

## **SCHEDULE**

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

### **MOTOR INDUSTRY SICK, ACCIDENT AND MATERNITY PAY FUND AGREEMENT**

in accordance with the provisions of the Labour Relations Act 66 of 1995, made and entered into by and between the

#### **Retail Motor Industry Organisation - RMI**

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

#### **National Union of Metalworkers of South Africa**

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

#### **CLAUSE 1 - PERIOD OF OPERATION OF AGREEMENT**

This Agreement shall in terms of Section 31 of the Act shall remain in operation for the period ending 31 December 20112

## **CLAUSE 2 - SCOPE OF APPLICATION OF AGREEMENT**

The terms of this Agreement shall be observed in the Regions defined herein by all employers in the Motor Industry who are members of the Retail Motor Industry Organisation (RMI) and by all employees in the said Industry who are members of the National Union of Metalworkers of South Africa (NUMSA) employed at RMI establishments.

## **CLAUSE 3 - DEFINITIONS**

Any terms used in this Agreement which are defined in the Labour Relations Act 66 of 1995 or the Main Agreement for the Motor Industry, shall have the same meaning as in the Act and/or Main Agreement; any reference to an Act and/or Main Agreement shall include any amendments thereto, and unless the contrary intention appears, words purporting the masculine gender shall include females, and vice versa; further, unless inconsistent with the text -

**"Act"** means the Labour Relations Act 66 of 1995;

**"apprentice"** means an employee undergoing training in terms of 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 No. 97 of 1998;

**"Council"** means the Motor Industry Bargaining Council - MIBCO registered in terms of section 29 of the Act;

**"female member"** means a female employee who is a member of the trade union and who is employed by an employer who is a member of one of the employers' organisation which is a party to the Council;

**"Fund"** means the Motor Industry Sick, Accident and Maternity Pay Fund established in terms of this Agreement;

**"Main Agreement"** means the collective Agreement in which wages and other conditions of service are prescribed for employees in the Motor Industry;

**"member"** means any employee registered as a member of the Fund in terms of clause 5 of this Agreement and in respect of whom contributions are made to the Fund;

**"Motor Industry"** means the Motor Industry as defined in the Main Agreement from time to time;

**"MSSC"** means the MIBCO Shared Services Centre;

**"rules"** means the rules of the Fund in force from time to time and as prescribed in terms of clause 8 of this Agreement;

**"week"** means a period of seven consecutive days commencing at midnight on a Sunday.

**CLAUSE 4 - CONTINUATION AND OBJECTS OF THE FUND**

- (1) The Fund established in terms of the Agreement published under Government Notice R.1600 of 30 July 1982 is hereby continued, known and referred to as the "Motor Industry Sick, Accident and Maternity Pay Fund" (hereinafter referred to as the "Fund").
  
- (2) The Fund shall consist of -
  - (a) the moneys as at the date of coming into operation of this Agreement, standing to the credit of the Motor Industry Sick and Accident Pay;
  - (b) contributions prescribed in this Agreement;
  - (c) interest on investments; and
  - (d) any other moneys to which the Fund may become entitled.
  
- (3) The objects of the Fund shall be, in accordance with the rules of the Fund as determined from time to time, to -
  - (a) assist members of the Fund who suffer losses of wages or salary through absenteeism resulting from incapacity owing to accident or sickness.
  - (b) assist female members who suffer losses of wages through absenteeism resulting from the pregnancy of such members.

## **CLAUSE 5 - MEMBERSHIP**

- (1) Membership of the Fund shall be compulsory for all employees in the Motor Industry who are members either of the National Union of Metalworkers of South Africa and who is employed by an employer who is a member of the Retail Motor Industry Organisation (RMI).
- (2) Non-union members employed in RMI establishments may be admitted to voluntary membership of the Fund, and the provisions of this Agreement shall **mutatis mutandis** apply to persons admitted to voluntary membership and their employers.
- (3) Subject to subclause (1) and (2) hereof, every member shall complete the form prescribed by the Council and lodge such completed form with the MSSC within one month after the date on which he enters or re-enters or becomes employed in the Motor Industry, and shall furnish such additional information or documentary evidence as the MSSC may require.
- (4) Membership of the Fund shall terminate directly a member ceases to be employed in the Motor Industry.
- (5) Any member whose membership of the Fund has terminated shall forfeit all claims on the Fund and if re-admitted to membership shall be regarded as an entirely new member unless otherwise decided by the MSSC.

## **CLAUSE 6 - CONTRIBUTIONS**

- (1) In respect of each week of employment of each of the undermentioned classes of employee in his employ, every employer shall contribute the amounts indicated to the Fund as follows:
- (a) In respect of each employee who is a member of the National Union of Metalworkers of South Africa, R10,20 per week;
  - (b) In respect of each female member as defined in Clause 3 of this Agreement, R4,77 per week;

Provided that where an employee receives or is entitled to receive wages for less than 23 hours in any week, no contributions shall be payable in respect of such employee for that week.

