

What is in a Franchise Agreement?



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While every franchise agreement is different and contains clauses which relate purely to the requirements of the particular franchise system. They do follow a certain pattern. Here is a summary of what you can expect to find in a franchise agreement:

1. **Grant** – under this clause the franchisee is granted the right to operate their business using the franchise system.
2. **Cooling off Period** – if the franchisor is a member of the Franchise Association of New Zealand Inc. it is required to have a clause in the franchise agreement which allows the franchisee to end the agreement within 7 days of entering into it and to receive a full refund of any amounts paid less specified expenses.
3. **Term** – a franchisee is only granted the right to use the franchise system for a limited period of time usually between 5 - 7 years. This period of time is called the "Term".
4. **Territory** – a franchise agreement may grant a franchisee the exclusive right to operate their business in a specified territory which means that the franchisor cannot grant anyone else the right to operate a franchise business in that territory. It is also common for a franchisee to have no rights of exclusivity or to be restricted from operating or marketing their business outside a certain area.
5. **Commencement obligations** – the agreement will usually spell out what the franchisee's obligations are in relation to the commencement of the business. This may include sourcing and fitting out the premises, training and marketing obligations. The franchisor will likely have obligations to assist the franchisee with these matters.
6. **Approved Suppliers** – to ensure consistency among all franchisees the agreement will usually provide that the franchisee is required to purchase supplies and products used in its business from the franchisor and/or suppliers which have been approved by the franchisor.
7. **Training** – a franchisee will be required to undergo initial training and on-going training provided by the franchisor.
8. **Fees** – a franchisee will be required to pay various fees under the agreement - there is usually an initial franchise fee, ongoing royalties and marketing fees, a renewal fee, a transfer fee and a requirement to reimburse the franchisor's legal fees in certain situations.
9. **Business records** – the franchisee will be required to keep certain business records and to allow the franchisor to inspect and audit these records from time to time. The franchisor may also have the right to audit the franchisee's records.
10. **Reporting requirements** – the franchisor will require certain information from the franchisee – including monthly profit and loss statements, annual accounts and other information as required from time to time.
11. **Marketing and advertising** – most franchise systems require their franchisees to contribute to a central marketing fund which is used by the franchisor to promote the franchise system as a whole. If the franchisee wants to do its own advertising it will usually be required to obtain the franchisor's prior written approval.
12. **Minimum performance criteria** – the franchisee may be required to meet certain performance criteria for instance: minimum sales targets etc.
13. **Confidential Information** – the franchise agreement will usually require the franchisee to agree that any information about the franchise agreement or the system is strictly confidential and

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Important: This information is provided as a guide only and is not intended to be legal advice. You are strongly recommended to consult the services of an experienced franchise lawyer if you are considering purchasing a franchise.

is not to be released without the franchisor's consent.

14. **Manual** – the franchise system should have a well written and comprehensive manual. This will contain all rules and guidelines which franchisees must follow. The agreement will require the franchisee to comply with the Manual.

15. **Intellectual property** – the agreement will provide that the intellectual property relating to the franchise system (for instance; the manual and the brand names and logos used in the franchise system) are all either owned by the franchisor or licensed to the franchisor. The franchisee acknowledges that it has no rights of ownership in relation to the intellectual property and may be required to notify and assist the franchisor if it becomes aware of any infringements of the franchisor's intellectual property rights.

16. **Transfer** – typically the franchisee will be unable to sell its business or assign the agreement without the franchisor's consent which will usually not be given until certain conditions have been met. These conditions may include: approval of the purchaser, the purchaser completing initial training and entering into the current franchise agreement, payment of a transfer fee and the franchisor's legal costs.

17. **Renewal** – often the franchise agreement provides that the franchisee has the right to renew the franchise agreement for a further term (or terms). In doing so it must comply with the franchisor's requirements which usually include: not being in breach of the franchise agreement, providing notice within a reasonable time, undergoing additional training, refurbishing premises, entering into the current form of the franchise agreement, paying a renewal fee and the franchisor's legal costs.

18. **Termination** - if the franchisee breaches the franchise agreement the franchisor will have the right to end the franchise agreement if the franchisee does not remedy the breach within the time frame required by the franchisor. If the breach is serious enough the franchisor may be able to end the agreement immediately without giving the franchisee the chance to remedy.

19. **Dispute Resolution** -if the franchisor is a member of the Franchise Association of New Zealand Inc. it will be required to have a dispute resolution provision in the agreement which provides that the parties must attempt to resolve any dispute between themselves first and then by mediation before they can take the matter further.

20. **Non-competition** – the franchisee will usually be restricted from carrying on any competing business during the term of the franchise agreement and for a limited period of time and within a certain area. It may also be restricted from soliciting the employees and customers after the agreement ends.

The above is not meant to be complete list of all the contents of a franchise agreement but to provide you with a guide on what you will typically find in a franchise agreement. Each franchise agreement is different and contains clauses specific to that particular system. You are strongly recommended to obtain advice from an experienced franchise lawyer before you enter into a franchise agreement.

We can help!

If you are looking at buying a franchise we would love to help you. Please call for more information.



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