

**METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL**

# **CONSOLIDATED**

## **PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE METAL INDUSTRIES**

**13 MAY 2011**

**METAL AND ENGINEERING INDUSTRIES  
BARGAINING COUNCIL**

**CONSOLIDATED PROVIDENT FUND COLLECTIVE AGREEMENT  
FOR THE METAL INDUSTRIES**

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

Association of Electric Cable Manufacturers of South Africa  
Cape Engineers' and Founders' Association  
Consolidated Association of employers of S.A. (CAESAR)  
Constructional Engineering Association (South Africa)  
Covered Conductor Manufacturers' Association  
Electrical Engineering and Allied Industries' Association  
Electronics and Telecommunications Industries' Association  
Federated Employers Organisation of S.A. (FEOSA)  
Gate and Fence Association  
Hand Tool Manufacturers' Association (HATMA)  
Iron and Steel Producers' Association of South Africa  
KwaZulu-Natal Engineering Industries' Association  
Lift Engineering Association of South Africa  
Light Engineering Industries' Association of South Africa  
National Employers Association of S.A. (NEASA)  
Non-Ferrous Metal Industries' Association of South Africa  
Plastics Convertors' Association of South Africa  
Port Elizabeth Engineers' Association  
Pressure Vessel Manufacturers' Association  
Radio, Appliance and Television Association of South Africa (RATA)  
Refrigeration and Air-conditioning Manufacturers' Association of South Africa  
Sheetmetal Industries' Association of South Africa  
S.A. Electro-Plating Industries' Association  
S.A. Engineers' and Founders' Association  
S.A. Fasteners Manufacturers' Association (SAFMA)  
S.A. Refrigeration and Air-conditioning Contractors' Association (SARACCA)  
S.A. Pump Manufacturers' Association  
S.A. Reinforced Concrete Engineers' Association (SARCEA)  
S.A. Valve and Actuator Manufacturers' Association (SAVAMA)

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

Metal and Electrical Workers' Union of South Africa  
Solidarity/MWU – Solidariteit/MWU  
United Association of South Africa (UASA)  
National Union of Metalworkers of South Africa (NUMSA)  
S.A. Equity Workers' Association

(hereinafter referred to as the "employees" or the "trade unions"), of the other part, being the parties to the Metal and Engineering Industries Bargaining Council.

(Schedule of parties amended by GN R.535 of 18 June 2010)

## 1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall apply to and be observed-
  - (a) throughout the Republic of South Africa; and
  - (b) by all employers and employees in the iron, Steel, Engineering and Metallurgical Industries who are members of the employers' organisations and the trade unions, respectively.
- (2) The terms of this Agreement shall not apply to an employer and his employee who are governed by and fall within the scope of application of the Engineering Industries' Pension Fund Agreement (formerly the Metal Industries Group Life and Provident Fund Agreement) in force for the time being.
- (3) The terms of this Agreement shall not, subject to subclause (4) below, apply to any employee who on 1 May 1991 was or thereafter became a participant in and member of any fund providing provident and/or pension benefits, which was in existence on the said date (and in which the employer of that employee was on the said date a participant) or to the employer of that employee, during such period only as such fund continues to operate and both employer and employee are participants therein: Provided that a fund which provides solely for payment of benefits on death shall not be deemed to be a pension or provident fund for the purposes of this Agreement.
- (4) Where employers and employees participate in domestic schemes providing provident and/or pension benefits as referred to in subclause (3) above, which at the date of coming into operation of this Agreement do not provide for percentage contributions which, in total, are at least as much as the percentages, in total, specified in clause 6 of this Agreement, a period of six weeks shall be allowed to enable compliance with this requirement subject to any amendment being retroactive to the date of coming into operation of this Agreement.
- (5) Clauses 1(1) (b), 2 and 8 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.  
(extension to TBVC in terms of GN R.627 dated 13-7-01 w.e.f. 23-7-01)

## 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 Labour Relations Act, 1995, and shall remain in force until 30 April 2016.  
(period of operation extended by R362 of 26-4-01 and again by GN R.410 dated 28 April 2006).  
(extended by Government Notice R.409 dated 13 May 2011).

