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**FOOD AND DRINK USER CLAUSES**

1. Introduction
   1. This precedent includes the additional clauses that may be required where the Permitted Use of the premises will be for any use involving the sale of food and drink such as a sandwich shop, restaurant, pub, takeaway or equivalent uses. These clauses are intended to be used alongside the retail lease. They should be altered to reflect any requirements that are specific to the property, parties and terms of the transaction.
   2. This precedent refers to A1(d), A3, A4 or A5 use under the Town and Country Planning (Use Classes) Order 1987 as in force on 31 August 2020. Although changes to the Use Classes Order were made on 1 September 2020, these changes are subject to a legal challenge in the Court of Appeal. Optional wording to use the new classes is included but you will need to consider whether it is appropriate to refer to them whilst the legal challenge is continuing.
   3. If you are drafting a lease for a property in Wales you should refer only to A1(d) or A3 use. The 2005 changes to the Town and Country Planning (Use Classes) Order 1987 that split A3 use into three separate categories and the further changes made on 1 September 2020 do not apply in Wales.
2. Incorporation into the lease
   1. Change the definition of “Permitted Use” in clause 1.1 of the lease to the following:

**“Permitted Use”**

the use of the Premises as a [sandwich shop within class A1(d)][restaurant within Class A3] [[wine bar][licensed public house][off-licence] within Class A4][hot-food takeaway within Class A5] of the Schedule to the Town and Country Planning (Use Classes) Order 1987 [or such other use within Class [A(1)(d)][A3][A4][A5][A3 or A4] as the Landlord may approve];[[1]](#footnote-2)

**OR**

the use of the Premises as a [[sandwich shop within Class E(a)][restaurant within Class E(b)] of Part A of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987] [[wine bar][licensed public house][off-licence]][hot-food takeaway for the sale of [DESCRIPTION]] [or such other use for the sale of [[hot] [or] [cold] food] [and] [alcohol] for consumption [[on] [or] [off]] the Premises as the Landlord may approve];[[2]](#footnote-3)]

* 1. Add the following definitions to clause 1.1 of the lease:

**[“Fast-Food Restaurant”**

premises where customers order, pay for and collect hot or cold meals and drinks from a counter service whether or not the meals and drinks are to be consumed on or off the premises;][[3]](#footnote-4)

**[“Kitchen Extract Duct”**

the kitchen extract duct [in the riser] shown [edged][coloured] [COLOUR] on the Plans;]

**[“Kitchen Extract Fan”**

the fan and associated attenuator at the outlet of the Kitchen Extract Duct that Tenant has a right to install on the Plant Area;]

**“Licensing Authorities”**

the person, body or authority competent to grant the relevant Trade Licences;

**“Premises Licence”**

any licence required under the Licensing Act 2003 for the use of the Premises for the Permitted Use;

**[“Seating Area”**[[4]](#footnote-5)

the area shown edged [COLOUR] on [the Plan][Plan number [NUMBER]] subject to any variation to this area that the Landlord may make from time to time in accordance with paragraph **1.6** of Part 3 of Schedule 1;]

**[“Seating Area Regulations”**

the regulations relating to the use and conduct of the Seating Area [**in paragraph 2 of Part 3 of Schedule 1**][published by the Landlord as part of any [Building][Centre][Estate] regulations];]

**“Trade Licences”**

any licences, certificates, permits, undertakings, notifications or other consents or permissions required under any Act relating to the Permitted Use including the Premises Licence, [licences for the use of the Seating Area,] [and licences for the use of amusement machines] whether or not any of them are in force or required at the date of this Lease;

* 1. Where you are referring to the pre 1 September 2020 version of the Use Classes Order for premises in England, ensure that the interpretation provisions in the lease relating to Acts of Parliament say that references to:

an Act are to that Act as amended from time to time and to any Act that replaces it but references to the Town and Country Planning (Use Classes) Order 1987 are to that Order as in force at 31 August 2020;

* 1. Add the following clause to clause 4.14 (User) of the lease and include the schedule to this precedent as a new schedule to the lease:

The Landlord and the Tenant must comply with their obligations in Schedule [NUMBER].

