

## **SCHEDULE**

### **THE MOTOR INDUSTRY BARGAINING COUNCIL - MIBCO**

### **COLLECTIVE ADMINISTRATIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**Retail Motor Industry Organisation - RMI**

and

**Fuel Retailers' Association of Southern Africa**

(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the

**National Union of Metalworkers of South Africa,**

and

**MISA/SAMU**

(hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the Motor Industry Bargaining Council - MIBCO.

## **CLAUSE 1 - SCOPE OF APPLICATION**

- (1) The terms of this Agreement shall be observed in the Motor Industry -
  - (a) throughout the Republic of South Africa as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993);
  - (b) by the employers and the employees in the Motor Industry who are members of the employers' organisations and the trade unions, respectively.
- (2) Notwithstanding the provisions of subclause (1), the provisions of this Agreement shall apply to -
  - (a) apprentices only in so far as they are not inconsistent with the provisions of or any conditions fixed under the Manpower Training Act, 1981, and learners in terms of Chapter IV of the Skills Development Act, Act No. 97 of 1998; and
  - (b) trainees undergoing training under the Manpower Training Act, 1981, only in so far as they are not inconsistent with the provisions of or any conditions fixed under that Act.
- (3) The provisions of Clauses 1(1)(b), 2, 5(1)(d), 7, 12 and 13 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions who entered into this agreement.

## **CLAUSE 2 - PERIOD OF OPERATION OF AGREEMENT**

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in operation for the period ending 31 August 2007.

## **CLAUSE 3 - DEFINITIONS**

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, and unless the contrary intention appears, words importing the masculine gender shall also include females; further, unless inconsistent with the context -

- (1) **`Act'** means the Labour Relations Act, 1995 (Act 66 of 1995);
- (2) **`apprentice'** means an employee serving under a written contract of apprenticeship registered or deemed to have been registered under the Manpower Training Act, 1981, and includes a minor employed on probation in terms of that Act as well as a learner in terms of Chapter IV of the Skills Development Act, 97 of 1998;
- (3) **`Area A (EC)'** means the Magisterial District of East London, the municipal areas of Despatch, Port Elizabeth and Uitenhage;

- (4) **`Area B (EC)'** means the Magisterial Districts of Aberdeen, Adelaide, Albany, Albert, Alexandria, Aliwal North, Barkly East, Bathurst, Bedford, Calittdorp, Cathcart, Colesberg, Cradock, Elliot, Fort Beaufort, George, Graaff-Reinet, Hankey, Hanover, Hofmeyr, Humansdorp, Indwe, Jansenville, Joubertina, King William's Town, Kirkwood, Knysna, Komga, Lady Grey, Maclear, Middelburg (C.P.), Molteno, Mosselbay, Murraysburg, Noupoot, Oudtshoorn, Pearston, Port Elizabeth (excluding the municipal area of Port Elizabeth), Queenstown, Somerset East, Sterkstroom, Steynsburg, Steytlerville, Stockenström, Stutterheim, Tarka Uitenhage (excluding the municipal area of Uitenhage), Uniondale, Verterstad, Willowmore and Wodehouse;
- (5) **`Area A (KZNL)'** means the Magisterial Districts of Chatsworth, Durban, Pietermaritzburg and Pinetown and the municipal areas of Ladysmith, Newcastle and Umhlanga Rocks;
- (6) **`Area B (KZNL)'** means the districts and areas in the Province of Kwazulu Natal not referred to in Area A (KZNL), and the Magisterial District of Mount Currie;
- (7) **`Area A (FS & NC)'** means the Magisterial District of Bloemfontein and the municipal areas of Kimberley, Sasolburg and Welkom;

- (8) **'Area B (FS & NC)'** means the Province of the Free State, excluding those districts and areas referred to in Area A (FS & NC), and the Magisterial Districts of Barkly West, Britstown, De Aar, Gordonia, Hartswater, Hay, Herbert, Hopetown, Kenhardt, Kimberley, Kuruman, Mafikeng, Phillipstown, Postmasburg, Prieska, Upington, Vryburg and Warrenton [but excluding those municipal areas included in Area A (FS & NC)];
- (9) **'Area A (Highveld)'** means the Magisterial Districts of Oberholzer, Randfontein and Westonaria, and the municipal areas of, Alberton, Bedfordview, Benoni, Boksburg, Brakpan, Edenvale, Elsburg, Germiston, Heidelberg (Gauteng), Johannesburg, Kempton Park, Klerksdorp, Krugersdorp, Meyerton, Midrand, Nigel, Potchefstroom, Randburg, Roodepoort-Maraisburg, Sandton, Springs, Vanderbijlpark and Vereeniging;
- (10) **'Area B (Highveld)'** means the Magisterial Districts of Amersfoort, Amsterdam, Balfour, Bethal, Bloemhof, Breyten, Christiana, Coligny, Davel, Delareyville, Delmas, Ermelo, Fochville, Heidelberg, Lichtenburg, Nigel, Orkney, Ottosdal, Piet Retief, Pongola, Schweizer Reneke, Standerton, Stilfontein, Volksrust, Wolmaransstad, Wakkerstroom, and the municipal areas of Amalia, Armadene, Bank, Biesiesvlei, Bosfontein, Claudina, Chrissiesmeer, Dasville, De Deur, Devon, Ebner-on-Vaal, Eendracht, Eikenhof, Eloff, Evander, Evaton, Glenharvie, Gollel, Grasmere, Greylingstad, Grootvlei, Hartebeesfontein, Hekpoort, Holmdene, Kinross, Klipdrift, Kliprivier, Klipvalley, Leeudoringstad, Leslie, Lothair, Magaliesberg, Makokskraal, Makwassi, Migdol, Moolman, Moosrivier, Morgenzon, Muldersdrift, Paardekraal, Perdekop, Plat Rand, Redan, Residensia, Rykaartspos, Sannieshof, Sibasa, Sundra, Sebokeng, Trichardt, Val, Van Wyksrust, Venterspost, Vermaas, Welbekend, Welverdiend, Walkerville, Zuurbekom, but excluding those Districts and Areas referred to in Area A (Highveld);

