

## DEPARTMENT OF LABOUR

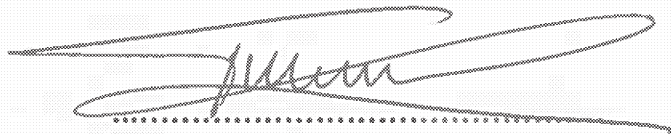
NO. R. 1693

20 DECEMBER 2019

## LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY  
OF THE WESTERN CAPE: EXTENSION TO NON-PARTIES OF THE AGENCY  
SHOP FEE COLLECTIVE AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the provisions of the collective agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Furniture Manufacturing Industry of the Western Cape** 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 the agreement for the period of twelve months.



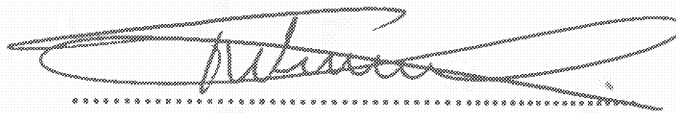
MR T W NXESI, MP

MINISTER OF EMPLOYMENT AND LABOUR

DATE: 29/11/2019

**UMNYANGO WEZEMISEBENZI NEZABASEBENZI****UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995****BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY  
OF THE WESTERN CAPE: UKWELULELWA KWESIVUMELWANO  
SENKOKHELO YENTELA SELULELWA KULABO ABANGEYONA INGXEYENYE  
YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi neZabasebenzi, ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa yi**BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY OF THE WESTERN CAPE**, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabasebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, siyokuqala ukusebenza kusukela ngomSombuluko wesibili emuva kokushicilelwa kwalesiSivumelwano esiyophela emuva kwezinyanga eziyishumi nambili.



MNUMZANE TW NXESI, MP

UNGQONGQOSHE WEZEMISEBENZI NEZABASEBENZI

USUKU: 29/11/2019

**SCHEDULE****BARGAINING COUNCIL for the FURNITURE MANUFACTURING INDUSTRY****OF THE WESTERN CAPE****AGENCY SHOP FEE COLLECTIVE AGREEMENT**

In accordance with the provisions of the Labour Relations Act 1995 (Act No 66 of 1995)(as amended), made and entered into by and between the

**Cape Furniture Manufacturers Association**

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

and the

**National Union of Furniture and Allied Workers of South Africa**

(hereinafter referred to as the "employees" or the "trade unions"), of the other part

being the parties to the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape.

**CHAPTER 1****1. SCOPE OF APPLICATION**

- (1) The terms of this Agreement shall be observed in the Furniture, Bedding, Upholstery and Curtain Manufacturing Industry as defined in Paragraph A in the Provinces of the Northern Cape and Western Cape excluding the Magisterial Districts of George, Knysna, Mossel Bay, Plettenberg Bay and Oudtshoorn.: -





**Paragraph A**

**"Furniture, Bedding, Upholstery and Curtain Manufacturing Industry"** or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the manufacture, either in whole or in part, of all types of components of furniture, furniture, bedding, curtains, upholstery and/or re-upholstery and will, inter alia, include but not be limited to the following:

**(a) Furniture**

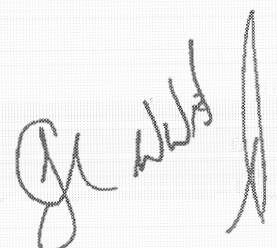
Manufacturing, assembling, repairing, staining, spraying, polishing, re-polishing, making loose covers and/or cushions, wood machining, veneering, woodturning, carving, assembling, painting, spraying, cutting, edging, drilling, wood bending, laminating and/or papering/foiling, of board.

"Board" means any type of wood or wooden or related product or any other substitute material, amongst others being: -laminated board, fibre board, chip board, block board, veneer board, pressed board.

Furniture manufacturing will also include the manufacturing, repairing, polishing, assembling, cutting, drilling, edging, re-polishing, staining, spraying either in whole or in part of: pianos, organs, kitchen cupboards, attached wall cupboards, built-in cupboards, free standing cupboards, bars or built-in bar counters, cane, wicker or grass furniture, cabinets including cabinets for musical instruments and radios, wireless or television cabinets, coffins, draw and draw fronts, doors and cupboard doors Irrespective of size, bathroom cupboards, cupboards tops, and furniture for tea-rooms, restaurants, offices, churches, schools, libraries, hotels, other educational institutions, conference centres and theatres.