### SPECIAL PROVISIONS

The provisions contained in clause 8 of the Agreement published under Government Notice R.1020 of 21 October 2005 (hereafter referred to as the "former Agreement") shall apply to employers and employees.

### GENERAL PROVISIONS

The provisions contained in clauses 3 to 7 and 9 to 12 of the former Agreement shall apply to employers and employees.

## 3. DEFINITIONS

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

**"agreement"** means an agreement as defined in the Labour Relations Act, 1995, operative in the Iron, Steel, Engineering and Metallurgical Industries, and shall include any succeeding agreement and/or any extensions and/or amendments thereof, and shall further include any agreement as defined in the said Act if such agreement has expired but was operative at the date of coming into operation of this Agreement or became operative after the date of coming into operation of this Agreement;

“**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 the Act or a trainee in terms of the Atrami Agreement as well as a learner in terms of Chapter IV of the Skills Development Act, No.97 of 1998.”  
(amended by GN R.1020 of 21 October 2005)

**"Council"** means the Metal and Engineering Industries Bargaining Council, registered in terms of section 29 of the Act;

**"employee"** means an employee, including an apprentice, whose minimum rate of pay is scheduled in any agreement as defined above in the Iron, Steel, Engineering and Metallurgical Industries;

**"establishment"** means any premises wherein or whereon the industries, or part thereof, as herein defined, is carried on;

**"Management Committee"** means the Management Committee of the Council, appointed in terms of its constitution;

**"Fund"** means the Provident Fund for the Metal Industries;

**"Iron, Steel, Engineering and Metallurgical Industries"** means (subject to the provisions of any demarcation determination made in terms of section 62 of the LRA, 1995 and section 76 of the LRA, 1956) the industries concerned with the production of iron and/or steel and/or alloys, and/or the processing and/or recovery and/or refining of metals (other than precious metals) and/or alloys from dross and/or scrap and/or residues; the maintenance, fabrication, erection or assembly, construction, alteration, replacement or repair of any machine, vehicle (other than a motor vehicle) or article consisting mainly of metal (other than a precious metal) or parts or components thereof, and structural metalwork, including steel reinforcement work; the manufacture of metal goods principally from such iron and/or steel and/or other metals (other than precious metals) and/or alloys, and/or the finishing of metal goods; the building and/or alteration and/or repair of boats and/or ships, including the scraping, chipping and/or scaling and/or painting of the hulls of boats and/or ships; and general woodwork undertaken in connection with ship repairs, and includes the Electrical Engineering Industry, the Lift and Escalator Industry and the Plastics Industry, but does not include the Motor Industry;

**"Electrical Engineering Industry"** means the industry in which employers and their employees are associated for the purpose of any one or more of the following:

- (i) The manufacture and/or assembly from component parts of electrical equipment in the republic of South Africa, namely generators, motors, convertors, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, transformers, furnace equipment, signalling equipment, radio or electronic equipment, including monitors, and other equipment utilising the principles used in the operation of radio and electronic equipment, the latter equipment including, but not limited to, television, and further, incandescent lamps and electric cables and domestic electrical appliances, and also includes the manufacture of component parts of the aforementioned equipment;
- (ii) Subject to clause (iii) hereunder, the installation, maintenance, repair and service of the equipment referred to in paragraph (i) above in the Provinces of the Transvaal and Natal, but does not include the Electrical Contracting Industry;
- (iii) the installation, maintenance, repair and service of television sets and monitors, excluding the installation, maintenance, repair and service of such in the Province of the Cape of Good Hope, and excluding in respect of the whole of the Republic of South Africa, the installation, maintenance, repair and service of monitors primarily intended for use in accounting and/or data processing and/or business procedures;  
(substituted by R627 of 13-7-01)