- (11) **'Area A (Northern Region)'** means the municipal areas of Akasia, Middelburg (Mpumalanga), Nelspruit, Pietersburg, Potgietersrus, Pretoria, Rustenburg, Centurion and Witbank;
- (12) **'Area B (Northern Region)'** means the Magisterial Districts of Barberton, Belfast, Brits, Bronkhorstspuit, Carolina, Cullinan, Eerstehoek/Badplaas, Ellisras, Groblersdal, Koster, Letaba (includes Tzaneen), Lydenburg, Marico (includes Zeerust), Messina, Moutse, Phalaborwa, Pilgrims Rest (includes Graskop and Sabie), Sibasa, Soshanguve, Soutpansberg (includes Louis Trichardt), Swartruggens, Thabazimbi, Warmbaths, Waterval Boven, White River and Waterberg (includes Nylstroom), but excluding those Districts and Areas referred to in Area A (Northern Region) and the Areas as it existed prior to the proclamation of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).
- (13) **'Area A (WP)'** means the Magisterial Districts of Bellville, Goodwood, Kuils River, Simon's Town, The Cape and Wynberg, and the municipal areas of Paarl, Somerset West, Stellenbosch and Strand;
- (14) **'Area B (WP)'** means the Magisterial Districts of Beaufort West, Bredasdorp, Caledon, Calvinia, Carnarvon, Ceres, Clanwilliam, Fraserburg, Heidelberg (C.P.), Hermanus, Hopefield, Ladismith, Laingsburg, Malmesbury, Montagu, Moorreesburg, Namaqualand, Paarl, Piketberg, Prince Alfred, Riversdale, Robertson, Somerset West, Stellenbosch, Strand, Sutherland, Swellendam, Tulbagh, Vanrhynsdorp, Victoria West, Vredenburg, Vredendal, Wellington, Williston and Worcester, but excluding those municipal areas referred to in Area A (WP);

- (15) **`B/A journeyman'** means an employee over the age of 22 who is able to prove not less than three years' experience in a trade designated for the Motor Industry or, with the approval of the Regional Council concerned, experience in some other trade, and who under the supervision of a journeyman performs work in the designated trade in which he has had the experience or, with the approval of the Regional Council concerned, in some other trade related to the activities covered by the definition of `Motor Industry' in this Agreement, or an employee who is able to prove to the satisfaction of the Regional Council concerned not less than three-and-a-half years' experience as a repair shop assistant, body shop assistant, motor cycle mechanic's assistant, auto electrician's assistant or diesel pump room assistant with any employer in the `Motor Industry' as defined;

**[Note:** Regarding the proof required of three-and-a-half years' experience, a certificate of service shall be issued by the employer in which it is certified that the employee concerned had served either as a repair shop assistant, body shop assistant, motor cycle mechanic's assistant, auto electrician's assistant or diesel pump room assistant, which certificate in turn shall be verified by the Regional Council concerned, and the employee shall submit proof of having attended the proper course at a duly registered group training centre.];

- (16) **`Council'** means the Motor Industry Bargaining Council – MIBCO, registered in terms of section 29 of the Act;
- (17) **`establishment'** means any premises or part thereof in or on which the Industry, or any part thereof, as defined in this Agreement, is carried on;

- (18) **'Exemption Board'** means the Board established by the Council in terms of section 32 of the Act, to consider appeals from non-parties against a refusal of a non-party's application for exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council;
- (19) **'journeyman'** means a person who performs journeyman's work and who -
- (a) has served an apprenticeship in a designated trade in accordance with the requirements of the Manpower Training Act, 1981, or in accordance with a written contract approved by any Regional Council; or
  - (b) is in possession of a Grade A membership card issued by MISA/SAMU or the National Union of Metalworkers of South Africa; or
  - (c) is in possession of a certificate issued to him in terms of the Manpower Training Act, 1981; or
  - (d) is in possession of an identity card issued by the Regional Council;
- (20) **'Main Agreement'** means the Agreement in which wages and other conditions of service are prescribed for employees in the Motor Industry, as published in terms of section 32 of the Act;