**(b) Bedding**

The manufacturing, assembling, repairing, covering, re-covering of mattress bases, mattresses, spring mattresses, overlays, bolsters, pillows, cushions for studio couches, spring units, box-spring mattresses sleeper couch and studio couches.



"Studio Couch" means an article of furniture, which is designed for seating and for conversion into a double bed or two or more beds and of which the frames may also be constructed mainly of metal and the seating and/or sleeping surfaces consist of mattresses and/or cushions.

(c) Upholstery

The upholstering or re-upholstering of any furniture, or item of furniture, bedding, seating, pelmets, mattress bases, foam mattresses and/or cushions.

(d) Curtain making

The making, altering, repairing and hanging of curtains and/or blinds made mainly of fabric, wood, cane, wicker, reed or grass.

Curtain making includes window treatment, cutting of rails and rods, fitting of pelmets, curtains, blinds and associated products.

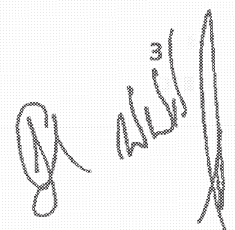
(2) Notwithstanding the provisions of sub-clause (1), the terms of this Agreement shall:-

- (a) apply only to employees for whom minimum wages are prescribed in the Main Collective Agreement and to employers of such employees.
- (b) apply to Learners in so far as the terms are not inconsistent with the Skills Development Act, 97 of 1998, or any contract entered into or any condition fixed under the Skills Development Act, 97 of 1998.

## 2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation:-

- (1) (a) in respect of parties to this agreement, on the date of signature;

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(b) in respect of non-parties, on such date as fixed by the Minister of Labour in terms of section 32 of the Act.

(2) This Agreement shall remain in force for a 12 month period, from the date fixed by the Minister.

### 3. TERMS AND CONDITIONS

3.1 A separate Agency Shop Fee Agreement in terms of section 25 of the Labour Relations Act, 1995 (Act 66 of 1995)(as amended)(hereinafter referred to as the Act) is hereby agreed to and the provisions of the Act, where applicable, shall apply to this Agreement.

3.2 The object of this Agreement is to ensure that all employees in the scope of the Main Agreement who receive the benefits of collective bargaining contribute towards its costs.

3.3 This Agreement shall be subject to the respective parties being representative, as required by section 25 of the Act, of employees and employers who are covered by the Main Collective Agreement of the Bargaining Council as verified by the Department of Labour from time to time.

3.4 The application of this agreement to either of the parties shall be subject to that party being representative.

### 4. DEFINITIONS

Any expressions used in this Agreement which are 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, and unless the contrary intention appears, words importing the masculine gender shall also include the feminine gender and vice versa further, unless inconsistent with the context-

"Act" means the Labour Relations Act, 1995 (Act 66 of 1995)(as amended);

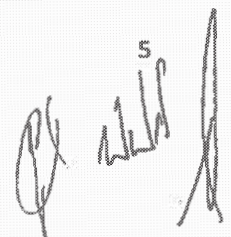
"Council" means the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape;







## 5. AGENCY SHOP FEE

- 5.1 An employer must deduct an Agency Shop Fee from the wages of employees identified in this Agreement who are not members of the representative trade union, and who are not compelled to become members of the aforementioned union, but are eligible for membership thereof.
- 5.2 For the purposes of this agreement, "representative trade union" means, the same as in section 25 of the Act, a registered trade union or two or more registered trade unions acting jointly, whose members are a majority of the employees employed: -
- 5.2.1 by an employer in a workplace in the scope of the Council; or
- 5.2.2 by the members of the employers' organisation who is party to this Agreement and whose members are employers in the scope of the Council.
- 5.3 This Agency Shop Fee agreement is binding on all employees who are employed in the scope of the Council's Main Collective Agreement and who are not members of the representative trade union who are parties to this Agreement, namely the National Union of Furniture and Allied Workers of South Africa.
- 5.4 A prescribed Agency Shop Fee equal to R26-00 per week, with effect from the coming into operation of this agreement, must be deducted by all employers from all of their employees' in the scope of the Main Agreement who are not members of the party trade union National Union of Furniture and Allied Workers of South Africa.
- 5.5 The prescribed Agency Shop Fee deducted in accordance with clause 5.4 above, must be paid by the employers concerned to the Council by the 15<sup>th</sup> day of each month following the month when these deductions were required to have been made from their employees' wages.
- 5.5.1 This prescribed Agency Shop Fee received by the Council must be paid by the Council on a monthly basis to the National Union of Furniture and Allied Workers of South Africa.
- 5.6 An employer shall together with the Agency Shop Fee also submit to the Secretary of the Council, at the same time, a monthly return form reflecting the amount of the Agency Shop Fee due for each employee.
- 5.7 The Secretary of the Council shall deposit all moneys received in terms of clause 5.5. into a bank account of the Council, if not already done so by the employer.
- 5.8 The prescribed Agency Shop Fee shall be equivalent to or less than the maximum amount of the trade union subscriptions payable by any of the members of the National Union of Furniture and Allied Workers of South Africa.