* 1. Where there is an restaurant or pub / wine bar use, you will need to delete the prohibition on the sale of food and alcohol in clause 4.14.3. Where there is a restaurant use, pub or wine bar use, the landlord may still want to restrict off-licence sales.
  2. Where the tenant wants to install gaming machines, delete the words “as an amusement arcade or in connection with gambling” in clause 4.14.1 and include the wording in paragraph **1.3 of Part 1 of Schedule 1**.
  3. If the tenant has to install an extraction duct and fan to remove cooking smells, paragraph 5 (roof space) in Part 1 of Schedule 1 (Rights granted and reserved) will need to be amended to refer to the installation of the Kitchen Extract Duct and Kitchen Extract Fan so that the tenant has the right to install these items.
  4. In Schedule 2 (Rent Review) to the lease amend the definition of “Assumptions” in paragraph 1 to add the following assumption:

“that the willing tenant has the benefit of all Trade Licences that are required for the Permitted Use and that they will remain in force throughout the term of the Hypothetical Lease for the benefit of the willing tenant and its successors in title;”



Additional User Provisions

* 1. : User provisions
     1. **Restrictions on use**

*You may need to include the following as a prohibited use under the lease where the landlord does not want the premises to be used for the sale of food for consumption off the premises:*

* + - 1. The Tenant must not use the Premises for any use involving the sale of hot or cold food for consumption off the Premises [except where ancillary to a high quality non Fast-Food Restaurant].

*A variation to this clause that prohibits fast food restaurants but which allows coffee shops or sandwich bars:*

* + - 1. The Tenant must not use the Premises as a Fast-Food Restaurant other than as a sandwich bar or coffee shop fitted out to a high quality of presentation.

*Where the Landlord wants to restrict use to high-class restaurants, the wording to use is:*

* + - 1. The Tenant must not use the Premises otherwise than as a restaurant that has a quality of food, service, ambience and fit-out that creates a high-class restaurant that, in any event:
         1. does not allow the sale of food and drink for consumption off the Premises;
         2. only serves customers seated at tables; and
         3. discourages table of more than [10] diners unless accommodated in a private dining room separate from the main restaurant.

*Where the Tenant wants to install gaming machines, a relaxation on the use of the Premises for gambling will be required. Include the following wording to achieve this:*

