

**BARGAINING COUNCIL FOR  
THE  
FURNITURE MANUFACTURING  
INDUSTRY, KWAZULU-NATAL**

**RURAL CHAMBER**

**(INCORPORATING AREAS B  
AND C)**

**COLLECTIVE AGREEMENT**

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# CHAPTER ONE

## (PURPOSE, SCOPE, APPLICATION AND DEFINITIONS)

### 1. PURPOSE OF AGREEMENT

- 1.1** Due to the history of the Rural areas of KwaZulu-Natal, the region developed into a unique and sensitive Manufacturing environment, which in the past was largely unorganised. Since the Furniture Industry plays an important role in the region and its economy, the employers and employees agreed on basic conditions of employment to protect the Furniture Industry and the overall economy of the region.
- 1.2** Both the employers and employees to this agreement intend to become Members of the Furniture Industry Bargaining Council for the Furniture Manufacturing Industry, KZN (hereinafter referred to as the Bargaining Council or Council's provided that:-
- 1.2.1** the Bargaining Council fix these conditions, as set out in this document, as conditions for the Furniture Industry in the Magisterial districts as set out in sub-clause 2.1.
- 1.2.2** terms and conditions agreed upon at a regional level will be administered by the Bargaining Council for the Furniture Manufacturing Industry, KZN, Administration.

## **2. SCOPE**

**2.1.** The terms of this Agreement shall be observed in the Furniture Manufacturing Industry, KwaZulu-Natal –

**2.1.1** by all employers who are members of the employers' organisation and by all employees who are members of the trade unions and who are engaged or employed therein, respectively ;

**2.1.2** in Area B, which consists of the Magisterial Districts of Umvoti (Greytown), Lions River, Port Shepstone, Richmond, Lower Tugela and Umzinto and the municipal areas of Estcourt, Ladysmith and Newcastle ;

**2.1.3** in Area C, which consists of the remainder of the Province of KwaZulu-Natal, excluding Area A, (which consists of the Magisterial Districts of Camperdown, Chatsworth, Durban. Inanda, Pietermaritzburg, Pinetown and Mount Currie).

**2.2.** Notwithstanding the provisions of sub-clause 2.1.1, the provisions of this Agreement shall not apply to professionals, technical administrators, sales and office staff and persons as defined in section 6 (1) (c) of the Basic Conditions of Employment Act, 1997 ; or to managers, sub-managers, foremen and supervisory staff if such employees are in receipt of a regular remuneration.

- 2.3.** Notwithstanding the provisions of sub-clause 6.1, the provisions of this Agreement, excluding those contained in clauses 5, 24, 44, 48 and 50 of the Main Agreement shall not apply to an employer who carries on not more than one business within the scope of application of this Agreement who employs ten or less employees at all times in or in connection with such business and who complies with the relevant provisions of the Basic Conditions of Employment Act, 1997 : Provided that any working partner, director or member be regarded an employee for the purposes of establishing the number of employees in such business.
- 2.4.** The provisions of sub-clause 2.3 shall not apply where an employer has more than 10 employees in his employ at the date of coming into operation of this Agreement, and subsequently reduces his number of employees to ten or less.
- 2.5.** The terms of this Agreement shall not apply to non-parties in respect of sub-clauses 2.1.1, 18 and 41.

### **3. DEFINITIONS**

- 3.1** Any expressions used in this Agreement that are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendments to such Act; further, unless inconsistent with the context -

- 3.1.1 Act** means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- 3.1.2 Caretaker or Watchman** means employee who is engaged in guarding premises or other property and/or goods:
- 3.1.3 Commission** means the Commission for Conciliation Mediation and Arbitration.
- 3.1.4 Council** means the Bargaining Council for the Furniture Manufacturing Industry, KwaZulu-Natal, registered or deemed to have been registered in terms of section 29 of the Act.
- 3.1.5 Designated trade** means a trade designated in terms of the Manpower Training Act, 1981, for the Furniture Manufacturing Industry in KwaZulu-Natal:
- 3.1.6 Date of Implementation** one month following the month in which the Agreement was reached
- 3.1.7 Employee** means:
- 3.1.7.1** any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

**3.1.8 Employers Organisation** means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions

**3.1.9 Establishment** means any premises where the Furniture Manufacturing is carried on and includes any premises where a person is employed in any of the classes of work specified in this Agreement;

**3.1.10 Furniture Industry** means without in any way limiting the ordinary meaning of the expression, the manufacture either in whole or part of all types of furniture irrespective of the materials used and includes the following operations :

Repairing, upholstering, re-upholstering, staining, spraying or polishing and/or re-polishing, making of loose covers and/or cushions and/or curtains; and/or the making and/or repairing of box-spring mattresses and/or frames for upholstering; wood machining, veneering, woodturning and carving in connection with the manufacturing and/or repairing of furniture, polishing and/or re-polishing of pianos or the manufacturing and/or staining, spraying and polishing and/or re-polishing of tea room, office, church, school, bar or theatre furniture, and cabinets for musical instruments and radio cabinets; including the manufacturing or processes in the manufacturing of bedding, including all types of mattresses, spring mattresses, overlays, pillows, bolsters and cushions; and including the activities carried out in any premises where wood machining, wood turning and/or carving in connection with the production of furniture is carried on; and

including further, the repairing, reupholstering or re-polishing of furniture in or in connection with establishments in which the production of furniture or any operation associated with the final preparation of any article of furniture for sale either in whole or in part is carried on, and veneering of laminated blockboard or plywood doors used for furniture, and all parts of materials used in the construction of furniture, and the manufacturing in a factory of all items listed in (a) to (g) hereunder and/or the parts or components thereof, whether or not such items are intended to be free-standing, built-in or attached to a building; but excluding the manufacturing of articles made principally of wicker, grass and/or cane, and the manufacturing of metal furniture including the manufacturing of metal bedsteads.

- (a) dressers, cupboards, units for the housing of sinks and appliances, grocery cupboards, shelves, worktops, tables, chairs, benches and pelmets, all of which are for use in kitchens;
- (b) multi-purpose cabinets - which can be used either singly or in combination with each other for various purposes, including kitchen dressers, kitchen cupboards and kitchen fittings or cupboards - or cabinets in any other part of a building;
- (c) headboards and pedestals for beds, dressing tables, bedroom cupboards, wardrobes and wall units;

- (d) other cabinets and cupboards;
- (e) counters, shelves and cupboards for use in bars;
- (f) the assembly in any building, of all types of furniture;
- (g) the repairing or remedying, in any building, of all types of furniture.”

**3.1.11 Hourly rate** means, in the case of an employee other than a casual employee, his actual weekly wage, divided by 45 or such lesser number of hours ordinarily worked by the establishment;

**3.1.12 Juvenile** means an employee under the age of 18

**3.1.13 Labour Relations Act, 1995**, means the Labour Relations Act 1995 (Act 66 of 1995)

**3.1.14 Learner** means an employee serving under a written contract of learnership entered into under the provisions of the Skills Development Act, 1998 (Act No. 97 of 1998)

**3.1.15 Medical Practitioner** means a person entitled to practice as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974)

**3.1.16 Overtime** means the time that an employee works during a day or a week in excess of ordinary hours of work

**3.1.17 Public Holiday** means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act 36 of 1994)

**3.1.18 Registered Employers Organisation** means an employers organisation registered under section 96 of the Labour Relations Act, 1995

**3.1.19 Registered Trade Unions** means a trade union registered under section 96 of the Labour Relations Act, 1995

**3.1.20 Remuneration** means any payment in money or time off, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and remunerate has a corresponding meaning

**3.1.21 Short Time** means a reduction in the number or ordinary working hours in an establishment owing to slackness of trade, shortage of raw materials or general breakdown of plant or machinery caused by accident or other unforeseen emergency; or as is deemed necessary by the deemed employer of the said business.

**3.1.22 Trade Union** means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers organisations

**3.1.23 Trade Union Official** includes an official of a federation of trade unions

**3.1.24 Trade Union Representatives** means a trade union representative who is entitled to exercise the rights contemplated in sections 14 and 15, subject to portions of this Collective Agreement of the Labour Relations Act, 1995.