(21) **`Motor Industry'** or **`Industry'**, without in any way limiting the ordinary meaning of the expression and subject to the provisions of any statutory demarcation determination made, means the industry concerned with -

(a) assembling, erecting, testing, remanufacturing, repairing, adjusting, overhauling, wiring, re-wiring, upholstering, spraying, painting and/or reconditioning carried on in connection with -

(i) chassis and/or bodies of motor vehicles;

(ii) internal combustion engines and transmission components of motor vehicles;

(iii) the electrical equipment connected with motor vehicles, including radios;

(b) automotive engineering;

(c) auto valet establishments

(d) repairing, vulcanising and/or retreading tyres;

(e) repairing, servicing and/or reconditioning batteries for motor vehicles;

- (f) the business of parking and/or recovery and/or storing motor vehicles;
- (g) the business conducted by filling and/or service stations;
- (h) the business carried on mainly or exclusively for the sale of motor vehicles or motor vehicle parts and/or spares and/or accessories (whether new or used) pertaining thereto, whether or not such sale is conducted from premises that are attached to a part of an establishment in which the assembly of or repairs to motor vehicles is carried out;
- (i) the business conducted by motor graveyards;
- (j) the business conducted by manufacturing establishments in which motor vehicle parts and/or spares and/or accessories and/or components thereof are manufactured;
- (k) vehicle body building;
- (l) the sale of tractors, agricultural and irrigation equipment (not connected with the manufacture thereof) in the Republic of South Africa but excluding the Magisterial District of Kimberley, in respect of the sale of:
  - (i) agricultural and irrigation equipment; and

- (ii) tractors, except when undertaken by establishments substantially engaged in the sale and/or repair of other motor vehicles.

For the purposes of this definition -

**`automotive engineering'** means the reconditioning of internal combustion engines or parts thereof for use in motor vehicles in establishments mainly or exclusively so engaged, whether such establishment is engaged in the dismantling and repair of motor vehicles or not; and

**`motor vehicle'** means any wheeled conveyance propelled by mechanical power (other than steam) or electrically and designed for haulage and/or for the transportation of persons and/or goods and/or loads and includes trailers and caravans but does not include any equipment designed to run on fixed tracks, trailers designed to transport loads of 27 273 kg or over, or aircraft; and

**`vehicle body building'** means any or all of the following activities carried on in a vehicle body building establishment, but does not include vehicle body building done by assembly establishments incidental to the assembling of motor vehicles:

- (a) The construction, repair or renovation of cabs and/or bodies and/or any superstructure for any type of vehicle;

- (b) the manufacture or repair of component parts for cabs and/or bodies and/or any superstructure and the assembling, adjusting and installation of parts in cabs, bodies or on the superstructure of vehicles;
- (c) fixing cabs and/or bodies and/or any superstructure to the chassis of any type of vehicle;
- (d) coating and/or decorating cabs and/or bodies and/or any superstructure with any preservative or decorative substance;
- (e) equipping, furnishing and finishing off the interior of cabs and/or bodies and/or superstructure;
- (f) building of trailers, but not including the manufacture of wheels or axles therefor;
- (g) all operations incidental to or consequent upon the activities referred to in paragraphs (a) to (f) above,

for the purposes of this definition, `vehicle' does not include an aircraft.

`Motor Industry' as defined above does not include the following:

- (a) The manufacture of motor vehicle parts and/or accessories and/or spares and/or components in establishments laid out for and normally producing metal and/or plastic goods of a different character on a substantial scale, or the sale of motor spare parts and accessories by assembly establishments from such establishments;
- (b) the assembling, erecting, testing, repairing, adjusting, overhauling, wiring, spraying, painting and/or reconditioning of agricultural tractors, except where carried on in establishments rendering similar service in respect of motor cars, motor lorries or motor trucks;
- (c) the manufacturing and/or maintenance and/or repair of -
  - (i) civil and mechanical engineering equipment, and/or parts thereof, whether or not mounted on wheels;
  - (ii) agricultural equipment or parts thereof; or
  - (iii) equipment designed for use in factories and/or workshops:

Provided that for the purposes of (i), (ii) and (iii) above, 'equipment' shall not be taken to mean motor cars, motor lorries and/or motor trucks;

- (iv) motor vehicle or other vehicle bodies and/or superstructures and/or parts or components thereof made of steel plate of 3,175 mm thickness or thicker when carried on in establishments laid out for and normally engaged in the manufacture and/or maintenance and/or repair of civil and/or mechanical engineering equipment on a substantial scale;
  - (d) assembly establishments, i.e. establishments in which motor vehicles are assembled from new components on an assembly line, which includes the manufacture and/or fabricating of any motor vehicle parts or components when carried on in such establishments, but does not include vehicle body building, except in so far as it is carried on incidental to the assembly of motor vehicles, other than caravans and trailers;
- (22) **`Region EC'** means those areas defined as `Area A (EC)' and `Area B (EC);
- (23) **`Region KZNL'** means the Province of Natal as it existed prior to the promulgation of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and the Magisterial District of Mount Currie;
- (24) **`Region FS & NC'** means those areas defined as `Area A (FS & NC) and `Area B (FS & NC);
- (25) **`Region Highveld'** means those areas defined as 'Area A (Highveld) and "Area B (Highveld);

