

CHECKLIST: FRANCHISE AGREEMENT

This checklist lists basic information required for a franchise agreement. It is not necessarily complete, as particular circumstances may require different/extra information. Some of the questions may require our advice for proper interpretation and response. If you would like us to draft or review a franchise agreement for you, please complete the checklist (so far as you can) and send it to us.

NB: Other information will be required from the franchisor, as outlined in the disclosure requirements of the Franchising Code of Conduct under the Trade Practices Act, 1974.

Franchisor

Franchisor's full name

Franchisor's ACN or ABN

Franchisor's registered office address

Franchisor's contact name

Franchisor's telephone no.

Franchisor's facsimile no.

Is the franchisor a sole director and sole secretary company? Yes / No

Is the franchisor the trustee of any trust? Yes / No

If yes, please provide the following in respect of each trust:

- (a) A copy of the trust deed.
- (b) Copies of all deeds amending the trust deed.
- (c) Copies of all deeds of retirement and appointment of trustee.

Franchisee

Franchisee's full name

Franchisee's ACN or ABN

Franchisee's registered office address

Franchisee's contact name

Franchisee's telephone no.

Franchisee's facsimile no.

Is the franchisee a sole director and sole secretary company? Yes / No

<p>Is the franchisee the trustee of any trust?</p> <p>If yes, please provide the following in respect of each trust:</p> <p>(a) A copy of the trust deed.</p> <p>(b) Copies of all deeds amending the trust deed.</p> <p>(c) Copies of all deeds of retirement and appointment of trustee.</p>	Yes / No
Intellectual property	
<p>What intellectual property rights exist in relation to the franchisor's products or services:</p> <ul style="list-style-type: none"> • Copyrights. • Designs. • Patents. • Trade marks. • Business names. • Others. 	
<p>Who owns each of those rights? Please provide copies of all registration certificates.</p>	
Franchisee's territory	
What is to be the franchisee's territory?	
Is the franchisor permitted to sell its products and services to customers in the territory?	
Is the franchisor permitted to appoint other franchisees in the territory?	
Is the franchisee to have the right of first refusal to other territories? If so, is it to be subject to any restrictions?	
Franchise term and options to renew	
Term	
Commencement date	
Termination date	
Options to renew	<p>No. of options:</p> <p>Length of further terms:</p>
Minimum notice required to exercise	

option to renew	
Maximum notice required to exercise option to renew	
Final termination date	
Sub-franchisees	
Is the franchisee to have the right to appoint sub-franchisees?	Yes / No
Specifications	
<p>What specifications of the following are to be met by the franchisee?</p> <ul style="list-style-type: none"> • Goods or services • Location • Lease – who is to hold it? • Fitout • Signage • Use of intellectual property • Uniforms • Equipment • Systems • Raw materials • Packaging • Delivery systems • Trading hours • Stationery, trading terms, etc. • Brochures, price lists, etc. • Performance standards • Others 	
What are to be the franchisor's rights to change the specifications?	
Licences	
What licences is the franchisee required to obtain and hold?	
Insurance	
<p>What insurances is the franchisor required to effect? E.g.:</p> <ul style="list-style-type: none"> • Public risk • Workers compensation 	<p>Minimum cover</p> <p>\$</p> <p>Yes – per legislation / No</p>

<ul style="list-style-type: none"> • Other 	
<p>What insurances is the franchisee required to effect? E.g.:</p> <ul style="list-style-type: none"> • Public risk • Workers compensation • Other 	<p>Minimum cover</p> <p>\$</p> <p>Yes – per legislation / No</p>
Prices	
<p>What prices are to be set for the franchisee's products and services? (E.g., agreed list prices or cost plus agreed margin.)</p>	
<p>Do the prices include or exclude taxes and export/import duties?</p>	
<p>How much notice of price rises is required?</p>	
Goods/services supplied by franchisor	
<p>What goods or services are to be supplied by the franchisor?</p>	
<p>Where are orders to be placed?</p>	
<p>What is to be the procedure (including time limits) for placing and acceptance/rejection of orders?</p>	
<p>By what method are orders to be placed and accepted?</p>	
<p>What right (if any) will the franchisor have to require variation of orders?</p>	
<p>What right (if any) will the franchisee have to vary orders after acceptance by the franchisor?</p>	
<p>What minimum orders are required to be placed by the franchisee? (Provide for each selling period, if appropriate.)</p>	
<p>What minimum frequency of orders is required of the franchisee?</p>	
<p>What forward estimates of its orders is the franchisee required to provide? At what frequency?</p>	
Delivery of goods/services by franchisor	
<p>What is the time allowed for delivery of orders?</p>	
<p>Where are the goods to be delivered or</p>	

