

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF LABOUR**NOTICE 803 OF 2015****LABOUR RELATIONS ACT, 1995****BARGAINING COUNCIL FOR THE MOTOR INDUSTRY-MIBCO: EXTENSION TO
NON-PARTIES OF THE MOTOR INDUSTRY PROVIDENT FUND AGREEMENT**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32(2) read with sections 32(5) and 32(8) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **Motor Industry Bargaining Council**, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from the second Monday after the date of publication of this notice and for the period ending 31 March 2016.


MINISTER OF LABOUR
30/7/2015

SCHEDULE

MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO

MOTOR INDUSTRY PROVIDENT FUND 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 the

Fuel Retailers Association of Southern Africa - FRA

and the

National Employers Association of South Africa - NEASA

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

Motor Industry Staff Association – MISA

and the

National Union of Metalworkers of South Africa - NUMSA

(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 - PERIOD OF OPERATION

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 force for the period ending 31 March 2016.

CLAUSE 2 - SCOPE OF APPLICATION OF AGREEMENT

- (1) Subject to the provisions of sub clause (2) of this clause, the terms of this Agreement shall be observed -
 - (a) in the Motor Industry in the Republic of South Africa;
 - (b) employees in Division B, grades 7 and 8 and apprentices in the Motor Industry and their employers.
- (2) Notwithstanding the provisions of sub clause, the provisions of this Agreement shall not apply to –
 - (a) employees in Division B, grades 7 and 8 and apprentices who are members of the Auto Workers' Provident Fund until such time as the parties agree that they are transferred to the Motor Industry Provident Fund.
 - (b) any employee who has been granted a retirement benefit by any fund which provides for such benefits;
 - (c) employees in respect of whom their employer contributes, and for as long as their employer so contributes, to a pension fund/provident fund which was in operation on the date of coming into operation of this Agreement and which, in the opinion of the Council, provides benefits not less favorable than those provided by the Fund;
 - (d) any fixed term and/or probationary employee for six months from the date on which he begins employment in the Motor Industry; provided that any

employer may in his discretion waive this exclusion.

CLAUSE 3 : DEFINITIONS

Any expressions used in this Agreement and which are defined in the Labour Relations Act, 1995, and the Main Agreement shall have the meanings assigned to them in the Act and that Agreement, references to an Act shall include any amendments to such Act, and unless the contrary intention appears, words importing the masculine gender shall include females and vice versa; further, unless inconsistent with the context -

- (1) **'Act'** means the Labour Relations Act, 1995 (Act 66 of 1995);
- (2) **"Apprentices"** means those employees as defined in the Main Agreement from time to time;
- (3) **'Company'** means the Motor Industry Fund Administrators (Pty) Ltd;
- (4) **'Council'** means the Motor Industry Bargaining Council - MIBCO registered in terms of section 29 of the Act;
- (5) **"Division B employees"** means those employees as defined in the Main Agreement from time to time.
- (6) **'Establishment'** means any premises or part thereof in or on which activities in the Motor Industry or part thereof are conducted;
- (7) **"Exemption Board"** means the Board established by the Council in terms of section 31 of the Act, to consider appeals from non-parties against the refusal of a non-party's application for exemption from the provisions of this Agreement

and the withdrawal of such an exemption by the Council;

- (8) **'Fund'** means the Motor Industry Provident Fund established in terms of the rules of the Fund for the purpose of providing lump sum benefits or annuities for employees in the Motor Industry or for the dependants of such employees on the death of such employees;
- (9) **"Grade 7 employees"** mean those employees as defined in the Main Agreement from time to time;
- (10) **"Grade 8 employees"** mean those employees as defined in the Main Agreement from time to time;
- (11) **'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 sections 31 and 32 of the Act;
- (12) **'Motor Industry' or 'Industry'** means the Motor Industry as defined in the Main Agreement from time to time;
- (13) **"Pensionable remuneration"** means the amount which an employer would normally and/or regularly pay to an employee, either weekly or monthly, in respect of the ordinary hours required to complete either a full normal week or month, as the case may be, and does not include remuneration which an employee who is employed on a piece work basis receives over and above the amount which he would have received if he had not been employed on such basis, but will include commission received on the sale of goods; provided, however, that all commission received in excess of R9 000 per month shall be excluded, unless the employer and employee jointly agree that contributions

shall be paid on commission earnings in excess of the aforementioned limitation;