**3.1.25 Wage** means the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week.

**3.1.26 Working Partner, Director or Member** means a person who himself performs any of the classes of work referred to in Schedule D of the Main Collective Agreement ; and

- (a) is registered as an employer in terms of clause 5, or is liable to such registration ; or
- (b) is a partner in a partnership that is registered as an employer in terms of clause 5, or is liable to such registration ; or
- (c) is a director of a company that is registered as an employer in terms of clause 5, or is liable to such registration ;
- (d) is a member of a closed corporation that is registered as an employer in

terms of clause 5, or is liable to such registration.

**3.1.27 Sibling** means an employees brother and/or sister.

#### **4. PERIOD OF OPERATION OF AGREEMENT**

This agreement shall come into operation on such date as fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995 as amended and shall remain in force until 30 June 2005.

#### **5. REGISTRATION OF EMPLOYERS AND EMPLOYEES**

**5.1** Every employer shall, within one month from the date on which this Agreement comes into operation, if he has not already done so pursuant to any previous agreement, and every employer entering the Industry after that date shall, within one month of commencement of operations by him, forward to the Secretary of the Council the following particulars, which shall be in writing and signed by the employer:-

**5.1.1** full names (where the business is a company or partnership, the full name of the responsible manager and/or partners to be furnished);

**5.1.2** address where the business is carried on, and the residential address of the persons referred to in clause 5.1.1; and

**5.1.3** trade or trades carried on by him in the Industry, names of his employees and occupations in which they are employed.

**5.2** Written notification shall be sent to the Council by every employer of an alteration in respect of any details supplied in terms of clause 5.1 and such notification shall be given within 90 days of such alteration.

## **CHAPTER TWO**

### **(REGULATION OF WORKING TIME)**

#### **6. INTERPRETATION OF DAY**

For the purposes of sections 7 and 8, **day** means a period of 24 hours measured from the time when the employee normally commences work.

#### **7. ORDINARY HOURS OF WORK; MEAL INTERVALS; FORENOON AND AFTERNOON INTERVALS**

**7.1** Save as is otherwise provided in this Agreement, no employer shall require or permit an employee, other than those exclusively employed in the delivery of goods or messages, or those employees engaged in guarding premises of offices, property or goods to work for more than 45 hours, excluding meal intervals, in

any one week.

**7.2** The daily hours of work shall not exceed -

**7.2.1** in establishments working a five day week, 9 hours 30 minutes per day, Monday to Friday; or

**7.2.2** in establishments working a six day week, eight hours per day, Monday to Friday, and five hours on Saturday.

**7.3** No employer shall require or permit an employee to work for a continuous period of more than five hours without an uninterrupted interval of at least 30 minutes: Provided that for the purposes of this paragraph a period of work interrupted by an interval of less than 30 minutes shall be deemed to be continuous.

**7.4** An employee shall be deemed to be working in addition to any period that he is actually working -

**7.4.1** during the whole of any interval in his work if he is not free to leave the premises of his employer for the whole of such interval;

**7.4.2** during any other period during which he is on the premises of his employer:

Provided that any such employee was not working and was free to leave the

premises during any part of any period referred to in sub-clause 7.4.2, the presumption provided for in this Section shall not apply in respect of such employee with reference to that part of such period.

**7.5** Every employer shall display in his establishment in a place readily accessible to his employees a notice in the form specified by the Council from time to time specifying the starting and finishing time of work for each day of the week, the meal interval and the forenoon and afternoon intervals referred to in clause 7.7 hereof.

**7.6** The provisions of this clause shall not apply to a caretaker or a watchman whose employer grants him a day of 24 consecutive hours off in respect of every week of employment provided that:

**7.6.1** the employer makes no deductions from the caretaker's or watchman's wage in respect thereof;

**7.6.2** the employer may, in lieu of granting his caretaker or watchman any such day off, pay such caretaker or watchman the wage he would have received if he had not worked on such day, plus an amount of not less than double his daily wage in respect of such day not granted.

**7.7** Every employee shall be given a tea interval as per current employer practice, provided it is not less than 20 minutes during one working shift.

**8. OVERTIME, LIMITATION OF OVERTIME AND PAYMENT FOR OVERTIME  
AND WORK ON SUNDAYS**

**8.1** Subject to this Chapter, an employer may not require or permit an employee -

**8.1.1** to work overtime except in accordance with an agreement; including but not limited to the contract of employment ;

**8.1.2** to work more than -

**8.1.2.1** twelve hours on any day, or

**8.1.2.2** fifteen hours overtime a week

**8.2** An employer must pay an employee at least one and a third times the employee's wage for overtime worked.

**8.3.** Where in any one week an employee absents himself from work during any or all of the ordinary hours of a shift observed in the establishment concerned, such ordinary hours not worked by the employee shall be deducted from the hours of overtime worked and the hours so deducted shall be paid for at the employee's ordinary rates provided that -

**8.3.1.** if the number of ordinary hours of work on which the employee is absent

in any one week is in excess of the number of overtime hours worked, all such overtime hours shall be paid for at the employee's ordinary hourly rate: and

**8.3.2** where an employee is absent from work with the permission of his employer or absent on account of sickness or circumstances beyond his control, the provisions of this clause shall not apply and the overtime hours worked in such case shall be paid at the overtime rate applicable to the overtime hours worked: Provided that an employer may call on an employee for a medical certificate as proof for cause of absence.

**8.4.** An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked.

**8.5.** If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of sub-clause 8.4 is less than the employee's ordinary daily wage, the employer must pay the employee's ordinary daily wage.

**8.6.** Despite sub-clauses 8.4 and 8.5 an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of sub-clauses 8.4 and 8.5.

- 8.7.** Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday, is not taken into account in calculation an employee's ordinary hours of work in terms of clause 7, but is taken into account in calculating the overtime worked by the employee in terms of sub-clause 8.1.
- 8.8.** If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
- 8.9.** **8.9.1.** An employer must grant paid time off in terms of sub-clause 8.6. within one month of the employee becoming entitled to it.
- 8.9.2.** An agreement in writing may increase the period contemplated by sub-clause 8.9.1 to 12 months.

## **9. SHORT TIME**

- 9.1** When it is found necessary to place employees in an establishment on short time owing to slackness of trade, shortage of raw materials or general breakdown of plant or machinery caused by accident or any unforeseen emergency, or as deemed necessary by the employer, notice shall be given to employees so affected
- 9.2** When, as a result of a major power failure a general breakdown of plant or machinery outside of an establishment or caused by accident or any unforeseen

emergency causing cessation of work it is found necessary to place employees in an establishment on short time, the employees so affected may within a period of four hours be placed on short time for the duration of the power failure: Provided that the employees so affected shall be paid in respect of such day an amount of not less than two (2) hours wages.

- 9.3** Except as in sub-clause 9.2 above, an employee who on any day reports for duty at the usual starting time of the establishment and for whom no work is available, shall be paid in respect of such day an amount of not less than four (4) hours wages, unless he was notified by his employer previously that his services would be required on that particular day.

## **10. COMPRESSED WORKING WEEK**

- 10.1** An Agreement in writing including and not limited to the contract of Employment, may require or permit an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of sub-clause 7.3 without receiving overtime pay.

- 10.2** An Agreement in terms of sub-clause 10.1 may not require or permit an employee to work -

**10.2.1** more than 45 ordinary hours of work in any week ;

**10.2.2** more than 15 hours overtime in any week ; or

**10.2.3** on more than five days in any week.

**11. PUBLIC HOLIDAYS, WORK ON PUBLIC HOLIDAYS AND PAYMENT FOR  
WORK ON PUBLIC HOLIDAYS**

**11.1** If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay -

**11.1.1** an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day;

**11.1.2** an employee who does work on the public holiday, then such employee is entitled to a normal wage for every such hour worked in addition to the normal days work that is required to be paid for such public holiday.