<p>services supplied to the franchisee? E.g.:</p> <ul style="list-style-type: none"> • Ex factory. • To specified port or airport. • On board ship/aircraft. • Franchisor's premises. • Elsewhere. 	
Title and risk in goods supplied by franchisor	
When are title to and risk in goods to pass to the franchisee?	
Payment for goods/services supplied by franchisor	
<p>Who is to pay the cost of:</p> <ul style="list-style-type: none"> • Packaging. • Shipping. • Insurance. • Export/import/other licences. • Customs procedures. • Taxes and duties. • Storage. • Delivery. 	<p>Franchisee / Franchisor</p>
<p>What are the terms of payment for goods or services by the franchisor? E.g.:</p> <ul style="list-style-type: none"> • Full prepayment. • Deposit and balance. • Payment on or after delivery. • Place of payment. • Method of payment. • Letters of credit. 	
What is to be the consequence of delay in payment?	
Approved suppliers	
What goods/services are to be acquired by the franchisee only from approved suppliers?	
Please provide a list of approved suppliers.	

Marketing	
<p>What marketing activities (if any) are to be conducted by:</p> <ul style="list-style-type: none"> • By the franchisor • By the franchisor and the franchisee together? 	
<p>What marketing or marketing support is the franchisor to provide? E.g.:</p> <ul style="list-style-type: none"> • Advertising and promotion. • Brochures and other sales aids. • Support staff. • Periodic visits. • Financial contribution. 	
<p>What minimum standards (if any) are required of the franchisee with regard to:</p> <ul style="list-style-type: none"> • Sales staff. • Sales effort. • Advertising and promotion. • Representations at industry shows, etc. • Record-keeping. • Reporting to the franchisor. • Financial contribution to promotion. 	
<p>What advertising & promotion contribution is the franchisee to make? E.g.:</p> <ul style="list-style-type: none"> • Fixed periodical sum. • Percentage of revenue. 	
Training	
<p>What training is the franchisor to provide:</p> <ul style="list-style-type: none"> • Initially. • Subsequently. 	
<p>Where is the training to be undertaken and at whose cost?</p>	
<p>What other training is the franchisee</p>	

required to undertake:	
<ul style="list-style-type: none"> Initially. Subsequently. 	
Where is the training to be undertaken and at whose cost?	
Stock	
What minimum stock requirements (if any) must the franchisee maintain?	
What minimum stock requirements (if any) must the franchisor maintain?	
For how long must the franchisee maintain a stock of spare parts?	
Support	
What technical support services is the franchisor to provide?	
Warranties/limitation of liability	
What warranties is the franchisee to provide?	
What implied warranties (if any) are to be excluded?	
What restrictions (if any) are there to be on the franchisee's liability for its products or services?	
Complaints	
What complaint investigation and resolution systems are to be provided by the franchisor and the franchisee?	
What restrictions (if any) are there to be on the making of claims against the franchisee?	
Franchisee fees/royalty	
What is the initial franchise fee?	\$_____
Is part/all of it to be paid as a deposit?	No / Yes: Sum \$_____
Is the deposit to be refunded if the franchisee does not proceed?	No / Yes
Is the initial franchise fee also payable on renewal of the franchise?	No / Yes
What periodic franchise fee/royalty is payable during the term? E.g.:	
<ul style="list-style-type: none"> Fixed periodic sum. 	

<ul style="list-style-type: none"> Percentage of revenue. 	
What is to be the payment frequency and due dates?	
Is GST included or to be added to the franchise fees?	Included / To be added / N/A
What periodic reports are required from the franchisee?	
Guarantee of franchisee's obligations	
Guarantors' full names	
Guarantors' addresses	
Have you obtained or do you require financial references for the guarantors?	Obtained / (Not) required
Is the guarantee to be unlimited or limited?	Unlimited / Limited to (specify)
Termination	
How much notice is required to terminate the agreement after the end of the fixed term?	
How much time is either party to be allowed to remedy breaches of the agreement before the other party is able to terminate the agreement?	
<p>In case of termination of the agreement, what are the franchisor's and the franchisee's respective rights regarding:</p> <ul style="list-style-type: none"> The franchisee's stock of goods, raw materials, stationery, etc. Goodwill. 	
Other terms	
Please specify all representations that have been made by the franchisor/its agent <u>and/or</u> by the franchisee.	
Please specify all warranties that have been given by the franchisor/its agent <u>and/or</u> by the franchisee.	
Are there any other terms that have been agreed between the franchisor and the franchisee?	
Which state's laws are to govern the franchise agreement?	