- (14) **“Region EC”** means those areas defined as “Area A (EC)” and “Area B (EC)” in the Main Agreement;
- (15) **“Region KZNL”** means those areas defined as “Area A (KZNL)” and “Area B (KZNL)” in the Main Agreement;
- (16) **“Region FS & NC”** means those areas defined as “Area A (FS & NC)” and “Area B (FS & NC)” in the Main Agreement;
- (17) **“Region Highveld”** means those areas defined as “Area A (Highveld)” and “Area B (Highveld)” in the Main Agreement;
- (18) **‘Region Northern’** means those areas defined as “Area A (Northern)” and “Area B (Northern)” in the Main Agreement;
- (19) **“Region WP”** means those areas defined as “Area A (WP)” and “Area B (WP)” in the Main Agreement;
- (20) **“Regional Council”** means a committee appointed as such by the Council in terms of its constitution for any region defined herein;
- (21) **“Retirement age”** means 65 years;
- (22) **“Voluntary member”** means a person admitted to membership by a Regional Council in terms of clause 5 of this Agreement;
- (23) **“Week”** means a period of seven consecutive days commencing at midnight on

a Sunday.

CLAUSE 4 : ESTABLISHMENT AND OBJECTS OF THE FUND

- (1) The Motor Industry/MISA Provident Fund established on 1 January 2001 is hereby continued as the Motor Industry Provident Fund (hereinafter referred to as the "Fund").
- (2) The Fund shall consists of:
 - (a) Contributions paid to it in terms of this agreement;
 - (b) Interest, dividends, rental income and capital gains derived from the investment of its moneys;
 - (c) Money or any other assets transferred to it from any other pension or provident fund; and
 - (d) Any moneys or other assets lawfully acquired from any other source whatsoever.
- (3) The objects of the Fund shall be, in accordance with the rules of the Fund as determined from time to time, to provide benefits for members.

CLAUSE 5 : MEMBERSHIP

- (1) Subject to the provisions of clause 2 of this agreement and of sub clause (3) of this clause, membership of the fund shall be compulsory for all employees in Division B, grades 7 and 8 and apprentices in the Motor Industry who have not

reached retirement age.

- (2) Employees who are not compulsory members in terms of sub clause (1) and employers, Directors of companies, members of Close Corporations, Sole Proprietors and Partners in business directly engaged in, or in connection with the Motor Industry, who are registered with the RMI, NEASA or the FRA may be admitted to voluntary membership of the Fund at the sole discretion of the Regional Council concerned, and the provisions of this Agreement shall **mutatis mutandis** apply to persons admitted to voluntary membership and their employers.
- (3) Every employee for whom membership is compulsory in terms of sub clause (1) of this clause shall -
 - (a) complete the form specified in Annexure A to this Agreement and lodge such completed form with the Secretary of the Regional Council for the Region in which he is employed, within one month after the date on which he enters, re-enters or becomes employed in the Motor Industry and for purposes of this paragraph an employee shall be deemed to have re-entered the Motor Industry when he has changed employment from one Region to another;
 - (b) when required to do so by the Council, a Regional Council or the Fund, furnish such evidence and information, documentary or otherwise, as may be necessary for purposes of his identity, his membership of the Fund and/or payment or determining of any benefit arising out of such membership.
- (4) Every person who is admitted to voluntary membership in terms of sub clause (2)

of this clause shall complete the form specified in Annexure B to this agreement and lodge such completed form with the Secretary of the Regional Council concerned.

CLAUSE 6 – CONTRIBUTIONS

- (1) Every employee for whom membership of the Fund is compulsory in terms of clause 5(1) or every voluntary member in terms of clause 5(2) of this Agreement, shall contribute 7,5% of his pensionable remuneration to the Fund in respect of each week of his employment in the Motor Industry; 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 by him in respect of such week.
- (2) The contributions specified in sub clause (1) shall, subject to the proviso contained in sub clause (1), be deducted by the employer from every employee's wages on the first pay-day after this Agreement comes into operation, and on each pay-day thereafter.
- (3) Every employer shall contribute and add to the contributions deducted in terms of sub clause (2) an amount equal to 8% of the pensionable remuneration of each member.
- (4) The total amount of contributions deducted from the earnings of employees and contributed by employers in terms of sub clause (2) and (3) of this clause shall be paid each month to the Secretary of the Regional Council for the Region within the area of jurisdiction within which the employer's establishment is situated, and each such payment shall be accompanied by a written statement containing the following details:

- (a) Name, initials, trade union membership number (if any) and national identification number of each employee;
 - (b) amount of contributions remitted in respect of each employee;
 - (c) the date on which service began or service ended in the case of employees whose employment began or ended since the details were last submitted.
- (5) Every employer shall pay the total amount of the contributions payable by him and his employees and render the statement of details in terms of sub clause (4) of the Secretary of the Regional Council concerned by not later than the 10th day of the month immediately following that to which the contributions and details relate.