- (26) **'Region Northern'** means those areas defined as 'Area A (Northern Region)' and 'Area B (Northern Region);
- (27) **"Region WP"** means those areas defined in 'Area A (WP)' and 'Area B (WP)';
- (28) **'Regional Council'** means a committee appointed as such by the Council in terms of its Constitution;
- (29) **'week'** means -
- (a) for the purposes of clause 11 (Returns to the Council) of this Agreement, a period of seven consecutive days commencing at midnight on a Sunday;
  - (b) for the purposes of the remaining clauses of this Agreement, a period of seven consecutive days.

#### **CLAUSE 4 - EXEMPTIONS**

- (1) Exemption from any of the provisions of any of the Council's Agreements may be granted by the Council or Regional Councils, to any party on application.
- (2) Application for exemption shall be made to the secretary of the Regional Council within whose area the applicant operates or is employed.

- (3) The Regional Council or the Council, as the case may be, shall fix the conditions subject to which such exemptions shall be valid, and may, if it deems fit, after one week's notice has been given, in writing, to the person(s) concerned, withdraw any licence of exemption.
- (4) The secretary of the Regional Council or the Secretary of the Council, as the case may be, shall issue to every person granted exemption, a licence signed by him setting out -
  - (a) the name of the person concerned;
  - (b) the provisions of this Agreement from which exemption is granted;
  - (c) the conditions subject to which such exemption is granted; and
  - (d) the period during which the exemption shall be valid.
- (5) In respect of establishments registered under Chapters II or III of this Agreement, the following exemptions procedure applies:
  - (a) An employer that applies for an exemption in order to pay a lesser wage increase or to be exempted from paying on actuals shall complete the wage exemption application form available on request from the local Regional Councils.



- (b) The employer shall consult its employees on the employer's intention to apply for an exemption and the application for exemption must contain details and proof of the consultation process.
  - (c) The employer, in the application shall furnish all relevant financial information supporting the motivation for the exemption applied for.
  - (d) The employer shall lodge the application for exemption with the local Regional Council and the employer shall specify that it is a Chapter II or III application for an exemption and the employer shall specify the exact nature of the exemption applied for as prescribed in paragraph (5)(a) of this clause.
  - (e) The Regional Council shall make a decision on the application for an exemption within 30 days from the date upon which the application was lodged with the Regional Council.
  - (f) If the application of a non-party establishment for the exemption is rejected, the employer may lodge an appeal with the Independent Board and if the application of a Party establishment is rejected the employer may appeal to the National Council.
- (6) The Secretary of the Regional Council or the Secretary of the Council, as the case may be, shall -
- (a) number consecutively all licences issued;

- (b) retain a copy of each licence issued; and
  - (c) where exemption is granted to an employee, forward a copy of the licence to the employer concerned.
- (7) The Secretary of the Regional Council or the General Secretary, as the case may be, shall issue to every person granted a licence, a letter of authority signed by him setting out, read with the changes required by the context, the information referred to in subclauses (5) and (6) above.

#### **CLAUSE 5 - DEDUCTIONS FROM EARNINGS**

- (1) Unless otherwise provided for in this Agreement or the Main Agreement, no deductions or set-off of any description, shall be made from the earnings that an employee would normally be entitled to receive other than the following:
- (a) Deductions made with the written consent of the employee and of the Regional Council or the Council for –
    - (i) holiday, insurance, provident and/or pension funds or medical aid schemes where these are not administered by a Regional Council or the Council, and where an employee through negotiations between himself and his employer agrees on the amount to be paid by the employee to accept board and/or lodging from his employer;

- (ii) tea, sports or similar clubs;
- (iii) purchases by employees from their employers;
- (iv) traffic fines in cases where the guilty person(s) have been identified beyond doubt; provided that in the event of an employee being required to drive an unroadworthy or unlicensed vehicle, such fines shall be excluded;

Provided that in the case of Division B employees who are in receipt of remuneration, excluding commission on sales, in excess of R91 341 per annum in Area A and R77 589 in other areas, the deduction enumerated in subparagraphs (i) and (ii), together with other similar deductions, may be made subject to the written consent of the employee only: Provided further that such deductions are not in conflict with any contract on commission work that exist between the employer and employee.

- (b) Contributions to Council funds in terms of clause 11 of this Agreement and contributions to any sick benefit, provident and/or pension funds administered by any Regional Council or the Council.
- (c) Any amount paid by an employer compelled by law, ordinance, or legal process to make payment on behalf of an employee.

- (d) Subscriptions to MISA/SAMU and the National Union of Metalworkers of South Africa, in terms of clause 12 of this Agreement, or to such other registered trade union as may be approved by a Regional Council or the Council.
- (e) Amounts an employer in terms of regulations published under the Manpower Training Act, 1981, is entitled to recover from an apprentice who has deserted or has been expelled from an apprenticeship training hostel.
- (f) Any amount an employer deducts to pay a financial institution approved by the Council in respect of a housing loan for which any of the Pension or Provident Funds administered by the Council provide collateral security.

