



International Distribution Institute

# Negotiation of Master Supply Agreements for Franchise Systems and Franchisor Rebates and Kickbacks



International Distribution Institute

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# The Topic

- ❖ When negotiating a supply agreement not just for itself, but for its franchisees, many additional questions arise, including how to structure the agreement, the franchisees' ability to negotiate a better deal on their own, and liability for contract breaches by the franchisees. In addition, the franchisor may want to negotiate an even better deal for itself than for its franchisees and rebates, or other forms of kickbacks from the supplier.

# Agenda

- ❖ Potential legal restrictions on the franchisor's right to receive rebates based on the franchisees' purchases from the supplier.
- ❖ How do you draft master supply agreements
- ❖ How do master supply agreements impact termination?

## Franchisor's right to receive rebates based on the franchisees' purchases from the supplier.

### ❖ USA:

- Federal law: general disclosure obligation
- State laws: limited regulation: e.g. Indiana – cannot receive benefits from vendors unless it is compensation for services

### ❖ Australia: Disclosure obligation

### ❖ Portugal: Freedom of contract

### ❖ Turkey: Freedom of contract

# How to Draft Master Supply Agreements

## ❖ Different approaches:

- Framework agreement, but each franchisee negotiates their own
- Vendor agreement with franchisors; franchisees purchase through franchisor
- Vendor agreement with independent purchase cooperative

## How to Draft Master Supply Agreements

- ❖ Simple or complex?
  - Simple or complex product or service?
- ❖ Whose form – the franchisor's or the vendors?
  - Depends on sophistication of franchisor and vendor

# How to Draft Master Supply Agreements

## ❖ Key provisions:

- Term issues
- Pricing
- Payment terms
- Warranties
- Exclusivity



## How to Draft Master Supply Agreements

### ❖ Term issues

- Inconsistency between length of vendor agreement term and franchise agreement term
- Franchisor's ability to terminate entire vendor relationship

# How to Draft Master Supply Agreements

## ❖ Pricing

- Can franchisor set pricing for all franchisees?
- Franchisee's ability to negotiate better pricing?

# How to Draft Master Supply Agreements

## ❖ Payment Terms

- Who pays the vendor?
  - Franchisor?
  - Franchisee?
- Can franchisor act as payment agent?
- Who is responsible for vendor payments?
  - Is franchisor responsible for franchisee non-payment?
  - Guarantees by franchisee owners or franchisor?

## How to Draft Master Supply Agreements

### ❖ Warranties

- Who can take advantage of vendor's warranties?

### ❖ Exclusivity

- Approved vendor provisions in franchise agreement may prohibit grant of exclusivity to vendor.

## Master Supply Agreements & Termination

- Termination of supply agreement vs. franchise agreement
- Remaining inventory
- Franchisee's inability to terminate vendor agreement - damages