* + - 1. The Tenant must not use the Premises for any gambling or betting transaction within the meaning of the Gambling Act 2005 other than in connection with the use of not more than [three] licensed amusement or gaming machines.”
      2. The Tenant must not use the Premises for sale of alcohol for consumption off the Premises [other than in any Seating Area].
      3. The Tenant must not place any tables, chairs or other furniture or equipment on the pavements, malls or other areas outside the Premises or allow customers to take drinks or food onto those areas[, in each case other than the Seating Area].
      4. The Tenant must not allow odours from the business carried on at the Premises to enter any [other parts of the [Building/Centre/Estate] or any] adjoining premises.
      5. The Tenant must not solicit for customers outside the Premises.
      6. The Tenant must not allow staff or customers to smoke [or to use electronic cigarettes] on the Premises [or in any Seating Area].[[5]](#footnote-6)
      7. The Tenant must take reasonable steps to prevent drunkenness and rowdy behaviour on the Premises.
    1. **Additional obligations**
       1. The Tenant must:
          1. keep food or waste food or the remains of meats in secure and hygienic containers or compartments so that no rats, pests or vermin are attracted to the [Premises][Building/Centre/Estate] or any adjoining premises; and
          2. take reasonable steps to prevent rats, pests or other vermin from entering into the drains within the [Premises][Building/Centre/Estate] or any adjoining premises.
       2. The Tenant must store all waste cooking oil in securely fastened and clearly labelled containers within the Premises and must arrange for it to be removed from the Premises on a regular basis.
       3. The Tenant must arrange for the collection of all litter (including food wrappings, remains of meals or other food and glasses, crockery and eating materials) left outside and in the vicinity of the Premises by customers of the business carried on at the Premises.
       4. [The Tenant must display at all times outside the Premises an up-to-date menu and price list in a form suitable for display outside a high class restaurant and keep the menu lit and in a position easily viewable by persons passing the Premises.]
       5. [The Tenant must not make substantial changes to the form of menu attached to this Lease without the consent of the Landlord and must keep the full range of items on that menu offered for sale at all times.]
       6. The Tenant must install grease traps of a size, quality and number that are appropriate to the Premises so that all wet refuse can be disposed of through the Conducting Media serving the Premises without grease and oil entering them.
       7. The Tenant must keep the Kitchen Extract Duct, the Kitchen Extract Fan and any grease traps in good and substantial repair and condition and properly maintained and cleaned and, where relevant, emptied using such specialist contractors charging reasonable commercial rates as the Landlord may from time to time specify. The Landlord may, at its option, carry out the maintenance, repair, cleaning and, where relevant, emptying of the Kitchen Extract Duct and the Kitchen Extract Fan and grease traps as is required by the Landlord or its insurers at the cost of the Tenant.
       8. The Tenant must pay the costs incurred by the Landlord in carrying out any periodic inspection of the Kitchen Extract Duct, Kitchen Extract Fan and any grease traps installed pursuant to paragraph **2.1** that is required by the Landlord or its insurers.
       9. [The Tenant must pay to the Landlord the increased costs (or, if those increased costs relate to the Premises and other Lettable Units used for catering purposes, a fair proportion as determined by the Landlord) of:
          1. collecting and disposing of a higher quantity or particular type of refuse from the Premises;
          2. collecting and disposing of refuse in the Common Parts that has been left there by customers of the Tenant; and
          3. cleaning the Common Parts adjacent to the Premises [and any Seating Area] resulting from the spillage of food or drinks purchased on the Premises.]
  1. : Trade licences
     1. **Maintenance of Trade Licences**
        1. The Tenant must ensure that all Trade Licences required for the Permitted Use remain in force during the Term in the name of the Tenant or, where a Trade Licence has to be held by an individual, in the name of the Tenant’s nominee.
        2. The Tenant must apply for and take reasonable steps to obtain renewals of the Trade Licences and pay any fees required for their renewal.
        3. The Tenant must comply with all undertakings given to the Licensing Authorities in respect of the Premises and must comply with all conditions lawfully contained in the Trade Licences.
        4. Where required, the Tenant must obtain the consent of the Licensing Authorities to any alterations or improvements to the Premises.
        5. The Tenant must give notice of and provide copies to the Landlord as soon as reasonably practicable of any:
           1. undertakings given and conditions agreed in respect of the Premises or the Trade Licences;
           2. notices that may have an effect on the Trade Licences; and
           3. complaints or warnings received by the Tenant in respect of the Premises or the Permitted Use whether from the police, the Licensing Authorities or any other person or body.
        6. The Tenant must not do or omit to do anything on the Premises that would have an adverse effect on the Trade Licences, their renewal or the use of the Premises for the Permitted Use.
        7. The Tenant must ensure that all persons named as licensees on the Trade Licences (including any individual specified on the Premises Licence as the designated premises supervisor) comply with the provisions of Part 2 of this Schedule.
     2. **Variations to Trade Licences**
        1. Subject to paragraph **2.2**, the Tenant must not without the Landlord’s consent:
           1. apply to the Licensing Authorities for the grant, variation, or renewal of a Trade Licence or the insertion of any conditions in any Trade Licences; or
           2. give any undertakings or assurances or agree to the addition of conditions in connection with the grant, variation or renewal of any Trade Licences.
        2. Consent will not be required under paragraph **2.1** for the variation of a Premises Licence where the variation is required solely to substitute a new designated premises supervisor in the Premises Licence in place of an existing designated premises supervisor.
     3. **Transfer of Trade Licences**
        1. The Tenant must not, without the Landlord’s consent, transfer or surrender or attempt or agree to transfer or surrender any Trade Licences, allow them to lapse or attempt to remove them to other premises.
        2. At the end of the Term the Tenant must do everything reasonably required by the Landlord (including attending any hearing or meeting of the Licensing Authorities) to:
           1. transfer any of the Trade Licences to the Landlord or its nominee; or
           2. obtain for the next occupier of the Premises any order or other authority to enable them to carry out the Permitted Use from the Premises as soon as reasonably possible.
        3. The Landlord or its nominee (or the next occupier of the Premises or its nominee) may at the Tenant’s cost:
           1. do all things necessary to renew or transfer the Trade Licences if the Tenant breaches paragraph **3.2**; or
           2. appeal against any refusal by the Licensing Authorities to renew or transfer the Trade Licences.
  2. : Seating Area
     1. **Seating area**
        1. The Tenant may use the Seating Area for the use of customers of the [restaurant and café within the] Premises as an additional dining area for the consumption only of food and beverages purchased by customers of that [restaurant and café].
        2. The Tenant must keep [a minimum of [NUMBER] chairs and [NUMBER] tables] and no more than [NUMBER] chairs and [NUMBER] tables in the Seating Area.
        3. The Tenant must comply with the Seating Area Regulations.
        4. In the case of persistent and material breach of the Seating Area Regulations, the Landlord may suspend the right to use the Seating Area by notice in writing to the Tenant for such period of time as the Landlord in its absolute discretion considers appropriate.
        5. The Landlord and all those authorised by it may have access to the Seating Area at all times, but will do so in a reasonable manner having regard to the use of the Seating Area.
        6. The Landlord may, by notice in writing to the Tenant, vary the location of the Seating Area subject to the extent of the Seating Area not being materially reduced and the location of the Seating Area not being materially less convenient for the Tenant’s use the Premises.
     2. **Seating Area Regulations**