- (2) The contributions referred to in subclause (1) of this clause shall be paid each month to the MSSC and shall be accompanied by a written statement containing the following details:
- (a) Name and initials of each employee;
  - (b) amount of contributions remitted in respect of each employee;
  - (c) date service commenced and/or terminated, in the case of employees whose employment commenced or terminated since the details were last submitted.

- (3) Every employer shall pay the total amount of the contributions payable and render the statement of details required each month in terms of subclause (2) to the MSSC by not later than the 10th day of the month following the month to which the contributions and details relate.

**Note:**

- (a) The present postal address of the MSSC is as follows:  
MSSC, P O Box 4616 Randburg 2125
- (b) Forms prepared specifically for the inclusion of the details required by this clause are obtainable on application from the MSSC.
- (4) Should any amount due in terms of this clause not be received by the MSSC 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 of one and a half per cent per month or part thereof from such 15th day until the day upon which payment in cash is actually received by the MSSC: Provided that a MSSC shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.

## **CLAUSE 7 - BENEFITS**

Subject to the provisions of the Fund's rules, every member possessing the necessary qualifications therefor and who has made the requisite number of contributions to the Fund shall be eligible for the Fund's benefits in force from time to time as prescribed in such rules.

### **CLAUSE 8 - ADMINISTRATION**

- (1) The Fund shall be administered by the MSSC in accordance with the rules prescribed for the purpose by the Council. Such rules shall not be inconsistent with the provisions of this Agreement or the Act and shall *inter alia* prescribe -
  - (a) the Fund's benefits and the qualifications attaching thereto;
  - (b) the procedure for lodging and payment of claims.
- (2) The Council may at any time make new rules or alter or repeal any existing rules.

### **CLAUSE 9 - POWERS AND DUTIES OF MSSC BOARD**

- (1) Subject to the direction of the Council and to the terms of this Agreement, the MSSC Board shall have full control of the affairs of the Fund.
- (2) Every member of the Fund shall be provided by the MSSC with a copy of the Rules of the Fund or a summary thereof.
- (3) The MSSC Board may -
  - (a) engage employees to assist in the administration of the Fund under such conditions as it may determine;



- (b) refuse or withhold any or all benefits from any member who, in its opinion, has acted in a manner calculated or reasonably likely to injure the interests of the Fund or its members: Provided that such member shall, if he so requests, be given the opportunity of appearing before the MSSC Board to be heard;
  - (c) sanction expenditure;
  - (d) empower its Chairman and/or Vice-chairman and its secretary or other official to sign jointly on behalf of the Fund any agreements and contracts of which the Council has approved;
  - (e) open accounts in the name of the Fund at registered financial institutions approved by the Council and empower persons to operate on such accounts;
  - (f) appoint sub-committees in terms of the rules to assist with the administration of the Fund.
- (4) The MSSC Board shall cause -
- (a) minutes to be kept of proceedings of all meetings and copies of such minutes to be transmitted to the Council;
  - (b) full and true accounts to be kept of the Fund and such accounts to be audited by the Council's auditors registered in terms of section 23 of the Public Accountants' and Auditors Act, 1951, whom it shall appoint for the purpose and such audited accounts shall be tabled at the Council's Annual General Meeting each year.

- (5) The MSSC Board shall not have any discretionary powers relating to the granting of additional assistance to members, but may submit cases which it considers merit the granting of special relief, with full details, to the Council, for submission to the Committee of Party Officials for a ruling on whether and to what extent a special grant may be made.

#### **CLAUSE 10 - FINANCIAL CONTROL**

- (1) All moneys received by the MSSC on behalf of the Fund shall be deposited in an account(s) in the name of the Fund at a financial institution approved by the Council within three days of receipt and all disbursements from such account(s) shall -
- (a) require the sanction of the MSSC Board;
  - (b) be effected by non-transferable cheque or other written instrument signed by two persons duly authorised thereto by the MSSC Board;
  - (c) in respect of benefits payable by the Fund, be suspended whenever the total amount standing to the credit of the account of the Fund falls below R20 000 and until such time as it rises above R40 000.
- (2) Any expenses incurred in connection with the administration of the Fund shall form a charge against the Fund.
- (3) (a) All moneys received by the MSSC on behalf of the Fund shall be credited in the MSSC's books of account separately in accounts reflecting -

- (i) all contributions received and benefits paid in respect of those members for whom contributions are payable in terms of subclause 6(1)(a); and
  - (ii) all contributions received and benefits paid in respect of those members for whom contributions are payable in terms of subclause 6(1)(b).
- (b) The provisions of subclause (1)(c) of this clause shall apply ***mutatis mutandis*** to any benefits payable from the different accounts provided for in subclause (a) above.
- (4) The Board of the MSSC shall furnish the Council with regular reports containing, ***inter alia***, particulars of the benefits and assistance provided by the Fund and moneys received and disbursed by the Fund for the period to which the report relates.
- (6) (a) The MSSC Board shall submit to the Council by not later than 15 February each year statements audited by the auditor appointed in terms of clause 9(4)(c) and countersigned by the Chairman showing the income and expenditure of the Fund for the preceding 12 months ended 31 December and its assets and liabilities as at that date.