**"Electrical Engineering Industry"** means the industry, which employers and their employees are associated for any, one or more of the following:

- (a) The manufacture and/or assembly from component parts of electrical equipment, namely generators, motors, convertors, switch and control gear (including relays, contractors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, transformers, furnace equipment, signalling equipment, radio or electronic equipment, including monitors, and other equipment utilising the principles used in the operation of radio and electronic equipment, the latter equipment include, but not limited to, television, incandescent lamps, electric cables and domestic electrical appliances, and includes the manufacture of component parts of the aforementioned equipment;
- (b) The installation, maintenance and repair of the equipment referred to in paragraph (a) above in the Provinces of the Transvaal and Natal (excluding any portion of that area falling within the self-governing territory of Kwalulu), but does not include the Electrical Contracting Industry;

**"Electrical Contracting Industry"** means the industry, which employers and their employees are associated for any, or all of the following:

- (a) The design, preparation, erection, installation, repair and maintenance of all electrical equipment forming an integral and permanent part of buildings or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;
- (b) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the purpose for which a building or structure is used, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;
- (c) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the construction, alteration, repair and maintenance of buildings or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;

**"law"** includes the common law;

**"Lift and Escalator Industry"** means the industry concerned with the manufacture and/or assembly and/or installation and/or repair of electrical lifts and escalators;

**"Main Agreement"** means the Agreement published under Government Notice No. R. 404 of 31 March 1998 or any succeeding agreement and includes any amendment, re-enactment or extension thereof, and further includes the Main Agreement during any period that it is expired;

**"Motor industry"** means the Motor Industry as defined in the Main Agreement of the Metal and Engineering Industries Bargaining Council, published under Government Notice No. R. 404 of 31 March 1998;

**"Pension Fund"** means the Metal Industries Group Pension Fund, established on 7 February 1966 in terms of Government Notice R. 141 of 28 January 1966;

**"pensionable remuneration"** means the actual wages payable to an employee by the employer each week in respect of the ordinary hours worked by such employee in the shifts of the establishment concerned during such week, including monies payable in terms of any agreement or under any law, but excluding amounts paid in respect of overtime, shift and other allowances and holiday leave bonuses, but including amounts paid in respect of overtime hours worked to make up lost ordinary hours, and for the purposes of this definition-

- (a) in the case of a monthly-paid employee, his pensionable remuneration shall be the amount determined as above, converted on the basis that one month equals  $4 \frac{1}{3}$  weeks;
- (b) "shift" means that period of work ordinarily worked by an employee in any period of 24 hours;

**"Permanent Disability Scheme"** means the Permanent Disability Scheme constituted to organise and provide permanent disability benefits for the employees of employers in the group of industries known as the Iron, Steel, Engineering and Metallurgical Industries in the Republic of South Africa and such other industry/industries in the Republic as may from time to time be admitted to participate in the Scheme by the Board of Management in terms of the constitution of the Scheme;

**"Plastics Industry"** means the industry concerned with the conversion of thermoplastic and/or thermosetting polymers, including the compounding or recycling thereof, or the manufacture of articles or parts of articles wholly or mainly made of such polymers into rigid, semi rigid or flexible form, whether blown, moulded, extruded, cast, injected, formed, calendered, coated, compression moulded or rotational moulded, including in-house printing on such plastics by the manufacturers, and all operations incidental to these activities."

(substituted by R627 of 13-7-2001 w.e.f. 23-7-2001)

**"plastics"** means any one of the group of materials which consist of or contains as an essential ingredient an organic substance of a large molecular mass and which, while solid in the finished state, at some stage in its manufacture has been or can be forced, i.e. cast, calendered, extruded or moulded into various shape by flow, usually through the application, singly or together, of heat and pressure including the recycling or compounding thereof, but only where such compounding and/or recycling is as a result of the conversion for manufacture by the same employer, but shall exclude all extrusions into mono- and multi-filament fibres and other activities falling under the scope of the National Textile Bargaining Council".