An employer who has made a deduction in terms of this sub-clause shall pay the amount deducted to the Secretary of the Regional Council concerned by not later than the 10th day of the month following that during which the deduction was made, or in the case of sub-clause (f) to the appropriate person or authority in terms of any law, ordinance or legal process or to the approved financial institution referred to in that sub-clause: Provided that the maximum deduction may not exceed 30% of an employee's weekly/monthly earnings including deductions for the payment of housing loans, and provided further that statutory deductions will not form part of this limitation.

- (2) Should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in terms of clause 21 of this Agreement, from such 15th day until the day upon which payment in cash is actually received by the Regional Council concerned: Provided that a Regional Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.

#### **CLAUSE 6 - ADMINISTRATION OF AGREEMENT**

- (1) The Motor Industry Bargaining Council - MIBCO, registered in terms of section 29 of the Act, hereinafter referred to as the "Council", shall be the body responsible for the administration, interpretation, implementation and enforcement of any provision of this Agreement, the Main Agreement or any other collective Agreements entered into by the parties to the Council.
- (2) The Council may, in terms of its Constitution, appoint Regional Councils for such Regions as it may establish from time to time.

## **CLAUSE 7 - AGENTS**

The Council or any Regional Council may appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement, and it shall be the duty of every employer and every employee to permit such persons to enter such establishment, institute and complete such enquiries and to examine such documents, books, wage sheets, time sheets and pay tickets, question such individuals and to do all such acts as may be necessary for the purpose of ascertaining whether the provisions of this Agreement are being observed.

## **CLAUSE 8 - REGISTRATION OF EMPLOYERS**

- (1) Every employer, unless he has already done so, shall in respect of each place at which he carries on business, complete a statement in the form of Annexure A to this Agreement and lodge such statement with the secretary of the Regional Council within whose area of jurisdiction such place of business is situated, not later than 30 days after the date -
  - (a) on which this Agreement comes into operation in the case of any place(s) of business which he is operating at that date; or
  - (b) of the commencement of business at any such place.

- (2) Every employer shall, within one month after such change, notify the secretary of the Regional Council concerned of any change in -
- (a) the ownership; and/or
  - (b) the name; and/or
  - (c) the address; and/or
  - (d) the partners, directors, members or managers, of the business.

#### **CLAUSE 9 - EXHIBITION OF AGREEMENT AND POSTING OF NOTICES**

Every employer upon whom this Agreement is binding must -

- (a) keep a copy of the Collective Agreement available in the workplace at all times;
- (b) make that copy available for inspection by any employee; and
- (c) give a copy of the collective agreement -
  - (i) to an employee who has paid the prescribed fee; and
  - (ii) free of charge, on request, to an employee who is a trade union representative.

- (d) affix and keep affixed in some conspicuous and readily accessible place upon his premises the undermentioned documents, which must be printed in legible characters in two official languages of the Republic of South Africa:
- (i) a notice in the form specified by the Council, specifying the day of the week or month, as the case may be, and the time and place at which wages will ordinarily be paid each week or month, as the case may be;
  - (ii) a notice containing the official address of the Provincial Director, of the Department of Labour and of the secretary of the Regional Council within whose area of jurisdiction the employer is carrying on his business;
  - (iii) a notice containing the starting and finishing times of each shift, in the case of filling and/or service stations where forecourt attendants are employed on a shift system.

#### **CLAUSE 10 - RECORDS TO BE KEPT BY EMPLOYERS**

(1) ***Hours and wages record:***

- (a) Every employer shall, in respect of and at each place where he conducts business, keep available for inspection at all times and in the form prescribed by the regulations under the Act, an up to date record of the earnings paid to and the time worked by each of his employees. All entries shall be in ink.



- (b) Every employer shall retain the completed record referred to in paragraph (a) of this subclause for a period of three years subsequent to the date of any entry therein.
  
  - (c) Every employer shall upon the commencement of employment of every employee enter into the record referred to in paragraph (a) of this subclause:
    - (i) the name of the employee;
    - (ii) the class of his employment; and
    - (iii) the date of commencement of his employment.
- (2) **Attendance record:** Every employer shall have available an attendance register in the form of BCEA 3 to the regulations promulgated in terms of the Basic Conditions of Employment Act, 1997, in which any employee who wishes to do so may, and every employee whose employer requires him to do so, shall record his correct times of arrival at and departure from work.

#### **CLAUSE 11 - RETURNS TO THE COUNCIL**

- (1) Every employer shall on each pay-day deduct from the earnings of each of his employees, other than apprentices, the levies specified in subclause (6) of this clause.

- (2) Every employer shall contribute and add to the levies deducted in terms of subclause (1) levies of an equal amount.
  
