



## Suggested Contractual Clauses

The following suggested clauses deal with a variety of situations relating to capital allowances on commercial property. They are for information only and advice should be sought before use in any given transaction.

### 1. Elected plant for £2 clause Capital Allowances Act 2001

Capital Allowances Act 2001 Section 198 election

- 1.1. In this clause “Elected Plant” means machinery and/or plant (within the meaning of the Capital Allowances Act 2001) which constitutes fixtures and on which the Seller has claimed or will claim capital allowances and in respect of which it has to bring a disposal value into its tax computations by reason of this sale.
- 1.2. The Seller and Buyer agree that the part of the Purchase Price attributable to the Elected Plant is £2.
- 1.3. Within two years of completion at a time determined by the Seller and only if the Seller has made a claim for capital allowances in respect of the Elected Plant, the Seller and the Buyer will each hand the other a signed election under section 198 of the Capital Allowances Act 2001 in respect of the Elected Plant in a form as set out in Schedule [X] which will satisfy the provisions of section 201 of the Capital Allowances Act 2001.
- 1.4. The Seller and the Buyer each warrant that they will comply with their respective procedural obligations under Section 201 of the CAA 2001 in respect of the Section 198 Election.
- 1.5. The Seller warrants that the sum specified in Clause 1.2 and forming the joint election pursuant to section 198 of the CAA 2001 detailed in the form attached to this agreement is not greater than the amount of the capital expenditure which was treated for the purpose of the CAA 2001 as incurred by the Seller on the provision of the Elected Plant.
- 1.6. The Seller warrants that it will bring into account in the relevant accounting period a disposal value for the Elected Plant equal to the sum specified in Clause 1.2.

### 2. Election at tax written down value

- 2.1. In this clause “Elected Plant” means items of plant and equipment within the meaning of the Capital Allowances Act (“CAA”) 2001 at the Property which are fixtures.
- 2.2. The Seller and the Buyer agree that the part of the Price attributable to the Elected Plant will be the Tax Written Down Value (TWDV) of the plant and machinery claimed in respect of the fixtures within the property by the Seller.
- 2.3. Within eighteen months of Actual Completion, the Seller and the Buyer will each hand the other a signed election under section 198 of the CAA 2001 in respect of the Elected Plant (“the Section 198 Election”) in the form detailed in Schedule [X].
- 2.4. The Seller and the Buyer each warrant that they will comply with their respective procedural obligations under Section 201 of the CAA 2001 in respect of the Section 198 Election.
- 2.5. The Seller warrants that the sum specified in Clause 2.2 and forming the joint election pursuant to section 198 of the CAA 2001 detailed in the form attached to this agreement is not greater than the amount of the capital expenditure which was treated for the purpose of the CAA 2001 as incurred by the Seller on the provision of the Elected Plant.
- 2.6. The Seller warrants that it will bring into account in the relevant accounting period a disposal value for the Elected Plant equal to the sum specified in Clause 2.2.



## Suggested Contractual Clauses

### 3. S198 clause where amount not known at date of sale

Capital Allowances Act 2001 Section 198 election

- 3.1. In this clause “Elected Plant” means plant and/or machinery (within the meaning of the Capital Allowances Act 2001) which constitutes fixtures and on which the Seller has claimed capital allowances and in respect of which it has to bring a disposal value into its tax computations by reason of this sale.
- 3.2. The Seller and Buyer agree that the part of the Purchase Price attributable to the Elected Plant is £x which is the Tax Written Down Value (TWDV) of the Sellers claim for plant and machinery allowances.
- 3.3. Within two years of completion, the Seller and the Buyer will each hand the other a signed election under section 198 of the Capital Allowances Act 2001 in respect of the Elected Plant in a form as set out in **Schedule [X]** which will satisfy the provisions of section 201 of the Capital Allowances Act 2001. In event that the Seller cannot agree the value of plant and machinery with Her Majesty’s Revenue and Customs (HMRC) within the two year period from the date of completion, the Buyer shall be at liberty to submit a claim for plant and machinery allowances to a maximum value of the amount stated in clause 3.2.
- 3.4. In the event that HMRC subsequently query the Seller’s claim for plant and machinery in any respect, the Seller or their agents shall be solely responsible for responding to these queries and agreeing the final value of the claim. When the claim is finally agreed, the Seller shall send the Buyer a copy of the correspondence from HMRC detailing the final value of the claim. The final value of the claim shall then become the value attributable to elected plant as detailed in clause 3.2 such amount not to be less than TWDV.
- 3.5. For the avoidance of doubt, the Seller does not warrant that the plant and machinery allowances stated above will definitely be available to the Buyer and the Seller will not compensate the Buyer in the event that the capital allowances eventually agreed with HMRC fall below amounts currently claimed by the Seller.

### 4. Warranty of no claim

- 4.1. The Seller warrants that neither it nor any company connected with the seller has claimed capital allowances in respect of either the plant & machinery fixtures within the property or industrial buildings allowances and that neither it nor any company connected with it will do so now or in the future.
- 4.2. The Seller warrants that it has not entered into any CAA 2001 s198 agreement with any prior owners of the property and agrees that it will not do so now or in the future.

### 5. Warranty of no claim & provision of information

- 5.1. The Seller warrants that neither it nor any company connected with the seller has claimed or will claim capital allowances in respect of the plant & machinery fixtures within the property.
- 5.2. The Seller has entered into a Capital Allowances Act 2001 Section 198 Election with a prior owner of the property and agrees, at its own cost, to provide the Buyer with a copy of this election on completion.



## Suggested Contractual Clauses

### 6. Capital contribution clause

- 6.1. Subject to the provisions of this Clause, the Landlord shall pay to the Tenant the sum of *[insert amount]* as a contribution (“the Contribution”) towards the costs of the Tenant’s Works.
- 6.2. The Landlord shall be entitled in accordance with section 538 of the Capital Allowances Act 2001 to claim all capital allowances in respect of items of plant and machinery included in the Tenant’s Works up to a maximum amount of the value of the Contribution. For the avoidance of doubt, the Tenant shall be entitled to claim any additional capital allowances that may be available in excess of the amount of the Contribution claimable by the Landlord. The Landlord shall appoint its own capital allowances consultant to assess the items of the Tenant’s Works eligible for capital allowances. The Tenant shall, on written request, supply specifications for the Tenant’s Works and such other information as the Landlord may request, to the extent not already in the Landlord’s possession, to the Landlord or its capital allowances consultant in order to enable the Landlord to sufficiently identify the exact nature and cost of the Tenant’s Works.

### 7. CAA 2001 Section 183 provisions

- 7.1. The Landlord warrants that it has not claimed and will not claim capital allowances in respect of any plant or machinery at the property within the meaning of The Capital Allowances Act 2001 (CAA 2001).
- 7.2. On **completion**, the Landlord shall enter into an election with the Tenant in the format as set out in [Schedule X] and in accordance with the provisions of CAA 2001 Section 183. (“the Section 183 election”)
- 7.3. For the avoidance of doubt, the Landlord accepts that the Tenant will become the owner of the fixtures on so entering into the section 183 election.
- 7.4. The Landlord and Tenant undertake to submit the section 183 election to HM Revenue & Customs within two years from the date of **completion** in accordance with the timescales set out in CAA 2001 Section 183.

### 8. Provision of information by professional advisors

- 8.1. In conjunction with other members of the professional team, the [\*quantity surveyor/architect/M&E engineer/structural engineer/project manager] shall provide initial budgetary costs, actual final costs and other such details as reasonably requested by the Employer or its appointed capital allowances advisor.

\*Delete/amend as necessary