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- 5.9 The Secretary of the Council must transfer all moneys received in respect of Agency Shop Fees into a separate bank account administered by the party trade union.
- 5.10 Despite sub-clause 5.9, a conscientious objector may request his employer in writing, to pay the prescribed amount deducted from his wages in respect of Agency Shop Fees into a fund administered by the Department of Labour.
- 5.11 No Agency Shop Fee may be:
- 5.11.1 paid to a political party as an affiliation fee; or
  - 5.11.2 contributed in cash or kind to a political party or a person standing for election to any political office; or
  - 5.11.3 used for any expenditure that does not advance or protect collective bargaining and the socio-economic interests of employees in the scope of this Council.
- 5.12 Despite the provisions of any law or contract, an employer may deduct the Agency Shop Fee from the wages of an employee without the employee's authorisation.
- 5.13 The provisions of sections 98 and 100 (b) and (c) of the Act apply, read with the changes required by the context, to the separate account referred to in sub-clause 5.9.
- 5.14 Any person may inspect the auditor's report, in so far as it relates to an account referred to in sub-clauses 5.9.
- 5.15 The Registrar must provide a certified copy of, or an extract from, any of the documents referred to in clause 5 to any person who has paid the prescribed fees.
- 5.16 If an employee or trade union or any other interested person or organisation alleges that the trade union party to this agreement is no longer a representative trade union as envisaged in clause 5.2 it must give the trade union party written notice of this allegation, and must allow the same trade union party 90 calendar days from the date of the notice to prove that they are representative trade unions.
- 5.17 If, within the 90-day period, the trade union party fails to prove that they are a representative trade union, the employee or trade union or any other interested person or organisation making such allegation must give the trade union party who are party to this agreement notice of their intention to request the Minister of Labour to withdraw the extension of this agreement to non-party employees in the Industry.
- 5.18 If the extension of this agreement to non-party employees in the Industry is withdrawn by the Minister of Labour, the provisions of sub-clause 5.7 and 5.9 shall apply until all the Agency

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Shop Fees due up until the date of withdrawal of the extension of this agreement, have been received and paid out in accordance with sub-clauses 5.7 and 5.9.

- 5.19 The Agency Shop Fee shall only be payable at the prescribed rate by an employee earning more than the equivalent of **two fifths of his normal weekly wage** and on the hours which would ordinarily have been worked by the employee on:
- 5.19.1 paid public holidays;
  - 5.19.2 paid trade union representative leave days;
  - 5.19.3 paid sick leave days;
  - 5.19.4 paid family responsibility leave days.

## 6. UNPAID AGENCY SHOP FEES

- 6.1 Should any amounts due to the Council in terms of this agreement not be received by the Council by the 15<sup>th</sup> day of the month following the month in respect of which the amounts are payable, the employer shall forthwith be liable for and be required to pay interest on such amounts or on such lesser amounts that remain unpaid at a rate which does not exceed the maximum rate as prescribed by the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975) (as amended), calculated from the 16<sup>th</sup> day of the month until the day upon which the payment is actually received by the Council and reflects in the Council's bank account. The Council shall be entitled at its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- 6.2 In the event of the Council incurring any costs or becoming obliged to pay any collection costs and commission by reason of the failure of the employer to make any payment on or before the applicable due date, the employer shall then also be liable to forthwith pay all such collection costs and commission to the Council and the Council shall be entitled in its absolute discretion to allocate any payment received from such an employer firstly to such costs, collection commission and interest, and thereafter to the reduction of the unpaid Agency Fees or Bargaining Levy.
- 6.3 Disputes about the Interpretation, application or enforcement of this Agreement shall be resolved in accordance with the Dispute Resolution Procedure as described in the Council's Main Collective Agreement.