Note:

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

For Region EC: P.O. Box 7270, Port Elizabeth, 6055

For Region KZNL: P.O. Box 17263, Congella, 4013

For Region FS & NC: P.O.Box 910, Bloemfontein, 9300

For Region Highveld: P.O.Box 2578, Randburg, 2125

For Region Northern: P O Box 2578, Randburg, 2125

For Region WP: P.O.Box 17, Bellville, 7535

- (b) Forms prepared specifically for the furnishing of the details required by this clause may be obtained from the Regional Secretary of the Region concerned.

- (6) The contributions payable by employers as specified in sub clause (3) shall not be refundable.
- (7) The contributions collected by Regional Councils in terms of this clause shall be paid to the Company; provided that the Council may retain, as recoupment of administrative expenses, such amounts as may from time to time be mutually determined by the Council and the Company. The amount so retained shall be paid into the general funds of the Council.
- (8) 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 of 1,5 to 2 per cent per month of part thereof 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 this absolute discretion to waive the payment of such interest or part thereof.

CLAUSE 7 – ADMINISTRATION

- (1) The Fund shall be administered in accordance with rules approved by the Council, which rules shall not be inconsistent with the provisions of this Agreement or of the Act, and a copy of the rules and details of any amendments to them shall be lodged with the Financial Services Board.

CLAUSE 8 – LIQUIDATION OR DISSOLUTION

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 Parties or the Financial Services Board may appoint the Company, to perform the functions of the Council in respect of this

Agreement. If the Company is unwilling or unable to discharge such duties the Financial Services Board shall appoint a trustee or trustees to perform the Council's function. The Company or the trustee(s) so appointed shall have all the powers vested in the Council for purposes of this Agreement.

CLAUSE 9 - 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 premises, 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 purposes 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 10 - EXEMPTIONS

- (1) The Council or any Regional Council may grant exemption from any of the provisions of this Agreement to any party on application in terms of Clause 8(2) of Division A of the Main Agreement;
- (2) Application for exemption shall be made to the Secretary of the Regional Council with whose jurisdiction the applicants operates or is employed;
- (3) The Council or Regional 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 weeks' notice in writing has been given to the person concerned, withdraw any license of exemption.

CLAUSE 11- 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 honored for any reason whatever, then and in such event a penalty shall be payable by the employer to the Council, which penalty shall be equal to 1,5 to 2 per cent per month as determined by the Council in its sole discretion, of the purported payment. Any penalty due to the Council in terms of this clause shall be payable on demand.

CLAUSE 12 – INDEPENDENT BOARD

Subject to clause 22 of the Administrative Agreement published under the same conditions and criteria apply in respect of appeals from non-parties submitted in terms of the provisions of this Agreement.

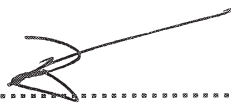
CLAUSE 13- RESOLUTION OF DISPUTES

- (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 does not apply when the Council makes use of the procedure set out in sub-paragraph (4).
- (3) If the Council fails to resolve the dispute through conciliation and the dispute remains unresolved, it 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 said Act.

- (4) The Council may, notwithstanding any other provision in this Agreement or any other Agreement, collect any levy or contribution payable in terms of this or any other Agreement, by way of civil proceedings in any civil court.
- (5) The arbitrator's decision shall be final and binding subject to the parties' right of review to the Labour Court.
- (6) Any other dispute shall have the same meaning as defined in the Act and be dealt with in terms of section 51 of the said Act, as contained in the Council's Constitution.

SIGNED AT RANDBURG, ON BEHALF OF THE PARTIES, THIS 23 DAY OF
June 2015.


..... B CELE
PRESIDENT OF THE COUNCIL


..... MC LAMPRECHT
VICE-PRESIDENT OF THE COUNCIL


..... BC MKHWANAZI
GENERAL SECRETARY OF THE COUNCIL

ANNEXURE A TO THE MOTOR INDUSTRY PROVIDENT FUND AGREEMENT

APPLICATION FOR REGISTRATION AS A MEMBER

Fund No.....

Identity No.....

Surname.....

First names.....

Date of birth.....(year).....(month).....(day).....

Sex (state male or female).....

Employed by (employer's name and address).....

.....

Applicant's private address.....

.....

Were you employed in the Motor Industry previously?...

If the answer is "Yes", state name and address of employer

.....

hereby apply to be registered as a member of the Motor Industry Provident Fund
and agree to abide by the provisions of the Fund's rules in force from time to
time.

I nominate as my beneficiary in the event of my death:

First names

(Mr/Mrs/Miss).....

Surname.....

Relationship (state: wife, husband, father, mother, son, daughter, as the case may be).....

Address.....

Identity No. of beneficiary (where applicable).....

Date.....

(Member's signature)