(Amended by GN R.1020 of 21 October 2005)

**"precious metals"** means the precious metals gold, silver, platinum and/or palladium and/or any alloy containing the said precious metals, or any of these in such proportion with any other metals as to the greater part in value of such alloy;

**"regional council"** means any committee appointed as such by the Council in terms of its constitution;

**"Region A"** means the Magisterial Districts of Beaufort West, Bellville, Bredasdorp, Caledon, Calvinia, Carnarvon, Clanwilliam, Ceres, Fraserburg, George, Goodwood, Heidelberg (CP), Hermanus, Hopefield (CP), Knysna, Kuils River, Ladimisth (CP), Laingsburg, Malmesbury, Mitchells Plain, Montagu, Moorreesburg, Mossel Bay, Namaqualand, Paarl, Piketberg, Prince Albert, Riversdale, Robertson, Simonstown, Somerset West, Stellenbosch, Strand, Sutherland, Swellendam, The Cape, Tulbagh, Vanrhynsdorp, Victoria West, Vredenburg, Vredendal, Wellington, Williston, Worcester and Wynberg, and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Cape Regional Council), RO. Box 8098, Roggebaai, 8012; or Room 507, Pearl Assurance House, Heerengracht, Foreshore, Cape Town, 8001;

**"Region B"** means the Magisterial Districts of Albert, Aliwal North, Barkly East, Cathcart, East London, Elliot, Indwe, King William's Town, Komga, Lady Grey, Maclear, Molteno, Queenstown, Sterkstroom, Stutterheim, Tarkastad and Wodehouse, and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Border Regional Council), P.O. Box 13162, Vincent, 5217; or First Floor, 12 St Georges Road, Southernwood, 5201;

**'Region C'** means the Province of Natal, and for the purposes of this particular area the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (KwaZulu Natal Region), P O Box 5900, Durban, 4000, or 14<sup>th</sup> Floor, Mercury House, 320 Smith Street, Durban, 4001.

**"Region D"** means the Magisterial Districts of Aberdeen, Adelaide, Albany, Alexandria, Bathurst, Bedford, Calitzdorp, Colesberg, Cradock, Fort Beaufort, Graaff-Reinet, Hankey, Hanover, Hofmeyr, Humansdorp, Jansenville, Joubertina, Kirkwood, Middelburg (CP), Murraysburg, Noupoort, Oudtshoorn, Pearston, Port Elizabeth, Richmond (CP), Somerset East, Steytlerville, Steynsburg, Uniondale, Uitenhage, Venterstad and Willowmore, and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Midlands Regional Council), RO. Box 12848, Centrahill, 6006; or First Floor, 30 Pearston Street, Central, Port Elizabeth, 6001;

**'Region E'** means the Province of the Transvaal, excluding the Magisterial Districts of Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp and Wolmaransstad, and for the purposes of this particular area the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Gauteng Region), P O Box 3998, Johannesburg, 2000 or Union Corporation Building, 1<sup>st</sup> Floor, 77 Marshall Street, Johannesburg, 2001”.

**"Region F"** means the Province of the Orange Free State, and includes the Magisterial Districts of Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp and Wolmaransstad, in the Province of the Transvaal, and the Magisterial Districts of Barkly West, Britstown, De Aar, Douglas, Gordonia, Griekwastad, Hartswater, Hopetown, Kenhardt, Kimberley, Kuruman, Postmasburg, Philipstown, Prieska, Vryburg and Warrenton, in the Cape Province, and for the purposes of this particular area the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Orange Free State and Northern Cape Regional Council), P.O. Box 95, Welkom, 9460; or 136 Constantia Road, Dagbreek, Welkom, 9459;