**11.2.** If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay the employee an amount equal to -

**11.2.1.** the employee's ordinary daily wage ; plus

**11.2.2.** the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or output.

- 11.3** In terms of sub-clause 2.2 of the Public Holidays Act 1994, (Act 36 of 1994), a public holiday is exchangeable for any other day which is fixed by agreement or agreed to between the employer and the employee.
- 11.4** An employer should pay an employee for a public holiday on the employee's usual pay day.
- 11.5** If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other, the whole shift is deemed to have been worked on the other day.
- 11.6** Should an employee absent himself on the day before and/or the day following the public holiday, such employee will not be remunerated for the said public holiday, unless a valid medical certificate is handed to the employer.

## **12. NIGHT WORK**

- 12.1** In this section **night work** means work performed after 18:00 and before 06:00 the next day.
- 12.2** An employer may only require or permit an employee to perform night work, if so agreed; and if

**12.2.1** the employee is compensated by the payment of an allowance, equated to the shift allowance and agreed to between the employer and employee, and

**12.2.2** transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.

**12.3** An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must -

**12.3.1** inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands -

**12.3.1.1** of any health and safety hazards associated with the work that the employee is required to perform; and

**12.3.1.2** of the employee's right to undergo a medical examination in terms of sub-clause 12.3.2.

**12.3.2** at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards -

**12.3.2.1** before the employee starts, or within a reasonable period

of the employee starting, such work, and

**12.3.2.2** at appropriate intervals while the employee continues to perform such work; and

**12.3.3** transfer the employee to suitable day work within a reasonable time if

**12.3.3.1** the employee suffers from a health condition associated with the performance of night work; and

**12.3.3.2** it is practicable for the employer to do so.

**12.4** For the purpose of sub-clause 12.3 an employee works on a regular basis if the employee works for a period of longer than an hour after 23:00 and before 06:00 at least five times per month or 50 times per year.

**12.5** The Minister may, after consulting with the Commission, make regulations relating to the conduct of medical examinations for employees who perform night work.

## **CHAPTER THREE**

**(LEAVE)**

### **13. ANNUAL LEAVE / SHUT DOWN**

**13.1** In this Chapter, annual leave cycle means the period of 12 months employment with the same employer immediately following

**13.1.1** an employee's commencement of employment ; or

**13.1.2** the completion of that employee's prior leave cycle.

**13.2** An employer must grant an employee at least

**13.2.1** 21 consecutive days annual leave on full remuneration in respect of each annual leave cycle; or

**13.2.2** by agreement on day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid;

**13.2.3** by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.

**13.3** An employee is entitled to take annual leave in terms of sub-clause 13.2 on consecutive days.

- 13.4** An employer must grant annual leave not later than six months after the end of the annual leave cycle.
- 13.5** An employer may not require or permit an employee to take annual leave during
- 13.5.1** any other period of leave to which the employee is entitled in terms of this Chapter; or
- 13.5.2** any period of notice of termination of employment.
- 13.6** Despite sub-clause 13.5 an employer may permit an employee, depending on the operational requirements of the employer at the employee's written request, to take unpaid leave.
- 13.7** An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full remuneration granted to the employee at the employee's request in that leave cycle.
- 13.8** An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked.
- 13.9** An employer may not require or permit an employee to work for the employers or

any other employer during any period of annual leave, unless by agreement.

**13.10** Annual leave, including annual shut down, must be taken

**13.10.1** in accordance with an agreement between the employer and employee; or

**13.10.2** if there is no agreement in terms of sub-clause 13.10.1, at a time determined by the employer in accordance with this section.

**13.11** An employer may not pay an employee instead of granting paid leave in terms of this section except -

**13.11.1** on termination of employment; and

**13.11.2** in accordance with sub-clause 32.1.1 and 32.1.2.

#### **14. PAY FOR ANNUAL LEAVE**

**14.1** An employer must pay an employee leave pay at least equivalent to the remuneration that the employee would have received for working for a period equal to the period of annual leave, calculated:

**14.1.1** at the employee's rate of remuneration immediately before the beginning

of the period of annual leave; and

**14.1.2** in accordance with clause 28.

**14.2** An employer must pay an employee leave pay

**14.2.1** before the beginning of the period of leave; or

**14.2.2** by agreement, on the employee's usual pay day.

## **15. SICK LEAVE**

**15.1** In this Chapter, **sick leave cycle** means the period of 36 months employment with the same employer immediately following:

**15.1.1** an employee's commencement of employment; or

**15.1.2** the completion of that employee's prior sick leave cycle.

**15.2** During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of 6 weeks.

**15.3** Despite sub-clause 15.2 during the first six months of employment, an employee

is entitled to one day paid sick leave for every 26 days worked.

**15.4** During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of sub-clause 15.2 by the number of day's sick leave taken in terms of sub-clause 15.3.

**15.5** Subject to clause 16, Proof of Incapacity, an employer must pay an employee for a day's sick leave

**15.5.1** the wage the employee would ordinarily have received for work on that day; and

**15.5.2.** on the employee's usual pay day.

**15.6** An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this section if -

**15.6.1** the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and

**15.6.2** the employee's entitlement to pay -

**15.6.2.1** for any day's sick leave is at least 75 per cent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and

- 15.6.2.2** for sick leave over the sick leave cycle is at least equivalent to the employee's entitlement in terms of sub-clause 15.6.2.

## **16. PROOF OF INCAPACITY**

**16.1** An employer is not required to pay an employee in terms of clause 16 if the employee has been absent from work for more than two consecutive days and who does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence.

**16.2** The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

## **17. APPLICATION TO OCCUPATIONAL ACCIDENTS OR DISEASES**

Clause 15 and 16 do not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), or the Occupational Diseases in Mines and Works Act, 1973 (Act No 78 of 1973) except in respect of any period during which no compensation is payable in terms of those Acts.

## **18. SHOP STEWARD'S LEAVE**

**18.1** For the purposes of attending training courses and/or seminars and/or meetings by the trade union that is a party to this Agreement, shop stewards shall be entitled to two days paid leave per annum, pooled up to a maximum of 15 days per annum, with effect from the date of the coming into operation of this Agreement, subject to the following conditions:

**18.1.1** The leave cycle shall commence on 1 January of each year. Leave not taken in a leave cycle, shall not be cumulative.

**18.1.2** Shop stewards leave shall be taken only during the first eight calendar months of the year : Provided that if leave is requested during the later part of the year, this shall be the subject of consultation between the parties.

**18.1.3** The name(s) of the shop steward(s) elected shall be conveyed to the employer by the union in writing.

**18.1.4** Prior arrangements shall be made by the trade union with an employer for the release of key staff. Not more than 50 percent of elected senior shop stewards and/or shop stewards at any particular establishment shall attend the training course and/or seminar and/or meeting on any particular day.

**18.1.5** The trade union shall make the training course and/or seminar content and/or agenda of meetings available to the employer at least seven days in advance.

**18.1.6** The trade union shall furnish the employer with written proof that the training course and/or seminar and/or meeting, for which purpose the paid leave was granted, was attended by the particular shop steward.

**18.1.7** The number of shop stewards elected at any particular establishment shall be in terms of provisions as contained in the relevant and applicable Recognition Agreements, and if there is no such Agreements as per the stipulations contained in the Labour Relations Act.

## **19. MATERNITY LEAVE**

**19.1** Any female employee going on confinement shall be entitled to unpaid maternity leave for a period not exceeding four months, with a guarantee of reinstatement after the aforementioned period on the same terms and conditions of employment as at the date on which the maternity leave was granted.

- 19.2** The employee on maternity leave shall, before or on the expiry date of the four month period, notify her employer whether or not she will recommence employment.
- 19.3** Proof of confinement shall be submitted to the employer upon the employee's return to work in the form of a birth certificate or a death certificate, in the case of a still birth, or a medical certificate in the case of a miscarriage.
- 19.4** The employer may extend the four-month guarantee period on receipt of a valid medical certificate from a registered medical practitioner advising the employee not to return to work for medical reasons.
- 19.5** The employer shall be permitted to employ a temporary employee in the same category as the employee who has been granted maternity leave, on a temporary contract of employment for the period of absence of the employee who has been granted maternity leave. Temporary contracts of employment may be obtained from the Council in a pro forma format.
- 19.6** During the period referred to in sub-clause 19.4 all the provisions of the agreements administered by the Council shall apply to the temporary employee.
- 19.7** During the contract period the employer may, subject to the principles laid down from time to time in the Basic Conditions of Employment Act 1997, or for any

other reason recognised in law, terminate the contract of temporary employment.