These statements and the auditor's report thereon shall be available at the offices of the MSSC for inspection by contributors to the Fund who shall be entitled to make copies thereof or to take extracts therefrom.

- (b) From the audited statements referred to herein the Secretary of the Council shall prepare a consolidated income and expenditure account and balance sheet of the Fund, cause these to be audited by the Council's auditors and approval by the Council.

### **CLAUSE 11 - INDEMNITY**

The members of the Motor Industry Bargaining Council – MIBCO, members elected to the Board of the MSSC and the officers and employees of the Fund shall not be liable for the debts and liabilities of the Fund and they are hereby indemnified by the Fund against all losses and expenses incurred by them in or about the bona fide discharge of their duties.

### **CLAUSE 12 - DISPUTES**

- (1) Subject to the provisions of subclause (2), any disputes concerning the interpretation, meaning or intention of any provision of this Agreement or concerning the administration of the Fund shall be dealt with by the MSSC Boardl *mutatis mutandis* in accordance with the procedure laid down in section 9 of the Council's Constitution.
  
- (2) (a) A member who is not satisfied with the decision of the MSSC Board in respect of any claims made by him on the Fund, may appeal to the Council and the Council's decision in this connection shall be final.

- (b) In the event of a member appealing to the Council, the MSSC Board shall, on being requested to do so by the Council's Secretary submit details of the member's case to the Council for consideration.

**CLAUSE 13 - EXPIRATION OF AGREEMENT AND  
DISSOLUTION OF THE COUNCIL**

- (1) In the event of the expiration of this Agreement, and unless within a period of 12 months after such expiration, either a new agreement is negotiated in terms of which the Fund is continued, or the Fund is transferred by the Council to any other fund constituted for a similar purpose to that for which the Fund was originally established, the Fund shall be liquidated.
- (2) In the event of the dissolution of the Council or in the event of its ceasing to function in terms of section 34(2) of the Act, during any period in which this Agreement is binding, the MSSC Board shall continue to administer the Fund and the members of the MSSC Board at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purposes:

Provided, however, that any vacancies occurring on such MSSC Board may be filled by the Parties from employers or employees in the Motor Industry to ensure an equality of employer and employee representatives and alternates in the membership of the MSSC Board. In the event of the MSSC Board being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable the Parties shall appoint a trustee or trustees to carry out the duties of the MSSC Board and who shall possess all the powers of the MSSC Board for the purpose.

If upon the expiration of this Agreement there is no Council in existence, the Fund shall be liquidated in the manner set forth in clause 14 of this Agreement, and if upon such expiration the affairs of the Council have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in section 34(4) of the Act as if it formed part of the general funds of the Council.

#### **CLAUSE 14 - LIQUIDATION**

Upon liquidation of the Fund in terms of clause 13(1) hereof, moneys remaining to the credit of the Fund after payment of all claims, including administration and liquidation expenses, shall be paid into the general funds of the Council.

#### **CLAUSE 15 - AGENTS**

The 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 premises, institute and complete such enquiries and to examine such documents, books, wage sheets, time sheets and pay slips, and to 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, and no person shall make a false statement to such agent in connection with his investigations.

### **CLAUSE 16 - EXEMPTIONS**

The Council or the MSSC Board may grant exemption from any of the provisions of this Agreement under such terms and conditions and for such period as it may determine.

### **CLAUSE 17 - PRESCRIPTION**

The MSSC Board shall have the right to refuse to review the manner in which a claim has been dealt with by the Fund if more than two years has elapsed since the date the claim in question was originally paid or rejected.

### **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 rate 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.

**At the Council's Annual General Meeting held on 10 November 2011 the Parties to this Agreement AGREED that the Agreement be ADOPTED with effect from 1 January 2012 to be binding on the Parties to the Agreement for a period ending 31 December 2012 in terms of the provisions of the Labour Relations Act, No. 66 of 1995.**

**Signed for and on behalf of the MOTOR INDUSTRY BARGAINING COUNCIL –  
MIBCO at Randburg this 22<sup>nd</sup> February 2012.**

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**Signed for and on behalf of the RETAIL MOTOR INDUSTRY ORGANISATION –  
RMI at Randburg this 22<sup>nd</sup> February 2012.**

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**Signed for and on behalf of the NATIONAL UNION OF METALWORKERS OF  
SOUTH AFRICA this 22<sup>nd</sup> February 2012.**

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