

WHAT IS A MASTER FRANCHISE AGREEMENT?

The Master Franchise Agreement (MFA) is a type of franchise agreement that allows the Master Franchisee the right to own and operate more than one establishment (called unit), and the right to sub-franchise the right to open units to other independent businesses (called Franchisees), all during a specified time within a specific area.

There are three participants in this contract type: the Franchisor who owns the marks, the Know-How (Franchise Handbook) and the products; the Master Franchisee, which is going to develop the franchise business through searching for, selecting and controlling the franchisees; and the Franchisees, who are the people who manage the points of sale. It is also common, however, for the Master, to manage certain establishments, particularly the first one which is created.

This type of franchise agreement is often well suited for international development, as the Master Franchisee is often far more knowledgeable and connected in the culture and business of the designated territory. However, the Franchisor loses a substantial part of control over the system resulting from the transfer of responsibility and the enforcement of systems standards may be more difficult in this type of relationship. Accordingly selection of the Master Franchisee is a critical endeavour to the success of the relationship.

Below, we offer a checklist of clauses typically to be included in a Master Franchise Agreement.

INTRODUCTION/PREAMBLE

The purpose of an introduction/preamble is to provide information on core issues in such a way that it describes the key elements of the agreement and accurately reflects the intentions of the parties when entering into the agreement. As such the introduction/preamble can serve as the general context within the entire agreement is to be interpreted and thus as a reference tool in the event of disputes. It is recommended that the following key elements be included, at least:

- a description of the parties and their independence from each other;
- a description of the Franchise System and its history;
- the ownership of the Franchise System and the consequences of future Systems amendments for changes respected of whether such amendments and/or changes originate from the Franchisor or the Master Franchisee;
- documentation transmitted by the Franchisor to the Master Franchisee prior to the conclusion of the agreement; and
- the mutual objectives of the parties.

RIGHTS GRANTED

The mutual objective of the agreement will typically be to further develop the Franchise System in a specific geographical territory and to make this possible by the Franchisor granting the Master Franchisee the right to use the Franchise System, a trademark license and a license for the use of any other intellectual property rights and to grant franchises to sub-franchisees within the limits provided for in the agreement.



TERRITORY

The geographical territory assigned to the Master Franchisee should be clearly defined. The parties can opt for expansion or reduction of the territory dependent on the attainment of specific and clearly defined targets (either in terms of turnover or the number of sub-franchised units opened or a combination thereof).

EXCLUSIVITY

In general Master Franchisees will want to be granted exclusivity for the assigned territory in return for the investments they are to make for the development of the franchise business in that territory. If no limitations are made with regard to the exclusivity, this usually means that the Master Franchisee has the unconditional right to franchise the business in the assigned territory to the exclusion of any other third party including the Franchisor itself.

DEVELOPMENT SCHEDULE

MFAs will usually contain a development schedule in which the developments of the number of franchise units to be opened in the assigned territory are listed. It is in the interest of all parties involved to approach this subject in a realistic manner in order to keep potential conflicts to a minimum. The agreement should provide solutions for the situation where realistic minimum developments are not obtained (e.g. limiting the scope of the exclusivity granted for termination of the agreement).

FEES

MFAs typically cover two types of franchise fees to be paid by Master Franchisee to Franchisor. The first is the initial fee for the rights granted. The second is an ongoing Franchise Fee (often also referred to as a royalty or continuing fee) for the use of the Franchise System and ongoing support service of the Franchisor. An initial fee does not have to be a lump sum all paid up front. In many Franchise Systems the initial fee is divided into equal tranches, or small first payment and then pay per-Unit opened. The franchise fee is charge for the continuing use of the rights granted and support provided. It is quite common that the franchise fee is calculated in the form of a percentage of the revenues of the Master Franchisee. However, parties are free to agree on and use different methods to determine this fee. These may vary from payment of monthly fixed fees to variable fees (either on sliding scales or not) calculated on the basis of revenues, purchases or sales, etc.

AGREEMENTS WITH SUB-FRANCHISEES

In many cases the Master Franchisee is put under an obligation to use the standard Sub-Franchise Agreement of the franchisor and to ensure that it complies with local (mandatory) laws. Another option is that the Master Franchisee may have the right to draft a standard Sub-Franchise Agreement provided that this standard agreements contains a number of clauses that are considered as mandatory by the Franchisor.