## **20. FAMILY RESPONSIBILITY LEAVE**

**20.1** This Clause applies to an employee -

**20.1.1.** Who has been in employment with an employer for longer than four months; and

**20.1.2.** Who works for at least four days a week for that employer,

**20.2** An employer must grant an employee, during each annual leave cycle, at the request of the employee, three days paid leave, which the employee is entitled to take -

**20.2.1.** When the employee's child is born ;

**20.2.2.** When the employee's child is sick ; or

**20.2.3.** In the event of the death of -

**20.2.3.1.** the employee's spouse or life partner; or

**20.2.3.2** the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

**20.3** Subject to sub-clause 20.5; an employer must pay an employee for a days family

responsibility leave -

**20.3.1.** The wage the employee would ordinarily have received for work on that day; and

**20.3.2** On the employee's usual pay day.

**20.4** An employee may take family responsibility leave in respect of the whole or a part of a day.

**20.5** Before paying an employee for leave in terms of this Clause, an employer may require reasonable proof of an event contemplated in Sub-Clause 2 for which the leave was required.

**20.6** An employee's unused entitlement to leave in terms of this section lapses at the end of the annual leave cycle in which it accrues.

## **CHAPTER FOUR**

### **(BENEFIT FUNDS)**

#### **21. PROVIDENT AND SAVINGS SCHEMES**

**21.1** All established in-house Provident Funds will remain in place.

**21.2** New employers engaged to the Rural Chamber shall have the right to either continue with their existing in-house Provident Fund, or to create a new in-house fund, and proof of existence of such a fund must be provided to the Chamber; or could join the Council's Provident Fund, subject to and pending the outcome of deliberations in terms of clause 21.3.

**21.3** A separate forum, established/appointed by the Rural Chamber will investigate and further negotiate the minimum standards required for a Provident Fund which will be acceptable to all parties.

## **22. MEDICAL ASSISTANCE**

All existing in-house policies and conditions relating to medical assistance will continue to apply.

# **CHAPTER FIVE**

## **(PARTICULARS OF EMPLOYMENT AND REMUNERATION)**

### **23. WRITTEN PARTICULARS OF EMPLOYMENT**

**23.1** An employer must supply an employee, when the employee commences employment, with the following particulars in writing -

- 23.1.1** the full name and address of the employer;
  
- 23.1.2** the name and occupation of the employee, or a brief description of the work for which the employee is employed;
  
- 23.1.3** the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
  
- 23.1.4** the date on which the employment began;
  
- 23.1.5** the employee's ordinary hours of work and days of work;
  
- 23.1.6** the employee's wage, or the rate and method of calculation wages;
  
- 23.1.7** the rate of pay for overtime work;
  
- 23.1.8** any other cash payments that the employee is entitled to;
  
- 23.1.9** any payment in kind that the employee is entitled to and the value of the payment in kind;
  
- 23.1.10** how frequently remuneration will be paid;
  
- 23.1.11** any deductions to be made from the employee's remuneration;

- 23.1.12** the leave to which the employee is entitled;
- 23.1.13** the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
- 23.1.14** the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
- 23.1.15** a description of any council or sectoral determination which covers the employer's business;
- 23.1.16** any period of employment with a previous employer that counts towards the employee's period of employment;
- 23.1.17** any period of employment with a previous employer that counts towards the employee's period of employment;
- 23.2** When any matter listed in sub-clause 23.1 changes ;

**23.2.1** the written particulars must be revised to reflect the change; and

**23.2.2** the employee must be supplied with a copy of the document reflecting the change

**23.3** If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.

**23.4** Written particulars in terms of this section must be kept by the employer for a period of one year.

## **24. KEEPING OF RECORDS**

**24.1** Every employer must keep a record containing at least the following information:

**24.1.1** the employee's name and occupation

**24.1.2** the time worked by each employee

**24.1.3** the remuneration paid to each employee

**24.1.4** the date of birth of any employee under 18 years of age; and

**24.1.5** any other prescribed information

**24.2** A record in terms of sub-clause 24.1 must be kept by the employer for a period of **ONE YEAR** from the date of the last entry in the record.

**24.3** No person may make a false entry in a record maintained in terms of sub-clause 24.1.

**24.4** An employer who keeps a record in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

## **25. PAYMENT OF REMUNERATION**

**25.1** An employer must pay to an employee any remuneration that is paid in money -

**25.1.1** in South African currency

**25.1.2** daily, weekly, fortnightly or monthly; and

**25.1.3** in cash, by cheque or by direct deposit into an account agreed to by the employee and employer

**25.2** Any remuneration paid in cash or by cheque must be given to each employee

**25.2.1** at the workplace

**25.2.2** during the employee's working hours or within 15 minutes of the commencement or conclusion of those hours ; and

**25.2.3** in a sealed envelope which becomes the property of the employee.

**25.3** An employer must pay remuneration not later than seven days after

**25.3.1** the completion of the period for which the remuneration is payable, or

**25.3.2** the termination of the contract of employment.

**25.4** Sub-clause 25.2 does not apply to any pension or provident fund payment to an employee that is made in terms of the rules of the fund.

## **26. INFORMATION ABOUT REMUNERATION**

**26.1** An employer must give an employee the following information in writing on each day the employee is paid:-

**26.1.1** The employer's name and address;

**26.1.2** the employee's name and occupation;

**26.1.3** the period for which the payment is made;

**26.1.4** the employee's remuneration in money;

**26.1.5** the amount and purpose of any deduction made from the remuneration

**26.1.6** the actual amount paid to the employee; and

**26.1.7** if relevant to the calculation of that employee's remuneration

**26.1.7.1** the employee's rate of remuneration and overtime rate

**26.1.7.2** the number of ordinary and overtime hours worked by the employee during the period for which the payment is made;

**26.1.7.3** the number of hours worked by the employee on a Sunday or public holiday during that period; and

**26.2** The written information required in terms of sub-clause 26.1 must be given to each employee

**26.2.1** at the workplace

**26.2.2** during the employee's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.

**25. DEDUCTIONS AND OTHER ACTS CONCERNING REMUNERATION**

**27.1** An employer may not make any deduction from an employee's remuneration unless

**27.1.1** subject to sub-clause 27.2, the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or

**27.1.2** the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

**27.2** A deduction in terms of sub-clause 27.1.1 may be made to reimburse an employer for loss or damage only if -

**27.2.1** the loss or damage occurred in the course of employment and was due to the fault of the employee;

**27.2.2** the employer has followed a fair procedure and has given the employee ;

**27.2.3** reasonable opportunity to show why the deductions should not be made ;

**27.2.4** the total amount of the debt does not exceed the actual amount of the loss  
or damage ; and

**27.2.5** the total deductions from the employee's remuneration in terms of this  
subsection do not exceed one-quarter of the employee's remuneration in  
money.

**27.3** A deduction in terms of sub-clause 27.1.1 in respect of any goods purchased by  
the employee must specify the nature and quantity of the goods

**27.4** An employer who deducts an amount from an employee's remuneration in terms  
of sub-clause 27.1 for payment to another person must pay the amount to the  
person in accordance with the time period and other requirements specified in the  
agreement, law, court order or arbitration award.

**27.5** An employer may not require or permit an employee to

**27.5.1** repay any remuneration except for overpayments previously made by the  
employer resulting from an error in calculating the employee's

remuneration; or

**27.5.2** acknowledge receipt of an amount greater than the remuneration actually received.

## **28. CALCULATION OF REMUNERATION AND WAGES**

**28.1** An employee's wage may be calculated by reference to the number of hours or part thereof the employee ordinarily work, or by any other method agreed to at plant level.

