

Principles of European Law on Lease of Movables

Chapter 2: Lease Period

Article 2:101 Start of Lease Period

- (1) *The lease period starts:*
 - (a) *at the time fixed by or determinable from the contract;*
 - (b) *if a period of time within which the lease period is to start is fixed by or determinable from the contract, at any time within that period determined by the lessor unless the circumstances of the case indicate that the lessee is to choose the time;*
 - (c) *in any other case, a reasonable time after the conclusion of the contract, at the request of either party.*
- (2) *The lease period starts at the time when the lessee takes delivery if this is earlier than the time that would follow from paragraph (1).*

Article 2:102 End of Lease Period

- (1) *A definite lease period ends at the time fixed by or determinable from the contract. A definite lease period cannot be terminated unilaterally beforehand by giving notice.*
- (2) *An indefinite lease period ends at the time specified in a notice of termination given by either party.*
- (3) *The time specified in a notice of termination must be such time as can be determined from the contract or if no such time can be determined, a reasonable time after the notice has reached the other party.*

Article 2:103 Tacit prolongation

- (1) *A lease period is prolonged for an indefinite period if*
 - (a) *the lessee, with the lessor's knowledge, has continued to use the goods after the expiry of the lease period;*
 - (b) *the use has continued for a period equal to what would be required for a notice of termination; and*
 - (c) *the circumstances are not inconsistent with the tacit consent of both parties to such prolongation.*
- (2) *Either party can prevent tacit prolongation by giving notice to the other before tacit prolongation takes effect. The notice needs only indicate that the party regards the lease period as having expired on the expiry date.*
- (3) *Where the lease period is prolonged under this article the contract for lease is also prolonged accordingly. The other terms of the contract are not changed by the prolongation.*
- (4) *Prolongation under this article does not increase or extend security rights provided by third parties.*

Chapter 3: Obligations of the lessor

Article 3:001: Overview of obligations of the lessor

The lessor must:

- (a) *deliver the goods;*
- (b) *ensure that the goods are available for the lessee's use during the lease period;*
- (c) *ensure that the goods conform to the contract in every way at the start of and during the lease period; and*
- (d) *take the goods in return at the end of the lease period.*

Section 1: Delivery and availability of the goods

Article 3:101: Delivery

- (1) *The obligation to deliver requires the lessor to ensure that the lessee can obtain physical control over the goods.*
- (2) *The time for delivery is at the start of the lease period.*
- (3) *The place for delivery is determined by Article 7:101 of the Principles of European Contract Law.*

Article 3:102: Availability of the goods during the lease period

The lessor's obligation to ensure that the goods are available during the lease period requires that the goods are available for the lessee's use and free from any right or claim of a third party that hinders, threatens to hinder or otherwise negatively affects the lessee's use of the goods.

Section 2: Conformity of the goods

Article 3:201: Conformity with the contract at the start of the lease period

- (1) *The lessor's obligation to ensure that the goods conform to the contract in every way at the start of the lease period requires that the goods must be of the quality, quantity and description required by the contract.*
- (2) *Except where the parties have agreed otherwise, the goods do not conform to the contract unless:*
 - (a) *they are fit for any particular purpose made known to the lessor at the time of the conclusion of the contract, except where the circumstances show that the lessee did not rely, or that it was unreasonable for the lessee to rely, on the lessor's skill and judgement;*
 - (b) *they possess the qualities which the lessor held out to the lessee as a sample or model;*
 - (c) *they are fit for the purposes for which goods of the same kind would ordinarily be used;*
 - (d) *they are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods; and*
 - (e) *they are accompanied by such accessories, installation instructions or other instructions as the lessee could reasonably expect to receive.*

Article 3:202: Statements by third parties

- (1) *The goods do not conform to the contract when they do not possess the qualities and performance capabilities held out in any relevant statement on the specific characteristics of the goods made about them by a person in earlier links of the business chain or by the producer.*
- (2) *However, the lessor is not bound by any statement if:*
 - (a) *the lessor was not, and could not reasonably have been expected to have been, aware of the statement;*
 - (b) *the statement had been corrected by the time of the conclusion of the contract, even if the lessee was not aware of the correction; or*
 - (c) *the lessee's decision to lease the goods could not have been influenced by the statement.*

Article 3:203: Conformity of the goods during the lease period.