**"Scheme"** means the Permanent Disability Scheme as referred to above.

#### 4. CONTINUATION OF THE FUND

- (1) The Metal Industries' Provident Fund (hereinafter referred to as the "Fund"), established in terms of Government Notice No. R. 624 of 19 April 1991, is hereby continued.
- (2) The Fund shall consist of-
  - (a) all monies and assets standing to the credit of the fund as at the date of coming into operation of the Agreement;
  - (b) all contributions paid by employers and members in accordance with clause 6 of this Agreement;
  - (c) all investment income derived from the investment of any monies of the fund; and
  - (d) any other monies to which the fund may become entitled.

#### 5. MEMBERSHIP

- (1) Each employee who becomes an employee falling within the scope of this Agreement and or after the date of coming into operation of this Agreement shall be required to choose either to become a member of this Fund or a member of the Engineering Industries' Pension Fund. Such choice shall be made on the date on which he becomes an employee falling within the scope of this Agreement. Membership of the relevant Fund shall commence on that date.
- (2) If an employee to whom subclause (1) applies does not choose either to become a member of this Fund or a member of the Engineering Industries' Pension Fund on the date on which he becomes an employee falling within the scope of this Agreement, he shall be required to become a member of either this Fund or the Engineering Industries Pension Fund, depending on his wages, as follows:
  - (a) Employees earning in excess of the amount stipulated in the Main Agreement as the minimum wage of an employee in job category DDD shall be deemed to be members of the Engineering Industries' Pension Fund.
  - (b) All other employees shall be deemed to be members of this Fund:

Provided that where the Main Agreement has expired, the last reference shall be to the most recently expired Main Agreement.

- (3) An employee to whom subclause (1) and/or (2) applies shall be entitled for a period of three months from the date on which he becomes an employee falling within the scope of this Agreement to withdraw from membership of this Fund in order to become a member of the other Fund.

In such case, membership of the Fund to which the employee transfers shall be made retrospective to the date on which contributions commenced to this Fund, and the benefits earned in the name of the employee concerned shall be transferred to the Fund chosen in terms hereof. There shall be no refund of contributions to either the employee or employer.

The right of an employee to transfer membership in terms of this subclause shall terminate on the expiry of the above three-month period.

- (4) If an employee who has become a member of this Fund ceases to fall within the scope of this Agreement as a result of his ceasing to be in service in the Industries or as a result of a specific exemption under clause 9 of this Agreement, but subsequently falls within the scope of this Agreement, then-
  - (a) if his benefit under this Fund or the Group Pension Fund (prior to 1 May 1991) has been paid out, he shall have the choice provided for in subclause (1);
  - (b) if his benefit under this Fund or the Group Pension Fund (prior to 1 May 1991) has not been paid out, he shall not have the choice provided for in subclause (1) but shall automatically become a member of the Fund of which he was previously a member.
- (5) If an employee terminated his membership of this Fund or the Engineering Industries' Pension Fund prior to 1 May 1991 and subsequently falls within the scope of this Agreement, or the Engineering Industries Pension Fund Agreement, then regardless of whether or not his benefit under the above funds have been paid out, he shall have the choice provided for in subclause (1).
- (6) The provisions of subclauses (2) and (3) shall also apply to an employee referred to in subclauses (4) (a) and (5).
- (7) Except as provided in this clause, an employee who remains in service in the Industries and continues to fall within the scope of this Agreement may not withdraw from membership of the Pension Fund or Provident Fund unless unspecifically exempted under clause 9 of this Agreement.