**28.2** For the purposes of calculating the wage of an employee by time, an employee is deemed ordinarily to work -

**28.2.1** 45 hours in a week, unless the employee ordinarily works more or lesser number of hours in a week;

**28.2.2** nine hours in a day or part thereof, or seven and a half hours in the case of an employee who works for more than five days a week, or the number of hours than an employee works in a day in terms of an agreement concluded in accordance with clause 10, unless the employee ordinarily works a lesser number of hours in a day

**28.3** An employee's monthly remuneration or wage is four and one third times the

employee's weekly remuneration or wage, respectively

**28.4** If an employee's remuneration or wage is calculated, either wholly or in part, on a basis other than time or if an employee's remuneration or wage fluctuates

significantly from period to period, any payment to that employee in terms of this Agreement must be calculated by reference to the employee's remuneration or wage during -

**28.4.1** the preceding 13 weeks, or

**28.4.2** if the employee has been in employment for a shorter period, that period.

**28.5** For the purposes of calculating an employee's annual leave pay in terms of clause 14, notice pay in terms of clause 31 or severance pay in terms of clause 33, an employee's remuneration ;

**28.5.1** includes the cash value of any payment in kind that forms part of the employee's remuneration unless the employee receives that payment in kind; but

**28.5.2** excludes -

**28.5.2.1** gratuities

**28.5.2.2** allowances paid to an employee for the purposes of enabling an employee to work; and

**28.5.2.3** any discretionary payments not related to the employee's hours of work or work performance.

**28.6.** Subject to the provisions of clauses 24, 25, 26, 27 and 28, no employer shall pay and no employee shall accept wages lower than those prescribed In Schedule C read with Schedule D.

## **29. JOB GRADING**

- 29.1.1** Artisan
- 29.1.2** Learner Artisan
- 29.1.3** Assistant Foreman
- 29.1.4** Charge hand
- 29.1.5** Clerk
- 29.1.6** Factory Clerk
- 29.1.7** Foreman
- 29.1.8** Grade I Employee
- 29.1.9** Grade II Employee
- 29.1.10** Grade III Employee
- 29.1.11** Handyman

- 29.1.12**      Labourer
- 29.1.13**      Watchman
- 29.1.14**      Driver
- 29.1.15**      Factory Driver

## **CHAPTER SIX**

### **(TERMINATION OF EMPLOYMENT)**

#### **30. NOTICE OF TERMINATION OF EMPLOYMENT :**

Notice shall be given by the employer or employee to terminate a contract of employment in terms of sub-clauses 33.2 or 33.6 whichever applies : Provided that this shall not affect the right of an employer or employee to terminate a contract of employment without notice for any cause recognised by law as sufficient.

#### **31. PAYMENT INSTEAD OF NOTICE**

**31.1**    Instead of giving an employee notice in terms of clause 30, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with clause 32, if the employee had worked during the notice period.

**31.2**    If an employee gives notice of termination of employment and the employer waives any part of the notice, the employer must pay the remuneration referred to in sub-clause 31.1 unless the employer and employee agree otherwise.

## **32. PAYMENTS ON TERMINATION**

**32.1** On termination of employment, an employer must pay an employee -

**32.1.1.** remuneration calculated in accordance with sub-clause 14.1 for any period of annual leave due in terms of sub-clause 13.2 that the employee has not taken; and

**32.1.2.** the employee has been in employment for longer than four months, in respect of an employee's annual leave entitlement during an incomplete annual leave cycle as defined in sub-clause 13.1.

**32.1.3.1** one days remuneration in respect of every 17 days on which the employee worked or was entitled to be paid; or

**32.1.3.2** remuneration calculated on any basis that is at least as favourable to the employee as that calculated in terms of sub-clause 32.1.2.1

## **33. DISMISSAL BASED ON OPERATIONAL REQUIREMENTS**

**33.1.** When an employer contemplates dismissing one or more employees for reasons based on the employers' operational requirements, the

employer shall have due regard for the provisions of Sections 189 and/or 189A of the Act:

**33.2.** In instances when it is found necessary to terminate a contract of employment of a party to the contract, the contract may be terminated only on notice of not less than -

**33.2.1.** one week if the employee has been employed for six months or less ;

**33.2.2.** two weeks if the employee has been employed for more than six months, but not more than one year ;

**33.2.3.** four weeks if the employee has been employed for one year or more.

**33.4** In the event of an employee having been dismissed in terms of sub-clause 33.1, an employer shall not replace such employee, in that same job category, within four weeks, without first having offered the position to the employee so dismissed : Provided further that such employee report for duty within 48 hours of the trade union, in the case of a non-party employer, the employee having been notified:

Provided further that no employee shall be dismissed by reason of short time unless such employee had worked less than 35 hours ordinary time in the pay week preceding such dismissal.

- 33.5.** Employees being dismissed, as provided for in terms of sub-clause 33.1, shall be paid a retrenchment/redundancy allowance equal to one week's normal wages for each completed year of service, up to a maximum of 12 weeks.
- 33.6.** Despite the provisions of sub-clause 33.2, an employer and employee may agree to provide for a longer period of notice than prescribed and provided that such agreement is confirmed in writing, failure to comply with such arrangement shall be a contravention of this clause.
- 33.7.** An employer or employee may terminate the contract of employment without notice by paying the employee, or paying or forfeiting to the employer, as the case may be, in lieu of notice an amount not less than the wages the employee would have received, calculated in accordance with sub-clause 33.2 or for such longer period as agreed upon by the employer and his employee in terms of sub-clause 33.6.
- 33.8.** The notice referred to in sub-clauses 33.2, and 33.6, shall not run concurrently with or shall not be given during -

**33.8.1** any period of military service

**33.8.2** the holiday period referred to in sub-clause 11.2 ;

**33.8.3** any period of illness not exceeding two weeks in any one year.

#### **34. CERTIFICATE OF SERVICE**

**34.1** On termination of employment an employee is entitled to a certificate of service stating -

**34.1.1** the employee's full name

**34.1.2** the name and address of the employer;

**34.1.3** a description of any council or sectoral employment standard by which the employer's business is covered;

**34.1.4** the title of the job or a brief description of the work for which the employee was employed at date of termination;

**34.1.5** the remuneration at date of termination; and

**34.1.6** the employee so requests, the reason for termination of employment

## **CHAPTER SEVEN**

### **(PROHIBITION OF EMPLOYMENT OF CHILDREN)**

#### **35. PROHIBITION OF EMPLOYMENT OF CHILDREN**

**35.1** No person may employ a child -

**35.1.1** who is under 15 years of age; or

**35.1.2** who is under the minimum school-leaving age in terms of any law, if this  
is 15 or older

**35.2** No person may employ a child in employment -

**35.2.1** that is inappropriate for a person of that age

**35.2.2** that places a risk on the child's well-being, education, physical or mental

health or spiritual, moral or social development

- 35.3** A person who employs a child in contravention of sub-clause 35.1 or 35.2 commits an offence.

### **36. EMPLOYMENT OF CHILDREN OF 15 YEARS OR OLDER**

- 36.1** Subject to sub-clause 35.2 the Minister may, on the advice of the commission, make regulations to prohibit or place conditions on the employment of children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law.
- 36.2** A person who employs a child in contravention of sub-clause 36.1 commits an offence.

### **37. PROHIBITION OF FORCED LABOUR**

- 37.1** Subject to the Constitution, all forced labour is prohibited.
- 37.2** No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of sub-clause 37.1.
- 37.3** A person who contravenes sub-clause 37.1 or 37.2 commits an offence.

## **CHAPTER EIGHT**

### **(ADMINISTRATION AND ENFORCEMENT OF AGREEMENT)**

#### **38. ADMINISTRATION AND ENFORCEMENT OF AGREEMENT**

**38.1** See Clause 44 and annexure E.

## **CHAPTER NINE**

### **(GENERAL)**

#### **39. INCENTIVE BONUS**

**39.1** Any employer who wishes to introduce an incentive scheme shall set up a joint committee of representatives of management and the employees which, after consultation with the trade union whose members are involved, may agree upon the terms of any such scheme.