ADVERTISING

Advertising is one of the vital factors that determine the success of a Franchise System. MFAs usually contain provisions on how to structure the advertising by specific standards on respective obligations/responsibilities, control and financing of advertising. MFAs typically provide that the Master Franchisee and the Sub-Franchisees must contribute to a

local advertising fund set up by the Master Franchisee, as well as a regional or global advertising fund administered by the Franchisor.

TERMINATION

Aside from a provision that makes the MFA will automatically terminate at the expiry of the agreed term (unless the conditions for a renewal, if agreed, have been met), termination by either party is to be provided for in the MFA. Early termination by the Franchisor in the event of a material breach by the Master Franchisee or automatic termination in the event of bankruptcy, insolvency, etc. of the Master Franchisee are usually included, though local bankruptcy may determine the effectiveness of termination.

APPLICABLE LAW AND DISPUTE RESOLUTION

The choice for the law applicable to an MFA will usually be the law of the country in which the Franchisor is domiciled. However, careful consideration must always be given first to a number of relevant factors in order to arrive at a well-motivated and useful choice.

International commercial arbitration will typically be the most appropriate solution when a dispute arises under an international MFA. Arbitration is generally less costly and time-consuming than litigation, offers a flexible and neutral forum, and process and allows the parties to choose an arbitrator with relevant subject-matter expertise.



To obtain the Master Franchise Agreement Template click here:



[MASTER FRANCHISE AGREEMENT](#)

INTERNATIONAL CONTRACTS TEMPLATES



INTERNATIONAL CONTRACTS IN ENGLISH

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Strategic Alliance Agreement
- International Franchise Contract
- International Services Contract
- International Consulting Contract
- International Technology Transfer Agreement
- International Trademark License Agreement
- International Supply Contract
- International Manufacturing Contract
- International Buying Agent Contract
- Logistics Services Contract
- Export Contract
- Confidentiality Agreement
- Expatriate Contract of Employment
- Memorandum Understanding International distribution
- Memorandum of Understanding for Joint Venture
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INTERNATIONAL CONTRACTS IN SPANISH

- Contrato de Compraventa Internacional
- Contrato de Distribución Internacional
- Contrato de Agencia Comercial Internacional
- Contrato de Representación Comercial Internacional
- Contrato de Intermediación Comercial Internacional
- Contrato de Joint Venture Internacional
- Contrato de Alianza Estratégica Internacional
- Contrato de Franquicia Internacional
- Contrato Internacional de Servicios
- Contrato Internacional de Consultoría
- Contrato Internacional de Transferencia de Tecnología
- Contrato Internacional de Licencia de Marca
- Contrato Internacional de Suministro
- Contrato Internacional de Fabricación
- Contrato de Agente de Compras Internacional
- Contrato de Servicios Logísticos
- Contrato de Exportación
- Contrato de Confidencialidad
- Contrato de Trabajo para Expatriado
- Memorándum Entendimiento Distribución Internacional
- Memorándum de Entendimiento para Joint Venture
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INTERNATIONAL CONTRACTS IN FRENCH

- Contrat de Vente Internationale
- Contrat de Distribution Internationale
- Contrat d'Agent Commercial International
- Contrat de Représentation Commerciale Internationale
- Contrat de Joint Venture Internationale
- Contrat de Franchise Internationale
- Contrat International de Services
- Contrat International d'Approvisionnement
- Contrat International de Fabrication
- Contrat de Confidentialité
- Protocole d'Accord pour Distribution Internationale
- Protocole d'Accord pour Joint Venture Internationale
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INTERNATIONAL CONTRACTS IN GERMAN

- Internationaler Kaufvertrag
- Internationaler Vertriebsvertrag
- Internationaler Handelsvertretervertrag
- Internationaler Vertretungsvertrag
- Internationaler Joint Venture Vertrag
- Internationaler Franchisevertrag
- Internationaler Dienstleistungsvertrag
- Internationaler Liefervertrag
- Internationaler Herstellungsvertrag
- Geheimhaltungsvereinbarung
- Absichserklärung Internationalen Vertriebsvertrag
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