- (1) *The lessor's obligation to ensure that the goods conform to the contract in every way during the lease period requires that the goods be kept in the condition required at the start of the lease period, cf. Article 2:101, including that they are fit for the purposes mentioned in Article 3:201(2)(a) and (c); normal wear and tear for the kind of goods excepted.*
- (2) *In so far as it is reasonable, taking into account the duration of the lease period, the purpose of the lease and the character of the goods, the lessor's obligations in paragraph (1) do not include measures that must ordinarily be expected to become necessary during the lease period in order to preserve the normal standard and functioning of the goods.*

Section 3: Taking the goods in return at the end of the lease period

Article 3:301: Obligation to take the goods in return

The obligation to take the goods in return at the end of the lease period includes performing all the acts which could reasonably be expected in order to enable the lessee to return the goods.

Chapter 4: Remedies of the lessee

Article 4:001: Overview of remedies

If the lessor fails to perform an obligation under the contract, the lessee is entitled, according to Chapter 8 and 9 of the Principles of European Contract Law and the provisions of this Chapter:

- (a) *to claim performance from the lessor;*
- (b) *to withhold own performance;*
- (c) *to terminate the contract;*
- (d) *to reduce the rent;*
- (e) *to claim damages and interest.*

Section 1: Remedies available

Article 4:101 Right to performance

- (1) *Notwithstanding Article 9:102(2)(d) of the Principles of European Contract Law, the lessee is entitled to specific performance, including the remedying of non-performance, even if the lessee may obtain performance from another source.*
- (2) *The lessor may choose how to remedy non-performance, unless the method chosen would, in comparison to other methods, cause unreasonable delay or significant inconvenience to the lessee.*

Article 4:102: Substitute transaction

Where the lessee has terminated the contract and has made a substitute transaction within reasonable time and in a reasonable manner, the lessee may recover the difference between the value of the terminated lease and the substitute transaction as well as any further loss recoverable. This provision applies in place of Article 9:506 of the Principles of European Contract Law.

Section 2: Preconditions of remedies

Article 4:201: Lessor to be given chance to cure

- (1) *The lessee is required to give the lessor an opportunity to remedy non-performance if:*
 - (a) *the lessor, promptly after being notified of the non-performance offers to remedy it; and*
 - (b) *the lessee has no reason to believe that the lessor will be unable to remedy it within reasonable time and without unreasonable inconvenience to the lessee.*
- (2) *This provision applies in place of Article 8:104 of the Principles of European Contract Law.*

Article 4:202: Notification of non-performance

- (1) *If the lessee does not give notification to the lessor of the non-performance within a reasonable time after the lessee has discovered or could not reasonably be unaware of it, the lessee loses the right to rely on the non-performance.*
- (2) *The lessee may lose the right to specific performance or the right to terminate the contract if the lessee fails to seek performance or does not give notice of termination according to Articles 9:102(3) and 9:303(2) of the Principles of European Contract Law.*

Article 4:203: Lessor's knowledge of non-performance

The lessor is not entitled to rely on the provisions of Articles 4:202 and 4:203 if the non-performance relates to facts which the lessor knew or could reasonably be expected to have known and which the lessor did not disclose to the lessee.