**39.2** The terms of any such incentive scheme and any subsequent alteration thereto that may have been agreed on by the committee shall be reduced to writing and be

signed by the members of the committee and shall not be varied or terminated by the committee or by either party wishing to vary or terminate the agreement has, in writing, given the other party such notice as may be agreed on by the parties when entering into such an agreement.

**39.3** A copy of any agreement entered into in terms of this clause shall be forwarded to the Council. On termination of any such agreement, the Council shall be notified in writing.

**39.4** Any employee employed on an incentive bonus scheme for any period shall be paid the full amount earned by him under the incentive bonus rates agreed upon in terms of this clause.

**39.5** The provisions of this clause shall not apply to learners.

#### **40. EXHIBITION OF AGREEMENT**

**40.1** Every employer shall affix and keep affixed in his establishment a legible copy of this Agreement, in English, in a conspicuous place where it is readily accessible to his employees.

#### **41. TRADE UNION REPRESENTATIVES IN COUNCIL**

**41.1** Every employer shall grant to his employees who are representatives on the

Council every reasonable facility to attend to their duties in connection with meetings of the Council.

#### **42. *ULTRA VIRES***

- 42.1** Should any provision of this Agreement be declared *ultra vires* by any competent court of law, the remaining provisions of this Agreement shall be deemed to be the Agreement and shall remain in operation for the period of this Agreement.

#### **43. CONCLUDING AND VARIATION OF AGREEMENT**

- 43.1** Upon and following the conclusion of this Agreement on wages and related matters between the parties to the Council, no employer shall be required to enter into a second or subsequent agreement on wages and/or related matters contained in this Agreement during the currency of the Agreement that would have the effect of amending, varying or superseding the concluded Agreement during or before expiry of its currency.
- 43.2** The provision of sub-clause 43.1 shall similarly apply to an employer who has concluded an agreement with the trade union under the provisions of clause 49.
- 43.3** The provisions of sub-clause 43.1 shall similarly apply to an employer who,

under an exemption granted to him by the Chamber under clause 51, has concluded an agreement with any trade union that has majority representation of members among the employees of such employer.

#### **44. ENFORCEMENT OF AGREEMENT AND RESOLUTION OF DISPUTES**

- 44.1** Despite any other provision of this Collective Agreement, the Council may appoint one or more specified persons and may request the Minister of Labour to appoint such person as designated agent in terms of Section 33(1) of the Act to promote, monitor and enforce compliance with this Collective Agreement.
- 44.2.** If, during the course of performing his duties and/or in the event that a complaint is received, the designated agent discovers what appears to be a contravention of this Collective Agreement, the designated agent may –
- (a)** secure compliance with this agreement by –
    - (i)** publicising the contents of this agreement ;
    - (ii)** conducting inspections ;
    - (iii)** investigating complaints ;

- (iv) issuing compliance orders ; or
  - (v) any other means the Council may have adopted.
- (b) perform any other function which is conferred or imposed on the agent by the Council.

**44.3.** Should any party to such alleged contravention as contemplated by the compliance order in terms of sub-clause 44 (2)(a)(iv), fail to comply with the provisions of this Collective Agreement within the specified period, the designated agent must –

- (a) submit a report to the Secretary certifying that the matter remains unresolved ; and
- (b) attach a copy of the compliance notice which notice shall contain the description of the areas of non-compliance with the provisions of this Collective Agreement.

**44.4.** Upon receipt of the report submitted under sub-clause 44.3(a), the Secretary may –

- (a) take such steps as are necessary to give effect to any such agreement reached in the event of the contravention issue

having been resolved ; or

- (b) refer the alleged contravention to arbitration by an arbitrator appointed by the Council ; and
- (c) an arbitrator appointed in terms of this clause by the Council, shall have all the powers assigned to an arbitrator, as contemplated by the Act, including but not limited to the powers to impose orders for interest and penalties and costs as contemplated by Section 33A of the Act read with the Regulations.

**44.5** The Secretary may apply to make the arbitration award and/or settlement agreement an order of the Labour Court.

**44.6.** A designated agent appointed under Section 33(1) of the Act, shall in addition to the powers referred to in this sub-clause, have the powers assigned to a designated agent as set out in Schedule 10 and Section 142 of the Act, read with the changes required by the context.

***44 A. DISPUTES ABOUT INTERPRETATION OF THE  
COLLECTIVE AGREEMENT***

**44.1.** If there is a dispute about the interpretation of any provision of this Collective Agreement, any party to the dispute may refer the dispute

to the Council.

- 44.2.** The party who refers the dispute must satisfy the Council that a copy of such referral has been served on all other parties to the dispute.
- 44.3.** The Council must attempt to resolve the dispute through conciliation in terms of the guidelines as contained in Schedule E
- 44.4** The Secretary of the Council may require a designated agent to conciliate the dispute.
- 44.5.** The designated agent may investigate the facts surrounding the dispute and if the designated agent has reason to believe that there has been a contravention of this Collective Agreement, the designated agent may endeavour to secure compliance with the Collective Agreement in terms of clause 44A.
- 44.6.** The designated agent shall submit to the Secretary a written report on the outcome of the investigations undertaken as well as any steps taken in terms of sub-clause 5.
- 44.7.** Should a party to such a dispute at a date set down for conciliation object to the designated agent acting as a conciliator, the Council may upon request of any such party, refer the dispute for conciliation in writing to the Secretary of the Council by –

- (a) a conciliator experienced in labour conciliation ; or
- (b) an accredited agency ; or
- (c) the Commission for Conciliation Mediation and Arbitration,  
subject to there being an agreement with the Commission in  
terms of sub-clause 51(6) of the Act.

**44.8.** Upon the failure of any party to attend a scheduled conciliation Meeting, the Council may –

- (a) postpone proceedings to a date not more than 14 days from the initial scheduled conciliation meeting ; or issue a certificate declaring the dispute unresolved.

**44.9.** If the dispute has been certified as unresolved, any party to the dispute may request the Secretary of the Council to refer the dispute to arbitration by –

- (a) an arbitrator experienced in labour arbitrations ; or
- (b) an accredited agency, or

- (c) the Commission for Conciliation Mediation and Arbitration,  
subject to there being an agreement with the Commission in  
terms of Section 51 (6) of the Act.

**44.10.** Any party requesting the Secretary of the Council in terms of this  
Clause to refer the dispute to the following –

- (a) a Conciliator an/or Arbitrator experienced in labour matters ; or
- (b) an accredited agency ; or
- (c) the Commission for Conciliation Mediation and Arbitration ;  
the referring party shall be liable for any fee that may be charged  
by any person and/or institution for performing the functions in terms  
of this Clause and the Council may recover the fees charged, from the  
referring party.

## **CHAPTER 10**

### **45. COMPULSORY RETIREMENT AGE**

**45.1.** In the absence of any in-house retirement fund, any employee who enters the  
Industry after the date on which this Agreement comes into operation, shall retire  
at the age of 65 years.

#### **46. DISCIPLINARY AND GRIEVANCE CODES PROCEDURES**

- 46.1.** Employers and employees may negotiate agreements of disciplinary and grievance codes and procedures at plant level.
- 46.2.** On conclusion of such agreement(s), the employer shall lodge copies of such agreement(s) with the Council and with the trade union.
- 46.3.** Any changes to such agreement(s) shall be negotiated between the employees and the relevant employer, and a copy of such amended agreement(s) shall be lodged with the Council and with the trade union.
- 46.4.** The provisions of this clause shall in no way affect any requirements of the Act.

#### **47. BASIS OF PAYMENT**

Payment for all work done shall be at the rate of wages prescribed for the class of work performed, and shall not be based on the technical skill or qualification of the employee concerned.

#### **48. EXPENSES OF THE COUNCIL**

- 48.1.** For the purpose of meeting the expenses of the Chamber, every employer shall deduct 20c per week from the wages of each of his employees who falls within the scope of application of this agreement. To the amount so deducted, the employer shall add a like amount and pay the total sum to the Secretary of the Council not later than the 10<sup>th</sup> day of each month, submitting at the time of payment the names

of employees and the period worked in the form and manner specified by the Council from time to time.

