

THINKING ABOUT HEADS OF TERMS

SW LAND MATCH



When you are considering entering into a legal agreement, it is helpful to draw up Heads of Terms, in plain language, as this allows the parties to establish the key principles that the legal document will be based on. This can latterly be shared with the parties' professionals who will be preparing the agreement on your behalf.

Remember, you do not have to have everything agreed in the Heads of Terms as your advisor will be able to make recommendations as to what is appropriate for your situation.

Below is a list of points to consider:

1. The Vision

It can be very helpful to set out the vision for the parties' relationship and for the stewardship of the land in question.

2. Landowner

Include the name, address and contacts for the legal entity granting the agreement.

3. Landowner's Agent / Solicitor

Include the contacts for any advisor acting for the landowner.

4. Entrepreneur

Include the name, address and contacts for the legal entity taking the agreement.

5. Entrepreneur's Agent / Solicitor

Include the contacts for any advisor acting for the entrepreneur.

6. The Property

Describe the property, include the acreage, any buildings or accommodation and fixed equipment. Provide an address. It is also helpful to include a plan.

7. Type of Agreement

If you know the type of agreement you wish to enter into then do include it. Otherwise, your advisor will be able to help.

8. Agreed Objectives

Out of the vision, there could be some key objectives which will guide the parties. This could include, for example:

- The farming methodology
 - The environmental objectives
 - Any community or education goals
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9. Term	Consider the initial term being proposed.
10. Start Date	This could be "on signing" or could be a date in the future.
11. Permitted Use(s)	<p>This can be as specific or varied as the parties wish. This may also include non-farming activity. Some examples include:</p> <ul style="list-style-type: none">- The growing of organic vegetables, fruit and nuts- The farming of beef / dairy / sheep- The purposes of horticulture- Any agricultural activity permitted within the definition of agriculture as detailed with the Agriculture Act 1947- The growing of mushrooms, microgreens and vegetables and rearing of livestock.- The growing of crops in addition to the operation of a farm shop and associated café.
12. Rent/Licence Fee/Contractors Charges	Include any financial agreements which have been agreed. Naturally, how this is structured will depend on the agreement type and the intention of the parties.
13. Rent Review Dates	If applicable, consider how this will be detailed in the agreement. For example: "The rent will be capable of being reviewed 3 years after the Start Date and thereafter every three years"
14. Rent Review	<p>Detail the approach to reviewing the rent.</p> <p>Under a tenancy, this could be in line with "market rent" or as the parties agree between them.</p> <p>Market rent is defined as "the rent at which the holding might reasonably be expected to be let on the open market by a willing Tenant taking into account all relevant factors, including the terms of the tenancy, but not those which preclude a reduction in the rent during the tenancy"</p>
15. Deposit	If a deposit is payable, include the details. Whether a deposit is necessary, typically depends on the likely value of damage that could be done by the entrepreneur during the agreement term. Often, there is no deposit paid for agricultural agreements.

16. Assignment & Subletting

Consider whether the entrepreneur can sublet the property, or, assign their agreement. In the case of the former, the entrepreneur would share possession of the property and in the case of the latter the entrepreneur would transfer their agreement to another entrepreneur.

It is common for landowners to prevent either assignment or subletting as least without landowner's consent. In the case of subletting, any income derived could be required to be shared with the landowner.

17. Access & Rights of Way

Consider how the entrepreneur will access the property and any conditions that relate to this. This is helpful to show on a plan.

18. Maintenance & Repairs

Consider what responsibilities the parties will have for maintenance and repairs. This should cover:

- Buildings
- Access and other roads
- Yards
- Fences and gates
- Ditches
- Water supplies
- Electricity supplies
- Gas supplies
- Other infrastructure

Typically, there is also a provision that the entrepreneur is responsible for repairing damage done by them or someone acting on their behalf.

19. Alternations & Improvements

Is the entrepreneur permitted to make alternations or improvements without further agreement by the landowner?

This could be permitted "subject to landlord's consent which should not be unreasonably withheld".

Certain consents can be pre-agreed, for example, "the entrepreneur is permitted to erect three polytunnels".

Consider what happens if planning consent is required.

20. Insurance

Note the responsibilities for insurance. Generally, the parties will agree who is responsible for insuring the buildings, infrastructure and any equipment. Additionally, there is normally a requirement for public liability insurance and employers' liability insurance.

21. Break Clause

Detail any break clauses. These could be for the benefit of both parties or only one party and are normally subject to a notice period.

22. Utilities

It is helpful to document what utilities will be provided, by who and how charges will be dealt with.

23. Roles & Services

In the case of a share farming agreement, contract farming agreement or partnership, it is important to note what services / roles each party will contribute.

24. Reserved Rights by the Landowner

In a tenancy, it would be standard for the landowner to reserve certain rights such as:

- a. With reasonable notice, to allow the landowner, their agents, guests or contractors access to the property to view the holding or action their responsibilities.
- b. Access through the property if reasonably required.
- c. The right to lay or maintain across the Holding any pipes, drains, conduits, cables, wires or other conducting media as are reasonably required for the benefit of any other land or for the exercise of any of the rights reserved.

25. Management Requirements

Detail any specific management requirements, such as not to use chemicals, to become certified as organic, or, to cut hedges in a 5-year rotation. It is helpful to establish these requirements as early as possible.

26. Guarantors

In some cases, especially where the entrepreneur is an entity with a limited liability (such as a limited company) the landowner may require that a guarantor is listed in the agreement. This has the effect of making the guarantors legally liable for any unpaid rent or liabilities under the agreement.

27. Disputes

Consider how disputes will be addressed. The regular options include:

- At mediation
 - At arbitration
 - By an Independent Expert
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28. Subject to Contract & Without Prejudice

It is helpful to include that the Heads of Terms are “subject to contract and without prejudice” which means that the parties can freely negotiate by means of drafting the terms without committing themselves in law.

Please note, this is a guidance note and is intended to help parties prepare for entering into a legal agreement and should not be a substitute for proper professional advice.



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