

Equipment Lease Checklist

A checklist of the most common issues that arise in a lease agreement is provided below. A careful review of the checklist can assist you in reviewing the issues that will be important when you negotiate an equipment lease.

- ☐ **Term and rent.** What is the initial term of the lease, and what is the rent? How and when must rent be paid?
- ☐ **Claims against supplier.** Does the lessee have the right to proceed directly against a supplier on warranties, refunds, price adjustments and other claims? Does the lessee have the right to retain any settlement?
- ☐ **Transfers.** Does the lease restrict the lessor's right to transfer an interest in the leased equipment?
- ☐ **Representations and indemnities.** Are any special representations required to satisfy regulatory requirements? Is the lessee required to assume property taxes, license fees, public liability? To what extent is the lessee obligated to indemnify other parties against various other risks and expenses?
- ☐ **Claims.** Can the lessee sue and take other action in the name of the lessor to assert claims against third parties? Is the lessee's right to settlements that compensate for losses protected?
- ☐ **Renewal options.** Does the lease provide for renewal? If so, for what term and at what rent? Keep in mind that renewal options may affect the tax treatment of the transaction.
- ☐ **Subleasing.** May the lessee sublease the equipment? Under what conditions?
- ☐ **Maintenance.** Who is obligated to maintain the equipment? The lessee should not accept a requirement that he provide a higher degree of maintenance than would be the case if he owned the property.
- ☐ **Improvements and modifications.** Does the lessee have the right to make improvements or modifications to the equipment so that it better suits individual needs? Who is responsible for modifications required by regulatory agencies such as the EPA or OSHA?
- ☐ **Stipulated losses.** What are the specified amounts that the lessee would owe in the event the equipment was lost, stolen, or destroyed by casualty? Are these charges in lieu of or in addition to the value of the lost equipment? Often, stipulated losses are based upon a formula incorporating rental payments for the balance of the lease term and the value of the lost tax advantages to the lessor. If the lessor has the right to sell the lease to investors seeking tax-sheltering advantages, the stipulated losses, sometimes stated in terms of making the lessors whole, may be figured with respect to their lost tax advantages rather than those of the original lessor.
- ☐ **Insurance.** Who is responsible for insuring the equipment? Who is entitled to what part of any insurance settlement if the equipment is lost, stolen or damaged?
- ☐ **Amendments.** Does the lease provide for amendments in case of changed circumstances or conditions? This is especially important in long-term leases, when the value of the equipment to the lessee may suddenly decline.
- ☐ **Purchase option.** Does the lessee have the right to purchase the leased equipment? What is the option price and how and when may it be exercised? Keep in mind that purchase options may affect the tax treatment of the transaction.

- **Termination.** Under what circumstances may the lease be prematurely terminated? Does destruction or loss of equipment terminate the agreement? Are any payments required because of premature termination? Does the lease provide for termination under certain circumstances or conditions, such as legal restrictions that make continued use of the equipment illegal or uneconomical?
- **Termination costs.** Who is responsible for costs associated with returning equipment to the lessor at the end of the lease term? Dismantling, packing, shipping, insurance and related costs can be substantial.
- **Master leases.** Does the lease require individual contract negotiations if the lessee wants to add another piece of equipment, or may the lessee make a simple addition to the regular contract describing the new equipment, the rate and the period of the new lease? The latter can yield substantial savings where an ongoing relationship is contemplated.