- (3) The total amount of levies deducted from the earnings of employees and contributed by employers in terms of subclauses (1) and (2) of this clause, respectively, shall be paid each month to the secretary of the Regional Council within whose area of jurisdiction the employer's establishment is situated and shall be accompanied by a written statement containing the following details:
  - (a) The total number of watchmen, Grade 1 and Grade 2 employees employed and the total amount of levies remitted in respect of such employees; and
  
  - (b) in respect of all other employees, including apprentices -
    - (i) the family name, initials, sex, date of birth, occupation and identity number of non-trade union journeymen;
  
    - (ii) the amount of the levy remitted in respect of each employee;
  
    - (iii) the date on which service began or the date on which service ended, in the case of employees whose employment began or ended since the details were last submitted.

**[Note:** Journeymen in non-party establishments shall be given numbered identity cards by the Council, and the trade union numbers must be inserted on monthly returns in terms of clause 12(1)(a) of this Agreement.]

- (4) Every employer shall pay the total amount of the levies payable and render the statement of details required each month in terms of subclause (3) of this clause to the secretary of the Regional Council concerned by not later than the 10th day of the month immediately following the month to which the levies and details relate.

**[Note:**

- (a) The present postal addresses of the secretaries of the various Regional Councils are as follows:

Region EC: PO Box 7270, Port Elizabeth, 6055;

Region KZNL: PO Box 17263, Congella, 4013;

Region FS & NC: PO Box 910, Bloemfontein, 9300;

Region Highveld: PO Box 2578, Randburg, 2125;

Region Northern: PO Box 2578, Randburg, 2125;

Region WP: PO Box 17, Bellville, 7535.

- (b) Forms prepared specifically for the inclusion of the details required by this clause are obtainable on application from the secretary of the Regional Council concerned.]

- (5) The contributions in terms of subclause (1), shall be at the rate of R1,60 per week per employee (irrespective of weekly wage) in all Regions:

Provided that -

- (i) where an employee receives wages for less than 23 hours, or has worked for less than 23 hours in a particular week, no contributions shall be payable by or in respect of him for that week;
  - (ii) before an employee proceeds on annual leave, contributions due in respect of the period during which he is to be on leave shall be deducted.
- (6) Should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in clause 21 of this Agreement from such 15th day until the day upon which payment in cash is actually received by the Regional Council concerned: Provided that a Regional Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.

**CLAUSE 12 - SUBSCRIPTIONS TO THE TRADE UNIONS AND EMPLOYERS' ORGANISATIONS**

- (1) (a) Every employer who is a member of the employers' organisations shall deduct from the wages of each of his employees concerned who are members of any of the Trade Unions that are Party to the Council, the amount of the subscription payable by such employees to the trade unions and shall pay to the secretary of the Regional Council having jurisdiction in the area concerned, the amount thus deducted and render a written statement containing the following details in respect of each employee from whose wages subscriptions have been deducted:

- (i) The family name and initials;
  - (ii) the trade union membership number;
  - (iii) the amount deducted; and
  - (iv) the period in respect of which subscriptions were deducted.
- (b) An employer who has been notified in writing by a Regional Council that one or more of his employees is in arrears with the subscriptions or entrance fees shall deduct such arrears up to an amount not exceeding R4 per employee per week from remuneration due to such employee, and shall forthwith remit any amounts so deducted to the Regional Council concerned.
- (c) Every employer shall pay the subscriptions deducted and render the statement required in terms of paragraph (a) to the secretary of the Regional Council concerned by not later than the 10th day of the month immediately following the month to which the subscriptions relate.

**[Note:** Forms prepared specifically for the inclusion of the details required by this subclause are obtainable on application from the secretary of the Regional Council concerned.]

- (2) Every employer who is a member of the employers' organisations shall not later than the 10th day of each month forward to the secretary of the Regional Council concerned one twelfth of his annual subscriptions payable to the relevant employers' organisation, should such subscriptions not already have been paid direct to the said organisation.

- (3) Subscriptions received by the Council in accordance with the provisions of subclauses (1) and (2) of this clause on behalf of the employers' organisations and the trade unions shall be paid to the organisation or the trade union in question by not later than the 10th day of the month following that during which the subscriptions were received.
  
- (4) Should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in clause 21 of this Agreement from such 15th day until the day upon which payment in cash is actually received by the Regional Council concerned: Provided that a Regional Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.

### **CLAUSE 13 - EMPLOYEES' REPRESENTATIVES ON THE COUNCIL**

Employees' representatives on the Council or any Regional Council shall be given every reasonable facility by their employers to attend their duties in connection with meetings of such Councils.

#### **CLAUSE 14 - PROHIBITION OF CESSION OF BENEFITS**

No benefit arising out of an employee's contract of service, whether due by his employer or the Council, shall be capable of being ceded, and any such cession by an employee is prohibited. No purported cession of such benefits shall be binding on or be recognised by the Council or his employer unless such cession is in respect of moneys advanced by the Contingency Reserve provided for by clause 16 of this Agreement.

#### **CLAUSE 15 - PRESUMPTIONS**

An employee shall be deemed to be working in the employ of an employer, in addition to any period during which he is actually so working, during -

- (a) any period during which, in accordance with the requirements of his employer, he is present at or in any establishment;
- (b) any other period during which he is present at or in any such establishment;
- (c) any period during which he is in charge of any vehicle used in the industry, whether or not it is being driven;
- (d) 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; or

- (e) the whole of any interval in his work if the duration of such interval is not shown in the records required to be kept in terms of clause 10 of this Agreement:

Provided that, if it is proved that any such employee was not working and was free to leave the premises during any part of any period referred to in paragraphs (b), (c), (d) or (e), the presumption established by this clause shall not apply in respect of such employee with reference to that part of such period.