## 6. CONTRIBUTIONS

- (1) Contributions, as hereinafter provided for, shall be made by employees and employers as from the date of coming into operation of this Agreement.
- (2) Contributions in respect of this Fund and the Metal and Engineering Industries' Permanent Disability Scheme (hereinafter referred to as the "Scheme"):
  - (a) The employer shall each week deduct from the earnings of his employees an amount equal to 6,6% of the pensionable remuneration of such employees, being contributions to this Fund as determined in clause 5.
  - (b) Contributions calculated in accordance with the provisions of paragraph (a) may, at the discretion of the employer, be deducted from the earnings of any other employees who request in writing to become members of this Fund: Provided that the membership provisions of clause 5 shall *mutatis mutandis* apply to such employees.
  - (c) The Employer shall pay the Fund an amount equal to the deductions made under paragraphs (a) and (b), from which shall be apportioned the costs of death and disability benefits as well as administration costs, as determined by the Board of Trustees in conjunction with the Actuary from time to time. The balance shall be the Employer's contribution to the Fund.
 

(Subclause 2(c) substituted by GN r.535 of 18 June 2010).
- (3) No deductions shall be made or contributions paid in respect of periods of absence on unpaid leave, and absences owing to sickness, injury on duty and military service where no payment is due to the employee by the employer in terms of an agreement or under any law.
- (4)(a) Every employer in regions A,B,C,D,E and F shall forward the total amount payable each month in terms of subclause (2), together with a statement in such form as may be prescribed from time to time, to reach the Council at its Central Funds Collection Office (CEFCO) Second Floor, Metal Industries House, 42 Anderson Street, Johannesburg, 2001 by no later than close of business on the 7<sup>th</sup> day of the subsequent month.



- (b) The employer uses the postal service, a courier service or any other means of delivery or transfer at the employer's own risk. The relevant postal address is P O Box 61474, Marshalltown, 2107. A facility for direct bank-to-bank transfer of funds is also available. Enquiries may be directed to the Financial Manager (Bargaining Council Collections), at the above address or telephone (011) 870-2000".  
(Subclause (4) amended by GN R.1020 of 21 October 2005)
- (5) Notwithstanding the provisions of this clause, failure on the part of the employer to make the deduction of employees' contributions which he is required to make shall not be absolve the employer from having to submit the total amount of the employees' contributions and his own contributions to the Council.
- (4) All contributions received by the Council shall be paid to the Provident Fund and the Scheme within seven days of receipt of such monies by the Council.
- (7)(a) If any amount that falls due in terms of this clause is not received in full by the Council by the 7<sup>th</sup> day of the month following the month for which the amount is payable, then the employer shall be liable to pay interest in accordance with the following provisions:
- (i) The interest payable shall accrue on the balance of the amount outstanding from time to time from the 7<sup>th</sup> day until the full amount is received by the Council.
  - (ii) The interest shall accrue at the same effective rate as the applicable maximum annual finance charge rate as if the amount outstanding were a 'credit transaction' for the purposes of the Act. For purposes of calculating the interest, the provisions of section 2(2) of the Act shall *mutatis mutandis* apply.
  - (iii) The Council shall, in its absolute discretion, be entitled to waive payment by the employer of any interest that accrues in terms of this subclause.
  - (iv) In addition to the provisions of section 2(2) of the Act, all the other provisions of the Act that are relevant for the purpose of calculating any interest payable by the employer in terms of this subclause shall *mutatis mutandis* apply for these purposes."
- (b) For the purposes of this subclause, 'the Act' means the Usury Act, 1968".  
(Subclause (7) amended by GN R.1020 of 21 October 2005)
- (8) In the event of the Council incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission.

## 7. ADMINISTRATION

- (1) The Fund and the Scheme shall be administered in accordance with their constitutions and rules. Such constitutions and rules shall not be inconsistent with this Agreement or the provisions of the Labour Relations Act, 1995. Copies of the constitutions and rules of the Fund and the Scheme and amendments thereto shall be lodged with the Director-General of Labour.
- (2) In the event of the dissolution of the Council or in the event of its ceasing to function during the currency of this Agreement, the Boards of Management of the Provident Fund and the Scheme appointed in terms of their constitutions shall take over the functions of the Council in respect of this Agreement, and if for any reason the Boards of Management should be unable or unwilling to perform such duties, the Registrar of Labour Relations may appoint trustees to perform the Council's functions. The Boards of Management or trustees so appointed shall have all the powers vested in the Council for the purposes of this Agreement. Payment (if any) for the services of the trustees shall be borne by the Fund and the Scheme, as the case may be.

