day after the Termination Date under this Lease and the termination date will be the last day of the further term;

- (b) the rental will be as determined by the parties.

Consequences of breach

- 22 Should this Lease be terminated under clause 18 or 19 prior to the expiry of the term and the Lessor retake possession of the Property, then without limitation to any other remedy the Lessee may have under this Lease or at law, the consequences outlined in **Schedule 6** will apply.

Improvements

- 23 Improvements and any capital works carried out during the term of the Lease by either the Lessor or the Lessee, the ownership of these improvements, their removal at the end of the Term and any compensation to be paid for the making of these improvements will be in accordance with a separate written agreement between the parties.

Dispute Resolution

- 24 The Lessor and the Lessee agree that the following steps will take place in the event of a dispute arising during the term of this Agreement:
- (a) The Lessor and the Lessee will meet at a mutually convenient time and make a genuine attempt to resolve the dispute informally and quickly. If the dispute cannot be resolved after this meeting the parties agree that they will submit to a mediation to be conducted by a mutually acceptable mediator.
 - (b) If the parties cannot agree on the mediator the parties agree to submit to mediation by a mediator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 16 of Schedule 1**.
 - (c) If the dispute cannot be settled by agreement or mediation within 21 days of the dispute arising, the parties agree to submit to arbitration by an arbitrator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 16 of Schedule 1**.
 - (d) The parties agree to bear their own costs and that the cost of any mediation or arbitration will be shared equally between them.
 - (e) The parties agree that they will continue to perform their obligations under this Agreement while the dispute is being resolved.

- (f) Nothing in this clause prevents either party from exercising their legal rights to take action to enforce payment or seek urgent court relief to prevent detrimental action by either party.

OR – NSW only

The Lessor or the Lessee may make an application to the NSW Civil and Administrative Tribunal for a determination of any dispute not later than 3 months after the relevant dispute arises or the end of the tenancy

Assignment

- 25 The Lessee will not assign any rights, privileges or benefits under this Lease without the prior written consent of the Lessor which may be withheld by the Lessor at its absolute discretion.

OR - Queensland only

The Lessee will not assign any rights, privileges or benefits under this Lease without the prior written consent of the Lessor which will not be unreasonably withheld.

Additional terms and conditions

- 26 The parties agree that the additional terms and conditions contained in **Schedule 7** form a part of this Lease.

Costs of the preparation of this Lease

- 27 Each party will bear their own costs of and incidental to this Lease.
- 28 The party specified in **Item 17 of Schedule 1** will pay any stamp duty in relation to this Lease.
- 29 The party specified in **Item 17 of Schedule 1** will pay any registration fee in relation to the registration of this lease.

Whole Agreement

- 30 This Lease contains the whole agreement between the parties and supersedes all prior representations, warranties, arrangements, understandings and agreements between them relating to the subject matter of this Lease.

Variation

- 31 No variation, modification or waiver of any provision of this Lease nor consent to any departure by any party therefrom will in any event be of any force unless it is confirmed

in writing and signed by the parties and will only be effective to the extent for which it has been made or given.

GST

- 32 The following provisions apply with respect to GST:
- (a) expressions used in this clause have the same meanings as when used in the GST Act;
 - (b) amounts payable and consideration provided under or in respect of this Lease (other than in sub-clause (c)) are GST exclusive;
 - (c) the recipient of a taxable supply made under or in respect of this Lease must in addition pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply;
 - (d) a party is not obliged, under sub-clause (c), to pay the GST on a taxable supply to it under this Lease until given a valid tax invoice for the supply.

Severability

- 33 Every provision or part of this Lease will be deemed to be severable as far as is possible from any other provision or part thereof and should any provision or part thereof be void or unenforceable for any reason the same will be deemed to be omitted therefrom and this Lease with such provision or part omitted will otherwise remain in full force and effect so far as is possible.

Applicable Law

- 34 This Lease will be construed in accordance with the laws of the state specified in **Item 16 of Schedule 1** and the parties submit to the jurisdiction of the appropriate courts of that state in respect of any matter or thing relating to this Lease.

Notices

- 35 Any notice required to be served under this Lease will be sufficiently served on a party in one of the following ways:
- (a) if left addressed to the party at the address stated in **Item 2, 3 or 3(a)** of **Schedule 1** for that party or such other address as may be notified to the sender by the recipient from time to time or forwarded to the recipient by post at such address;

- (b) by faxing to the party at the number shown at in **Item 2, 3 or 3(a) of Schedule 1**;
- (c) by email to the party at the email address shown at in **Item 2, 3 or 3(a) of Schedule 1**,

A notice sent by post is deemed to be given at the time when in a normal course of the post it would be delivered at the address to which it is sent.

General

36 In this Lease, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words importing one gender include other genders;
- (c) a reference to a document or instrument, including this Lease, includes that document or instrument as novated, altered or replaced from time to time;
- (d) a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- (e) a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- (f) other grammatical forms of defined words or expressions have corresponding meanings;
- (g) a covenant, undertaking, representation, warranty, indemnity or agreement made or given by two or more parties or a party comprised of two or more persons, is made or given and binds those parties or persons jointly and severally;
- (h) a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- (i) a recital, schedule, annexure or description of the parties forms part of this Lease;
- (j) if an act must be done on a specified day that is not a business day, the act must be done instead on the next business day;
- (k) if an act required to be done under this Lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- (l) all monetary amounts are in Australian dollars;
- (m) a party that is a trustee is bound both personally and in its capacity as trustee of the trust for which it is acting as trustee;
- (n) a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and

- (o) headings are for convenience only and do not affect the interpretation of this Lease.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED

SIGNED for and on behalf of the Lessor

.....

(full name)

.....

in the presence of:

.....

(Signature of Witness

.....

(Name of Witness)

.....

Affix company seal if applicable

SIGNED for and on behalf of the Lessee

.....

(full name)

.....

in the presence of:

.....

(Signature of Witness)

.....

(Name of Witness)

.....

Affix company seal if applicable

SIGNED for and on behalf of the Guarantor

.....

(full name)

.....

in the presence of:

.....

(Signature of Witness)

.....

(Name of Witness)

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