#### **49. IN-HOUSE CHAMBER WAGE AGREEMENT**

**49.1** The Chamber shall grant exemption from the provisions of Schedule C, whenever an employer and the trade union wish to enter into negotiations prior to the onset of the annual negotiations on amendments to the Main Agreement and where the Chamber is advised accordingly, in respect of the applicable minimum wage rate for any or all categories of employees enumerated therein : Provided that -

**49.1.1** any agreement reached shall be reduced to writing and signed by the employer of his authorised representative and by the trade union ;

**49.1.2.** such agreement shall be lodged with the Council within seven days of the signing thereof

**49.1.3.** such agreement shall be only in respect of categories of employees appearing in Schedule C hereto.

**49.1.4.** such agreement and the wage schedule annexed thereto or forming part thereof shall be set out in a form and manner acceptable to the Council.

**49.2.** Upon receipt of the written agreement in terms of sub-clause 49.1 , the Council

shall forthwith register the applicable minimum wage rates recorded therein in its records and, failing a commencement date being stipulated in such agreement,

such minimum wage rates become effective, due and payable to the employees of the employer from the commencement of the pay week following the date of receipt thereof by the Council.

**49.3.** The applicable minimum wage rates published in Schedule C of the Main Agreement, as amended from time to time, shall continue to apply to those employers and employees where the employer and employees have not concluded a written agreement as referred to in sub-clause 49.1.1 hereof, and shall in any case apply up to date of commencement of a written agreement as provided for in sub-clause 49.2 hereof.

**49.4.** Where a group of employers with similar interest, or an employers' organisation in respect of any or all its members, enters into negotiations with the Trade Union in terms of sub-clause 49.1, the provisions of that sub-clause and of sub-clauses 49.2 and 49.3 shall similarly apply.

## **50. COSTS**

The Council shall be entitled to recover all monies disbursed by it in respect of legal and/or arbitration fees and expenses incurred, in its endeavour to secure compliance with

this agreement.

**50.1.** Costs awarded by an arbitrator, may include-

- (a) the cost of arbitration ;
- (b) legal and professional costs and disbursements ;
- (c) and other expenses incurred by the Council.

## **51. EXEMPTIONS**

**51.1.** Subject to the Exemptions Procedure contained in Annexure B, the Chamber may grant exemption from any of the provisions of this Collective Agreement for any good and sufficient reason and if exemption has been applied for by a non-party to the Chamber and the Independent Exemption Appeal board established in terms of Schedule B requests the Chamber to do so, it must grant such exemption.

**51.2.** All applications for exemption shall be in writing, in the form specified by the Chamber from time to time and shall be addressed to the Secretary of the Council.

## **52. LONG SERVICE AWARDS**

**52.1.** A once off Long Service Award allowance shall be paid by each employer to his employees for which minimum wages are prescribed in Schedule C read with Schedule D, calculated from the date of coming into operation of this Agreement onwards, as follows :

5 years ~ R250.00

10 years ~ R1,000.00

15 years ~ R1,500.00

20 years ~ R2,000.00

**SCHEDULE A**

**PUBLIC HOLIDAYS**

(1)	NEW YEARS DAY	-	01 JANUARY
(2)	HUMAN RIGHTS DAY	-	21 MARCH
(3)	GOOD FRIDAY	-	13 APRIL
(4)	FAMILY DAY	-	16 APRIL
(5)	FREEDOM DAY	-	27 APRIL
(6)	WORKERS DAY	-	01 MAY
(7)	YOUTH DAY	-	16 JUNE
(8)	NATIONAL WOMEN'S DAY	-	09 AUGUST
(9)	HERITAGE DAY	-	24 SEPTEMBER
(10)	DAY OF RECONCILIATION	-	16 DECEMBER
(11)	CHRISTMAS DAY	-	25 DECEMBER
(12)	DAY OF GOODWILL	-	26 DECEMBER

## **SCHEDULE B**

### **EXEMPTIONS PROCEDURE**

#### **1) GENERAL :**

(a) The Council may grant exemption from any of the provisions of the Collective Agreement for any good and sufficient reason and all applications for exemption shall be dealt with in the following manner :

(i) Parties: Any application for exemption by a Party to the Collective Agreement shall be dealt with in accordance with the provisions as laid down within the Constitution relating to exemptions.

(ii) Non-Parties : Any application by a non-party to the Collective

Agreement shall be dealt with in accordance with the provisions as set out below.

**2) PROCESS :**

- (a) All applications for exemption must be in the prescribed form as required by the Council and must be forwarded to the Secretary.
  
- (b) Applications for exemption must be fully motivated and shall *inter alia*, include the following particulars :
  - (i) The period for which exemption is sought ;
  
  - (ii) the relevant clause/s from which exemption is/are sought ;
  
  - (iii) If the applicant is an employer, the application must be accompanied by a business plan setting out the steps to be taken by the during the period of the proposed exemption so as to ensure ultimate compliance upon the expiry of such exemption and relevant financial statements shall accompany such application.
  
- (c) Any application for exemption from the minimum wage and/or increases provided for within Schedule C of the Collective Agreement, must be received by the Secretary within 30 days after

publication by the Minister of Labour, and/or the date of registration as an employer within the Industry, which application shall include a schedule reflecting the following particulars of employees :

- (i) names and job categories ; and
  - (ii) current wages earned ; and
  - (iii) confirmation that the employees and/or their representatives are in support of the application.
- (d) An application for exemption shall not be considered if the employees have indicated that they were not in favour of the exemption sought.
- (e) An application for exemption shall also not be considered if the contents of the application are covered by an arbitration award and/or Labour Court Order binding on the applicant.

**3) CRITERIA TO BE CONSIDERED WHEN CONSIDERING AN APPLICATION FOR EXEMPTION :**

- (a) The exemption applied for may not be in conflict with the primary objects of the Act ;
- (b) The interests of the Industry/Sector shall be taken into account and whether the granting of the exemption would –

- (i) unfairly undermine the collective bargaining process ;
- (ii) interfere with fair competition between manufacturers in the Industry ;
- (iii) encourage unfair exploitation of workers' in the Industry ;
- (iv) wage and wage related exemptions may only be granted for duration of the Collective Agreement.

**4) ADMINISTRATION :**

- (a) The Secretary of the Council shall issue to every person granted exemption a licence signed by the Chairman and Secretary of the Council setting out –
  - (i) the full name of the person/employer concerned ;
  - (ii) the provisions of the Collective Agreement from which exemption is granted ;
  - (iii) the conditions fixed in accordance with (ii) ;
  - (iv) the period for which exemption shall operate.

- (b) The Secretary of the Council shall –
  - (i) number consecutively all licences issued ;
  - (ii) retain a copy of each licence issued ;
  - (iii) forward a copy of the exemption licence to the Applicant.
  
- (c) The Council may on good cause shown, give the holder of an exemption licence 30 days' notice of withdrawal of the exemption, on receipt of which the holder may appeal to the Board in which case the same time limitation as contained in sub-clause 5 (d) shall apply.

**5) EXEMPTIONS APPEAL BOARD :**

(a) **Establishment :**

In terms of Section 32 of the Act, the Council hereby establishes an independent body to be known as the Exemptions Appeal Board, to consider and determine any appeal brought against a refusal and/or withdrawal of a non-party application for exemption from any provision of the Collective Agreement by the Council.

- (b) In considering an appeal, the Board must consider the views expressed

by the Council, the employer/s and the employee/s and/or their representatives, as well as representations received in relation to the possible effect of the exemption on competitors.

- (c) In the event of the Board exercising its discretion to grant an exemption previously refused by the Council, the Board must ensure that such an exemption shall not contain terms that would have an unreasonable detrimental effect of the fair equitable and uniform application of this Collective Agreement in the Industry.
- (d) All applications to the Board, must be lodged with the Secretary of the Council by no less than 6 (six) weeks from the date of the delivery of the Council's exemption finding on the Applicant.
- (e) All applications must be in Affidavit form styled Heads of Argument and must be accompanied by a processing fee of R500.00 (five hundred rand) which amount is not refundable.
- (f) The Applicant shall be required to attend the hearing, failing which the Board shall be entitled to hear and decide on the matter in the absence of the Applicant.