## 8. AGENTS

- (1) The Council shall appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement. For the purpose of enforcing or monitoring compliance with this Agreement, as the case may be, an agent of the Council shall have the right to enter and inspect premises, examine records and question the employer and/or his employees in any manner that he deems appropriate: Provided that such rights be exercised only as is reasonably required for the purpose of enforcement of, or monitoring compliance with, the Agreement.
- (2) After each inspection of an employer's records and operations the agent shall prepare a report for the attention of the employer, worker representatives and, in the case of an individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions. Any disclosure of information shall comply with the provisions of the Labour Relations Act, 1995.
- (3) A designated Agent shall have the powers set out in sections 33 and 33A of the Act and in Schedule 10 of the Act.  
(Subclause (3) inserted by GN R.1020 of 21 October 2005)

## 9. EXEMPTIONS

### 1. *General*

- (a) Any person bound by this Agreement may apply for exemption.
- (b) The authority of the Council to consider and make recommendations on the granting of exemptions (excluding the hearing of appeals) is delegated to the Metal Industries Benefit Fund Administrators (MIBFA).

### 2. *Fundamental principles for consideration*

- (a) All applications must be in writing and fully motivated and sent to the Regional Office of the Council for the area in which the applicant is located.
- (b) In scrutinising an application for exemption MIBFA will consider the views expressed by the employer and the workforce, together with any other representations received in relation to that application.
- (c) The employer must consult with the workforce, through a trade union representative or, where no trade union is involved, with the workforce itself, and must include the views expressed by the workforce in the application.

Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application.

Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.

- (d) The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of this Agreement in the Industry.
- (e) An application for exemption shall not be considered if the contents of the application are covered by an arbitration award binding the applicant.

### 3. *Urgent applications*

- (a) In cases of urgent applications, details may be faxed or delivered to the Council in the region where the applicant is located.
- (b) MIBFA will consider the application, make a recommendation and communicate that recommendation to the Council without delay.
- (c) The applicant is expected to put forward a substantive explanation as to the urgency of the application.

#### **4. Process**

- (a) The Council shall issue to every person to whom exemption has been granted an exemption licence, setting out the following:
  - (i) the full name of the person or enterprise concerned;
    - (ii) the provisions of this Agreement from which the exemption has been granted;
    - (iii) the conditions subject to which exemption is granted;
    - (iv) the period of the exemption;
    - (v) the date from which the exemption shall operate; and
    - (vi) the area in which the exemption applies.
- (b) The Council shall ensure that –
  - (i) all exemption licences issued are numbered consecutively;
  - (ii) an original copy of each licence is retained by the Council;
  - (iii) a copy of the exemption licence is sent to the applicant.
- (c) Unless otherwise specified in the licence of exemption, any exemption from this Agreement shall be valid only in the region of the Council in which the application was made.
- (d) The Council may withdraw the exemption at its discretion.

#### **5. Appeals**

- (a) An independent body, referred to as the Independent Exemptions Appeal Board (the Board), is hereby appointed and shall consider any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption.
- (b) The Council Secretary will on receipt of an appeal against a decision to refuse the granting of an exemption submit it to the Independent Exemptions Appeal Board for consideration and finalisation.
- (c) In considering an appeal the Board shall consider the recommendations of the Council, any further submissions by the employer and the workforce or their respective employee organisations or trade unions and shall take into account the criteria set out above and also any other representations received in relation to the application.
- (d) Should the appeal be granted a licence of exemption shall be issued in terms of subclause (4)(a) and (b) above and shall be subject to subclauses (4)(c) and (d).  
(substituted by R.210 of 14 February 2003)