#### **CLAUSE 16 - CONTINGENCY RESERVE**

- (1) Leave pay, holiday bonus and additional holiday pay in the possession of Regional Councils and unclaimed by the beneficiaries after the expiration of three years from the date of receipt shall be paid -
  - (a) to Contingency Reserve A where the beneficiary is eligible for membership of MISA/SAMU; and
  - (b) to Contingency Reserve C, where the beneficiary is an employee, not falling under those categories referred to in paragraph (a) above, and is eligible for membership of the National Union of Metalworkers of South Africa.



- (2) Contingency Reserves A and `C' (hereinafter referred to as the `Reserves') shall be utilised for the benefit of employees in the Industry as the Council may determine: Provided that -
- (i) any such leave pay or additional holiday pay or part thereof as the Council may regard as being in excess of what is required to finance the Reserves shall be forfeited to the Council;
  - (ii) any leave pay or additional holiday pay that has been forfeited to the Council or paid to the Reserves in terms of this subclause, and that is subsequently claimed by the beneficiary, may be paid out at the discretion of the Council;
  - (iii) subject to proviso (ii), any money forfeited to the Council shall, in the case of a beneficiary who was a member of the National Union of Metalworkers of South Africa, be credited separately in the books of account of the Council in an account to be styled the "C" Contingency Account.
- (3) The Reserves shall be administered by Regional Councils in accordance with principles formulated by the Council and a copy of the memorandum containing such principles and particulars of any amendments shall be lodged with the Director-General of Labour.

- (4) In the event of the dissolution of the Council. any moneys standing to the credit of the Reserves shall at the time of such dissolution be deemed to constitute part of the Council's cash assets and shall be dealt with accordingly: Provided that in the case of Contingency Reserve A such moneys shall be paid into any Benefit Fund established on behalf of MISA/SAMU in terms of Clause 4 of its Constitution and approved by the Registrar of Labour Relations.
- (5) Subject to the provisions of subclause (4) of this clause, in the event of the expiration of this Agreement by effluxion of time or cessation for any other cause, the Reserves shall continue to be administered in terms of subclause (3): Provided that if another agreement for the industry is not negotiated within a period of two years after such expiration or cessation, any moneys standing to the credit of the Reserves shall be forfeited to the Council.
- (6) The cost of administering the Reserves referred to in this clause and the special Leave Pay Account referred to elsewhere in this Agreement shall be borne by Regional Councils, which may at their discretion invest any of the funds on hand with an approved bank and/or building society, and any interest accruing from such investment shall be retained by such Regional Councils to defray costs of administration of the Reserves and of the said Special Leave Pay Account.

**CLAUSE 17 - WAGES FOR TRAINEES AND/OR APPRENTICES TRAINING  
AT THE TRAINING CENTRE FOR ARTISANS, BELLVILLE**

Any motor and diesel trainee and/or apprentice receiving training at the Training Centre for Artisans at Bellville who, for purposes of obtaining the required workshop experience is placed with an employer in the Motor Industry for a period of six months during the third year of training shall, during such period of six months, be paid a wage of not less than that prescribed for a third-year apprentice in the Motor Industry.

**CLAUSE 18 - DISHONOURED CHEQUES**

Whenever an employer pays any sum of money, which is due to the Council in terms of this Agreement, in any manner other than in cash and such payment is not honoured for any reason whatever, then and in such event a penalty shall be payable by the employer to the Council in its sole discretion, which penalty shall be equal to the interest as determined by the Council from time to time of the amount of the purported payment. Any penalty due to the Council in terms of this clause shall be payable on demand.

**CLAUSE 19 - REVISION OF WAGES**

The wages prescribed for the Motor Industry shall be negotiable by the employers' organisation and the trade unions on a yearly basis.

## **CLAUSE 20 - LEGAL COSTS**

- (1) For purposes of this clause “money” means any amount of money and includes money that an employer has to deduct or has deducted from moneys due to an employee by virtue of any obligation, but not paid over to the Council.
- (2) When the Council instructs an attorney to collect money from an employer, the employer shall be liable to the Council for all the legal costs incurred by the Council in the recovery of the amount due including costs on the attorney and own client scale irrespective of whether the Council instituted civil proceedings or arbitration proceedings or whether those proceedings have commenced or not.
- (3) When the Council instructs a natural or legal person other than an attorney to collect money, then the employer shall be liable for the costs and fees determined by the Council to be the costs and fees payable by the Council to such person in the recovery of the amount due by the employer.

## **CLAUSE 21 - INTEREST CLAUSE**

Whenever any amount payable to the Council in terms of this Agreement is not paid on the due date, interest shall be payable monthly on such amount or on any such lesser amount as may remain unpaid, calculated from the due date at the interest rate of 1,5 per cent to 2 per cent or part thereof.