## 7. EXEMPTIONS

- 1 Any person bound by this Agreement may apply for exemption.
- 2 The authority of the Bargaining Council is to consider applications for exemptions and grant exemptions.
- 3 The *Bargaining Council* must determine its exemptions policy and process all exemptions applications in terms of this policy.
- 4 All applications for exemption shall be made in writing on the appropriate application form, obtained from the *Bargaining Council*, setting out relevant information, including:
  - (a) The provisions of the *agreement* in respect of which exemption is sought;
  - (b) The number of persons in respect of whom the exemption is sought;
  - (c) The reasons why the exemption is sought;
  - (d) The nature and size of the business in respect of which the exemption is sought;
  - (e) The duration and timeframe for which the exemption sought;
  - (f) The business strategy and plan of the applicant seeking the exemption;
  - (g) The applicant's past record (if applicable) of compliance with the provisions of the Collective Agreement, its amendments and exemptions certificate;
  - (h) The recorded views expressed by the trade union or workforce itself during the plant level consultation process; and
  - (i) Any other relevant supporting data and financial information the *Council* may prescribe from time to time.
- 5 An exemption application in respect of a term or provision in a *Collective Agreement*:
  - (a) Concluded in the *Council* that applies throughout the *Industry* must be considered by an exemptions body appointed by the *Council*;
- 6 The Bargaining Council shall decide on an application for exemption within 30 days of receipt.





- 7 Upon receipt of an application by the Bargaining Council, it shall immediately refer the application to the exemptions body which may, if deemed expedient, request the applicant to attend the meeting at which the application is considered, to facilitate the deliberations.
- 8 An exemption body appointed by the *Council* may request additional information from an applicant applying for exemption.
- 9 In scrutinising an application, the Exemption Body or the Independent Exemptions Body will consider the details of the application, the views expressed by the trade union or workforce, affected employers, any other representations received in relation to the application, and the factors and criteria as listed in clause 15 below.
- 10 The *Secretary* must advise the applicant in writing of the decision of the exemptions body within 15 days from the date of the decision, failing which the *Bargaining Council* is deemed to have refused the application for exemption.
- 11 In the event of the exemptions body granting, partially granting or refusing to grant an application, the applicant shall be informed for the reasons for the decision and have the right to appeal in writing on the appropriate appeal application form against the decision to the Independent Body, established by the Bargaining Council within 21 days from the date of being informed of the outcome.
- 12 In terms of section 32(3)(e) of the Act, the Bargaining Council must establish an Independent Body to hear and decide as soon as possible any appeal brought against the exemptions body's refusal of a non-party's application for exemption from the provisions of a collective agreement by the exemptions body or withdrawal of an exemption by the Bargaining Council.
- 13 The Independent Body shall hear and decide and inform the applicant and the *Bargaining Council* as soon as possible and not later than 30 days after the appeal has been lodged against the decision of the exemptions body.
- 14 No representative, office-bearer, or official of a trade union or employers' organisations party to the Bargaining Council, may be a member of, or participate in the deliberations of, the Independent Body established by the Bargaining Council.





15 When considering an application, the Exemption Body or, the Independent Body whichever the case may be must consider, in addition to clause 9, the following:

- (a) Whether the granting of the exemption or appeal will prejudice the objectives of the *Bargaining Council* or contravene the provisions of any labour legislation or *Collective Agreements*;
- (b) The circumstances prevailing in the *Industry* as a whole likely to be affected by the application and / or the interest of the industry regarding unfair competition, collective bargaining, potential for labour unrest and increased employment;
- (c) The nature and size of the business in respect of which the application is made;
- (d) Whether the duration of the exemption or appeal is for a limited or specified period;
- (e) Any representations made by the employees likely to be affected by the application and interest of employee's as regard exploitation, job preservation, sound conditions of employment, possible financial benefits, health and safety of workers and infringement of basic rights;
- (f) Whether the business strategy and plan presented by the applicant demonstrates that the granting of the exemption or appeal will make a material difference to the long-term viability of the business in respect of which the exemption or appeal is sought;
- (g) Whether a refusal to grant an exemption or appeal will result in undue financial hardship to the applicant, financial instability, impact on productivity, future relationship with the employees' trade union and operational requirements;
- (h) Whether the granting of the exemption or appeal will undermine collective bargaining and be likely to cause undue financial hardship to the employees affected;
- (i) Whether the granting of the exemption or appeal will impact negatively on parity agreements;