### **10. RESOLUTION OF DISPUTES**

Any dispute about the interpretation, application, or enforcement of this Agreement shall be referred to the Council and shall be dealt with in accordance with the provisions contained in the Metal and Engineering Industries Bargaining Council Dispute Resolution Agreement (published under Government Notice No. R.1174 of 15 August 2003.”  
(New Clause 10 inserted by GN R.1020 of 21 October 2005)

### **11. EXHIBITION OF AGREEMENT**

Every employer shall affix and keep in some conspicuous place upon his premises, a copy of this Agreement, in legible characters.

### **12. TERMINATION OF EMPLOYMENT OF MEMBERS**

On termination of employment of a member of the Fund his employer shall complete the details on a form as specified in Annexure A to this Agreement and hand it to the member.

Supplies of the specified forms are available from the regional councils.

The employer shall be required to maintain a permanent record of the permanent home address of the member.

**ANNEXURE A**

**METAL INDUSTRIES' PROVIDENT FUND**

(Form to be completed by employer and handed to members of the Metal Industries' Provident Fund on termination of employment.)

***Member's Rights to Benefits:***

1. A lump sum benefit on retirement at the age of 65 or later, or on early retirement from the age of 55 up to 65.
2. A permanent disability benefit owing to permanent disability/incapacity in terms of the rules of the Provident Fund and the rules of the Permanent Disability Scheme.
3. Death benefits: A lump sum benefit as if the member had retired on date of death PLUS a lump sum of three years' salary on-
  - (a) death in service of a contributing member before the age of 65;
  - (b) death before the age of 65 where death occurs within six weeks of ceasing employment, if ex-member was unemployed for such period and had been a member of the Fund for a consecutive period of not less than two years prior to such unemployment;
  - (c) death before the age of 65 where death occurs within six months of ceasing employment owing to sickness or a works accident, and ex-member was unemployed owing to such sickness or works accident until the date of death.

**Note:** The lump sum of three years' salary is reduced if the member or ex-member first joined the Fund after the age of 55. The benefit is then based on the period of membership.

4. A lump sum benefit on retrenchment/redundancy, before the age of 65, as if the member had retired on date of retrenchment/redundancy. The Fund will aim to pay the benefit within six weeks after cessation of service in the industries: Provided that the member has not returned to employment in the industries within that period.
5. A lump sum on ceasing service in the industries for reasons other than in (1) to (4) above. The lump sum is a refund of the member's own contributions, PLUS interest, PLUS a share of the employer's contributions, less costs, according to length of continuous service, and is payable not less than eight weeks after the cessation of service in the industries.

***To be completed by employer:***

- (a) Name of employee (surname first) .....
- (b) I.D/Ref. No ..... Works No .....
- (c) Period of service (from) ..... (to) .....
- (d) Reason for termination of employment:
  - Retrenchment
  - Redundancy
  - Resignation
  - Permanent disability/incapacity
  - Other
- (e) In cases of retrenchment and/or redundancy, state name of regional council and date on which notification of retrenchment was given under clause 35 of the Main Agreement:

Regional Council:

Date:

(f) The appropriate form for benefits has been handed to the employee.

Date:

*For and on behalf of the employer*

**Notes:**

- (i) Claim forms for the various benefits are available from regional councils or from the offices of the Metal Industries' Provident Fund.
- (ii) It should be ensured that the employee has been handed his membership card and any brochures or other information relating to the Fund.
- (iii) The employer is required to maintain a permanent record of the permanent address (i.e. residential address) of each employee.

Thus signed at Johannesburg, for and on behalf of the parties, this 3<sup>rd</sup> day of May 2010.

L. TRENTINI  
Member

V. MABHO  
Member

A SMITH  
Chief Executive Officer