## **CLAUSE 22 - EXEMPTIONS BOARD**

- (1) In terms of section 32(3)(e) of the Act the Council hereby establishes an independent body, to be known as the Exemptions Board, to consider appeals from non-parties against a refusal of a non-party's application for exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council.
  
- (2) Any non-party employer may lodge an appeal with the Council against the Council's refusal of an application for an exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council, in which event the following procedure shall apply:
  - (a) An appeal shall be in writing and shall be addressed to the Regional Secretary concerned for consideration by the Exemptions Board appointed by the Council.
  
  - (b) All appeals shall be considered by the Council or regional councils with due regard to the criteria contained in the collective agreement when considering applications for exemptions by non-parties.
  
  - (c) All appeals shall be substantiated or motivated by the applicant and shall include the following details:
    - (i) the period for which the exemption is required;

- (ii) the Agreement and clauses or subclauses of the Agreement from which exemption is required;
  - (iii) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives; and the responses resulting from such consultation, either in support of or against the application, are to be included with the appeal.
- (3) The Exemptions Board may, having regard to the individual merits of each appeal, grant or refuse the appeal if -
  - (a) it does not undermine the agreement;
  - (b) it is fair to the employer or his employees and other employers and employees in the Industry.
- (4) The Exemptions Board shall deal with all appeals within 30 days of the date on which the appeal was submitted: Provided that the Board may defer a decision to a following meeting if additional motivation or substantiation or information is considered necessary to made a decision on the appeal.
- (5) Once the Exemptions Board has granted an exemption, it must issue a certificate and advise the applicant(s) accordingly within 14 days of the date of its decision.

- (6) When the Exemptions Board dismisses or dismisses part of an appeal for exemption it shall advise the applicant(s) within 14 days of the date of such decision.
- (7) **Exemption criteria:** The Exemptions Board must consider all appeals with reference to the following criteria:
- (a) the written substantiation and motivation submitted by the applicant;
  - (b) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;
  - (c) the scope of exemption required;
  - (d) the infringement of basic conditions of employment rights;
  - (e) the fact that a competitive advantage is not created by the exemption;
  - (f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative compatible *bona fide* benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;

- (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Motor Industry;
- (h) any existing special economic or other circumstances which warrant the granting of the exemption;
- (i) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy; and
- (j) any recommendation from the Council.

#### **CLAUSE 23 - RESOLUTION OF DISPUTES**

- (1) For the purpose of this Agreement, “dispute” means any dispute about the application, interpretation or enforcement of this Agreement, or any other collective agreements entered into by the parties to the Council.
- (2) Any such dispute shall be referred to the Council on the form specified by the Council. This provision shall not apply when the Council makes use of the procedure set out in subclause (4).



- (3) If the Council fails to resolve the dispute through conciliation and the dispute remains unresolved, such dispute shall be referred to arbitration to the MIBCO-Dispute Resolution Centre in terms of section 52 of the Act. The arbitrator shall have the power to decide upon the procedure to be followed at the arbitration hearing in terms of section 138 of the Act, and be entitled to make an award in respect of the parties' arbitration costs in terms of section 138 (10) of the Act.
- (4) The provisions of this clause stand in addition to any other legal remedy through which the Council may enforce a collective agreement.
- (5) The arbitrator's decision shall be final and binding, subject to the parties' rights of review to the Labour Court.
- (6) Any other dispute shall have the same meaning as defined in the Act and shall be dealt with in terms of section 51 of the Act.

**Signed at Randburg, on behalf of the parties, this 24th day of January 2006.**

..... **R. BASTICK**  
**PRESIDENT OF THE COUNCIL**

..... **B. CELE**  
**VICE-PRESIDENT OF THE COUNCIL**

..... **D. SIMPSON**  
**p.p. GENERAL SECRETARY OF THE COUNCIL**

**THE MOTOR INDUSTRY BARGAINING COUNCIL - MIBCO**

**ANNEXURE A**

**[Specified in clause 8(1) of this Agreement]**

Date: .....

The Regional Secretary  
The Motor Industry Bargaining Council - MIBCO  
Regional Council .....  
P O Box .....  
.....

Dear Sir

REGISTRATION AS EMPLOYER IN THE MOTOR INDUSTRY

In accordance with clause 8(1) I hereby furnish the following particulars in connection with this business:

1. Name under which business is carried on .....  
.....
2. Address at which business if carried on .....
3. Telephone No. ....  
Fax No. ....  
E-Mail Address: .....  
Cel Phone No. ....

4. Address of head office (where applicable) .....

5. Nature of business .....

6. Date on which trading commenced .....

76. Names and addresses of:

Proprietor .....

or Partners .....

or Directors .....

or Members .....

Manager and/or Secretary .....

(Where any of these persons are actively engaged in the business, the nature of their duties must be shown in parentheses alongside their respective names)

7. Particulars of employees:

Number of journeymen .....

Number of apprentices .....

Number of clerical and sales persons .....

Number of general workers .....

Number of employees .....

8. Name of employer's organisation of which I am a member .....

Yours faithfully

.....