Chapter 5: Obligations of the lessee

Article 5:001 Overview of the obligations of the lessee

The lessee must:

- (a) pay the rent;*
- (b) take delivery of the goods;*
- (c) handle the goods in accordance with the contract; and*
- (d) return the goods at the end of the lease period.*

Section 1: Rent

Article 5:101: Obligation to pay rent

- (1) The lessee must pay the rent that is fixed by or determinable from the contract or from Article 5:102.*
- (2) The rent accrues from the start of the lease period.*

Article 5:102: Contracts without Fixed Rent

Where the contract does not fix the rent or the method of determining it, such rent shall apply as is generally paid for that particular kind of goods under similar circumstances, or, if no such rent can be found, a rent that is reasonable, depending on the particular circumstances in the case.

Article 5:103: Time and place for payment

- (1) Rent is payable:*
 - (a) at the end of each period for which the rent is agreed or,*
 - (b) if the rent is not agreed for certain periods, at the expiry of a definite lease period or,*
 - (c) if no definite lease period is agreed and the rent is not agreed for certain periods, at the end of reasonable intervals.*
- (2) The place of payment is determined by article 7:101 of the Principles of European Contract Law.*

Article 5:104: Formalities of payment

The lessee's obligation to pay the rent includes taking such steps and complying with such formalities as may be necessary to enable payment to be made.

Section 2: Taking delivery of the goods

Article 5:201: Taking delivery

The obligation to take delivery includes performing all the acts which could reasonably be expected of the lessee in order to enable the lessor to make delivery.

Section 3: Use and Care

Article 5:301: Handling the goods in accordance with the contract

The obligation to handle the goods in accordance with the contract requires the lessee:

- (a) *to observe in every way the requirements and restrictions that follow from the contract;*
- (b) *to handle the goods with the care that a reasonable lessee would exercise in the circumstances, taking into account the duration of the lease period, the purpose of the lease and the character of the goods; and*
- (c) *to perform all measures, in so far as it is reasonable, taking into account the duration of the lease period, the purpose of the lease and the character of the goods, that must ordinarily be expected to become necessary during the lease period in order to preserve the normal standard and functioning of the goods.*

Article 5:302: Intervention to avoid danger or damage to the goods

The lessee must perform maintenance and repairs that would ordinarily be carried out by the lessor, if the measures are necessary to avoid danger or damage to the goods, and it is impossible or impractical for the lessor, but not for the lessee, to have these measures taken. The lessee has a right against the lessor for indemnification or, as the case may be, reimbursement in respect of an obligation or expenditure (whether of money or other assets) in so far as reasonably incurred.

Article 5:303: Obligation to notify

- (1) *The lessee must notify the lessor of any damage or danger to the goods, and likewise of any right or claim of a third party, if these circumstances normally would give rise to need of action from the lessor.*
- (2) *Notification must be given within reasonable time after the lessee knew or could reasonably be expected to know about the circumstances and their character.*

Article 5:304: Repairs and inspections of the lessor

- (1) *The lessee must tolerate that the lessor performs repairs and other work on the goods that are necessary in order to preserve the goods, remove defects and prevent danger. This obligation does not preclude the lessee from reducing the rent in accordance with Chapter 9, Section 4 of the Principles of European Contract Law. If possible, the lessor must notify the lessee in good time.*
- (2) *The lessee must not without good reason object to other work than mentioned in paragraph (1) being performed on the goods.*
- (3) *The lessee must tolerate that the lessor inspects the goods for the purposes indicated in paragraph (1) and also that a future prospective lessee inspects the goods within a reasonable time before the period of lease expires.*

Section 4: Sublease

Article 5:401: Sublease

- (1) *Without the lessor's consent the lessee is not allowed to sublease the goods.*

- (2) *If a consent to sublease is withheld without good reason, the lessee can terminate the lease by giving notice of reasonable length.*
- (3) *In case of sublease, the lessee remains liable for the performance of the contract of lease.*

Section 5: Returning the goods

Article 5:501: Obligation to return the goods

- (1) *The obligation to return the goods requires the lessee to ensure that the lessor can obtain physical control of the goods at the end of the lease period.*
- (2) *The lessee must return the goods at the place where they were delivered.*