*Note that these regulations will need to be discussed with the Landlord and tailored to the location of the Seating Area and its proposed use. If any tenant’s handbook produced by the Landlord contains regulations relating to the use of seating areas, you do not need to include regulations here.*

* + - 1. The Tenant must not place anything on the Seating Area other than [umbrellas,] tables and chairs [and portable heating apparatus] of appropriate make and quality [that have first been approved in writing by the Landlord] and must promptly replace any that are broken or that are dangerous to use.
      2. The Tenant must:
         1. keep the Seating Area clean and tidy at all times;
         2. maintain all the tables and chairs in a clean and tidy condition;
         3. ensure that all tables are cleared as soon as possible after customers have vacated;
         4. promptly clean any spillage of food or drink; and
         5. clear any litter deposited by customers of the Tenant on or nearby the Seating Area.
      3. The Tenant must reimburse the cost on written demand of repairing any damage to the Seating Area or the Landlord’s property arising out of the use of the Seating Area.
      4. In the course of using the Seating Area, the Tenant must not do anything that is or becomes a nuisance to the Landlord or any tenants or occupiers of any adjoining property.
      5. The Tenant must maintain adequate insurance in respect of public or third party liability in connection with the use of the Seating Area.
      6. [The Tenant must remove from the Seating Area and store the [umbrellas,] tables, chairs [and heating apparatus] during such periods when the Premises are not open for trade.]
      7. The Tenant must comply with all requirements of the Landlord’s insurers relating to the use of the Seating Area.
      8. The Tenant must not use the Seating Area without having first obtained any necessary Trade Licences required for its use.
      9. The Tenant must pay all rates that may be payable in connection with the use of the Seating Area or, if such rates are demanded from the Landlord, indemnify the Landlord against such rates.
      10. The Tenant must comply with any additional regulations that the Landlord imposes in respect of the proper use and operation of the Seating Area.

1. This option must be used for premises in Wales and may be used in England where you want to refer to the pre 1 September 2020 version of the Town and Country Planning (Use Classes) Order 1987. In Wales all uses involving the sale of hot food or alcohol for consumption on or off the premises are Class A3 use within the Schedule to the Town and Country Planning (Use Classes) Order 1987. [↑](#footnote-ref-2)
2. From 1 September 2020 all hot-food takeaway uses and licenced premises uses are sui generis and are no longer within the use classes permitted under the Town and Country Planning (Use Classes) Order 1987. [↑](#footnote-ref-3)
3. Take instructions on whether use as a fast food restaurant will or will not be permitted and, if use as a fast food restaurant is to be prohibited, that this definition is sufficient to prevent the type of restaurant use that the Landlord wants to prohibit. [↑](#footnote-ref-4)
4. For use where the Tenant will be granted a right to use an area outside the Premises for seating customers. Note, if rights to use a seating area are included in the Lease, a cross-reference to the clause granting those rights must be included in clause LR11.1 of the Land Registry Prescribed Lease clauses. [↑](#footnote-ref-5)
5. Although the general law prohibits smoking in enclosed spaces, the Landlord may want to prohibit the use of external smoking areas. Electronic cigarettes are not covered by the restrictions on smoking. [↑](#footnote-ref-6)