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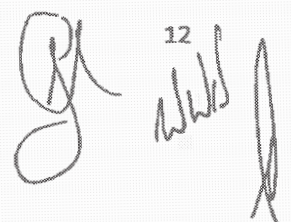

- (j) Whether the granting of the exemption or appeal will impact negatively on local competitors who are complying with *Collective Agreements*; and
  - (k) Whether the employees or their representatives have been consulted and their views recorded, and / or any agreement reached between the applicant and the workforce.
  - (l) Any other relevant supporting data and financial information as prescribed by the Bargaining Council and supplied by the applicant.
- 16 In the event of the Independent Body granting, partially granting or refusing the grant the appeal, the applicant shall be informed in writing of the reasons for the decision within 21 days from the date of the decision.
- 17 The decision of the Independent Body is final and binding upon the applicant and the *Bargaining Council*.
- 18 If an exemption or appeal is granted or partially granted, the Exemptions Body or the Independent Body, shall issue a certificate, signed by Secretary, containing the following particulars:
- (a) The full name of the applicant(s) or enterprise concern;
  - (b) The trade name;
  - (c) The provisions of the Agreement from which exemption or appeal has been granted;
  - (d) The period for which the exemption or appeal shall operate;
  - (e) The date of issue and from which day the exemption or appeal shall operate;
  - (f) The condition(s) of the exemption or appeal granted; and
  - (g) The area in which the exemption or appeal applies.
- 19 An employer to whom a certificate has been issued shall at all times have the certificate available for inspection at the workplace.
- 20 The Secretary must maintain a register of all exemption and appeal certificates granted, partially granted or refused.





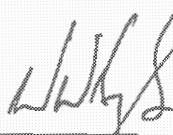
**8 ENFORCEMENT OF COLLECTIVE AGREEMENT**

- 1 Despite any other provisions of this Agreement, the Council may appoint one or more persons and may request the Minister of Labour to appoint such persons as designated agents in terms of Section 33 (1) of the Act to promote, monitor and enforce compliance with this Agreement.
2. In the event of non-compliance with this Agreement, a designated agent may secure compliance by –
  - (a) publicising the contents of this Agreement.
  - (b) investigate complaints.
  - (c) conduct inspections.
  - (d) issue a compliance order ; or
  - (e) adopt any other means the Council may have approved of; and
  - (f) perform any other function which is conferred on or imposed on the agent by the Council.
- 3 In the event that non-compliance prevails after the issuance of a compliance order in terms of sub-clause 2 (d) above, the agent must:
  - (a) submit a report to the Secretary of the Council, specifying that compliance had not been achieved.
- 4 Upon receipt of such report, the Secretary of the Council shall –
  - (a) Appoint an arbitrator from the list of arbitrators supplied by the CCMA to arbitrate the matter ; or
  - (b) take such steps as deemed necessary to give effect to any agreement reached after the compliance order was issued in resolving the matter.
  - (c) An arbitrator appointed in terms of this Clause shall have all the powers assigned to an arbitrator as contemplated by the Act, including but not limited to the charges and penalties as further contemplated by Section 33A of the Act read with the applicable Regulations.
- 5 The Secretary shall make application to certify the arbitration award or settlement agreement, whichever applies, as order of the Labour Court.
- 6 A designated agent appointed under Section 33 (1) of the Act, shall in addition to the powers referred to in that Section, have the powers as assigned to designated agents as set out in Schedule 10 of the Act, read with the changes required by the context.

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Agreement signed at Bellville on this 15th day of October 2019.



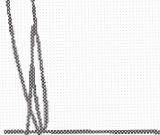
**W. DYERS**

Chairman of the Council



**J. CLAASSEN**

Vice-Chairman of the Council



**A. DAVIDS**

Secretary