**SCHEDULE E**

**CONCILIATION GUIDELINES**

**1. Introduction :**

**1.1.** These guidelines deal with the manner in which the Council and the conciliators conduct conciliation proceedings.

**2. Purpose of guidelines :**

**2.1.** The purpose of these guidelines are-

- (a)** to inform users of the Council's conciliation process of the policies and procedures adopted by the Council in conciliation ;
- (b)** to help Conciliators perform their functions ; and
- (c)** to promote consistency in the Council's approach to conciliation proceedings.

**2.2.** These guidelines are drawn from the Commission for Conciliation, Mediation

and Arbitration's (CCMA) best practice, the decisions of Commissioners of the CCMA, the courts, and the law.

**3. Applications for Condonation :**

- 3.1.** An unfair dismissal dispute must be referred to the Council within 30 days of the date of dismissal. If the 30-day time limit has expired.
- 3.2.** The application must be attached to the dispute referral form and served with it in the other parties to the dispute and lodged with the Council.
- 3.3.** If at any time the Council becomes aware that the dispute was referred outside the 30-day time period, the Council may call on the applicant to apply for condonation.
- 3.4.** The application must include a signed statement which explains the reasons for the delay and deals with each of the considerations set out in paragraph 3.8. below.
- 3.5.** If the applicant requires condonation because he or she did not attend a

conciliation meeting scheduled by the Council, the applicant must give reasons for failing to attend.

- 3.6.** The other parties to the dispute must reply to the application within fourteen (14) calendar days of receiving it. This reply must also include a signed statement, which is to be served on the applicant and filed with the Council.
- 3.7.** The applicant may reply to the other party's response within seven (7) calendar days of receiving it. The applicant must serve the reply on the other parties to the dispute and then file it with the Council.
- 3.8.** The Conciliator must consider the application and any representations of the parties and must grant condonation to the applicant if there are good grounds for doing so. The Conciliator must consider the following.

  - (a)** *The degree of lateness* : if the referral is only a few days late, this may weigh in favour of condonation.
  - (b)** *The degree of fault* of the referring party of his/her authorised representative. If the referral was late owing to a circumstance beyond the control of the applicant, this may weigh in favour of condonation.
  - (c)** *The reasonableness of the explanation* : If the explanation is improbable,

this should weigh against condonation.

(d) Prejudice to the other parties to the dispute.

(e) Prospects of success.

#### **4. Province in which dispute is to be conciliated**

**4.1.** A dispute should be conciliate in the province in which the dispute arose.

**4.2.** The Council may arrange for conciliation to be held telephonically if in its opinion the circumstances justify this and it is practical to do so.

#### **5. Jurisdictional disputes**

**5.1.** The policy of the Council is to discourage legal technicalities and to promote dispute resolution in the interests of social justice and labour peace. Accordingly, its policy is not to determine jurisdictional disputes at conciliation.

**5.2.** If a party objects to the jurisdiction of the Council, the conciliator may-

(a) conciliate the dispute on the basis that attendance and participation of all

parties is without prejudice ; or

- (b) issue a certificate stating that the dispute has not been resolved.

**6. Discretion to assume jurisdiction**

**6.1.** If at any time the Council becomes aware that the dispute could have been resolved by another bargaining council, an accredited agency or in terms of a collective agreement, the Council may, in terms of section 147 of the LRA-

- (a) exercise its discretion to assume jurisdiction ;

- (b) refer the dispute to the appropriate person or body for resolution.

**6.2.** In determining whether or not to assume jurisdiction in terms of section 147, the Council must be guided by whether-

- (a) the referral is an attempt to bypass agreed or statutory procedures ;

- (b) substantial injustice will be done by referring the dispute to the appropriate person or body for resolution ;

- (c) the Council has jurisdiction.

- 6.3.** If the Council declines jurisdiction it must give the parties brief reasons for its decision and advise the parties as to the appropriate person or body for resolving the dispute.

**7. Failure to attend conciliation proceedings**

- 7.1.** If the applicant party attends a scheduled conciliation meeting and the responding party does not, the Conciliator may-

- (a) postpone the conciliation ; or
- (b) issue a certificate that the dispute has not been resolved.

Before issuing a certificate the Conciliator must be satisfied that the parties have received adequate notice of the place, date and time of the scheduled conciliation.

- 7.2.** If the applicant party does not attend a scheduled conciliation meeting and the responding party does, the Conciliator may -

- (a) postpone the proceedings ; or
- (b) dismiss the referral.

Before deciding to dismiss the referral, the Conciliator must be satisfied that the parties have adequate notice of the place, date and time of the scheduled conciliation. If the referral has been dismissed, the Council must notify the parties that the referral has been dismissed.

- 7.3.** If a referral has been dismissed because a party did not attend a scheduled conciliation, the applicant party may refer the dispute to the Council again under a fresh dispute referral form. If the dispute being referred is about the fairness of a dismissal, and if the 30-day time limit for referral has expired, the applicant must apply for condonation in terms of Clause 3 of this Annexure

## **8. Representation at conciliation proceedings**

- 8.1.** Section 135 (4) of the Act, explicitly states who may appear or be a representative in conciliation proceedings. A Conciliator does not have discretion to allow a person not listed in subsection (4) to appear or act as a representative.

In the conciliation proceeding, a party to the dispute may appear in person or be represented only by-

- (a) a director or employee of that party ; or
- (b) any member, office bearer or official of that party's registered trade union

or registered employers' organisation.

**8.2.** If a party objects to a representative or the Conciliator is of the opinion, that a representative is not authorised in terms of section 135 (4), the Conciliator must decide whether that representative may attend.

**8.3.** A dispute about the status and entitlement of a representative is a factual dispute. The Conciliator may call upon any person to demonstrate why he or she should be admitted as representative in terms of section 135 (4) of the Act. The Conciliator may request documentation, such as the constitution, pay-slips, the contract of employment, the prescribed form listing the directors of a company and recognition agreements. Representatives must be prepared to tender evidence in support of their status.

## **9. Application for postponement**

**9.1.** The Council may, on application, postpone a conciliation hearing only in special circumstances. This policy is based on the fact that the Act emphasises expeditious dispute resolution and postponement inevitably causes delay.

**9.2.** The Council will not allow matters to be postponed unless-

- (a) there is good reason to do so ;
- (b) the application is in good faith
- (c) the application is made as soon as practicable ; and
- (d) the other parties to the dispute are not unduly prejudiced.

**9.3.** If a postponement will result in expiry of the 30-day period allowed for conciliation (in section 135), the party seeking the postponement must furnish the Council with written proof that the parties have agreed to extend the 30-day period.

## **10. Impartiality of Commissioners**

**10.1.** A Conciliator must be independent and must be seen to be independent. Conciliators should disclose any interest or relationship that is likely to effect their impartiality or which might create a perception of partiality.

**10.2.** After disclosure, a Conciliator may conciliate if both parties so desire, but should withdraw if he or she believes that a conflict of interest exists irrespective of the view expressed by the parties.

**10.3.** If a party objects to a Conciliator conciliating the dispute, the Conciliator should

not withdraw if he or she determines that the reason for the objection is not substantial and he or she can nevertheless act impartially and fairly, and that withdrawal would cause unnecessary delay or would be contrary to the ends of justice.

**10.4.** Conciliators must conduct themselves in such a way as to avoid any inference of bias.

## **11. Conclusion**

**11.1.** These guidelines lay down general principles to guide the Council's conciliators and staff in the exercising of their powers and functions. These principles are not hard and fast rules and every case presented to the Council must be considered on its merits.

**SIGNED AT DURBAN ON THIS**

**DAY OF**

**2004**

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**V. NAIDOO**  
**CHAIRPERSON**

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**G. MOONSAMY**  
**VICE-CHAIRPERSON**

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**G.J.P. BLIGNAUT**  
**SECRETARY OF THE COUNCIL**