

SCHEDULE

FURNITURE BARGAINING COUNCIL

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

**Furniture, Bedding & Upholstery Manufacturers' Association for the Greater Northern
Region**

(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

and

Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (CEPPWAWU)

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

being the parties to the Furniture Bargaining Council.

CHAPTER 1

1. SCOPE OF APPLICATION

1.1 The terms of this Agreement shall be observed in the Furniture, Bedding and Upholstery Manufacturing Industry-

1.1.1 by all employers who are members of the party employers' organisation, which is party to this Agreement and by all employees who are members of the party trade unions, which are party to this Agreement and the Council's Main Collective Agreement, and who are engaged or employed in the Furniture, Bedding and Upholstery Manufacturing Industry, respectively;

1.1.2 in the Provinces of Gauteng, North West, Mpumalanga, Limpopo and Free State.

1.2 Notwithstanding the provisions of clause 1.1 the provisions of this Agreement-

1.2.1 apply only to employees for whom wages are prescribed in the Council's Main Collective Agreement and to the employers of such employees; and

1.2.2 apply to learners under the Skills Development Act, 1998, or any contracts entered into or any conditions fixed thereunder.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall, in terms of section 31 of the Act, become binding on the above parties on 1 May 2019 and for non-parties on such a date as may be determined by the Minister of Labour in terms of section 32 of the Act and shall remain in force for the period ending 30 April 2020.

3. TERMS AND CONDITIONS

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

This Agreement shall be subject to the parties being representative, as required by section 25 of the Act, of employees or employers who are covered by the Main Collective Agreement of the Furniture Bargaining Council as verified by the Department of Labour from time to time. Accordingly, the application of this agreement to either of the parties shall be subject to that party being representative or the two registered trade unions in acting jointly, are 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);

“Agency Shop Fee” means the fee set out in clause 5 of this Agreement;

“Council” means the Furniture Bargaining Council;

“Furniture, Bedding and Upholstery 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 furniture and bedding as well as upholstery and/or re-upholstery and will, inter alia, include the following:

(a) **Furniture**

Repairing, staining, spraying, polishing, re-polishing, making loose covers and/or cushions, wood machining, veneering, woodturning, carving, assembling, painting, wood bending and laminating. Furniture manufacturing will also include the manufacturing, installation, repairing, polishing, re-polishing, staining, spraying of pianos, organs, movable room/office partitions, kitchen cupboards, kitchen cupboard tops, kitchen cupboard components (irrespective of materials used), attached wall cupboards, built-in cupboards, built-in cupboard components, free standing bars or built-in bar counters, cane, wicker or grass furniture, cabinets including cabinets for musical instruments and radios, wireless or television cabinets, bathroom cupboards, any other cupboard tops and furniture for tea-rooms, restaurants, offices, churches, schools, libraries, other educational institutions, conference centres and theatres but excluding the manufacturing of furniture made mainly of metal and/or plastic materials.

(b) **Bedding**

The manufacturing, repairing, covering, re-covering of mattress bases, mattresses, spring mattresses, overlays, bolsters, pillows, cushions for studio couches, spring units, box-spring mattresses and studio couches, but excluding the manufacturing of bedding made mainly of metal and/or plastic materials.

"Studio Couch" means an article of furniture, which is designed for seating and for conversion into a bed or two or more beds and of which the frames are 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, pelmets and mattress bases.

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 unions, and who are not compelled to become members of the aforementioned unions, 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 unions who are parties to this Agreement, namely the National Union of Furniture and Allied Workers of South Africa and the Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (CEPPWAWU).
- 5.4 A prescribed Agency Shop Fee equal to 1% of an employee's weekly wage calculated in terms of clause 5.20 hereunder, subject to a maximum of R17-00¹ per week, must be deducted by all employers concerned from all their employees' weekly wages if they are not members of the Chemical, Energy, Paper, Printing, Wood and Allied Workers Union or the National Union of Furniture and Allied Workers of South Africa who are the party trade unions to this Agreement.
- 5.5 The prescribed Agency Shop Fee shall be paid by the employers concerned to the Council monthly by no later than the 10th day of each month following the month to which these deductions relate.

¹ Maximum amount as agreed to at AGM 19/7/2018

- 5.6 The prescribed Agency Shop Fee received by the Council must in turn be paid by the Council to the party trade unions namely the Chemical, Energy, Paper, Printing, Wood and Allied Workers Union and the National Union of Furniture and Allied Workers of South Africa, proportionately on a monthly basis in accordance with the seats held by the same Council Party Trade Unions.
- 5.7 An employer shall, together with the Agency Shop Fee, simultaneously submit to the Secretary of the Council, a monthly return form reflecting the amount of the Agency Shop Fee due for each employee.
- 5.8 The Secretary of the Council shall deposit all moneys received in terms of clause 5.5. into a bank account of the Council.
- 5.9 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 Chemical, Energy, Paper, Printing, Wood and Allied Workers Union and/or the National Union of Furniture and Allied Workers of South Africa trade unions.
- 5.10 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 unions.
- 5.11. Despite sub-clause 5.10, 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.
- 5.12 No Agency Shop Fee may be:
- 5.12.1 paid to a political party as an affiliation fee; or
 - 5.12.2 contributed in cash or kind to a political party or a person standing for election to any political office; or

- 5.12.3 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.
- 5.13 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.
- 5.14 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 5.10.
- 5.15 Any person may inspect the auditor's report, in so far as it relates to an account referred to in sub-clauses 5.10.
- 5.16 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.
- 5.17 If an employee or trade union or any other interested person or organisation alleges that the trade union parties to this agreement is no longer jointly representative trade unions as envisaged in clause 5.2 it must give the trade union parties written notice of this allegation, and must allow the same trade union parties 90 calendar days from the date of the notice to prove that they are representative trade unions.
- 5.18 If, within the 90-day period, the trade union parties fail to prove that they are representative trade unions, the employee or trade union or any other interested person or organisation making such allegation must give the trade union parties 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.
- 5.19 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 5.8 and 5.10 shall apply until all the Agency 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 5.8 and 5.10.

- 5.20 Notwithstanding the provisions of sub-cause 5.3 above, employees will be exempted from the Agency Shop Fee provision for the duration of this agreement –
- 5.20.1 if another trade union, whose members are employed in the scope of the Council at the date of signing of this agreement by the parties, or on the extension hereof by the Minister of Labour to non-parties, enjoys a majority membership of at least fifty percent plus one in the scope of the Council;
 - 5.20.2 should another trade union's membership drop below the minimum of fifty percent plus one the exemption from the Agency Shop Fee provision shall become null and void and the Agency Shop Fee shall apply.
- 5.21 The Agency Shop Fee shall only be payable at the prescribed rate by an employee when more than 10 hours' wages per week are payable to an employee in respect of actual hours worked by the employee as well as on the hours which would ordinarily have been worked by the employee on:
- 5.21.1 paid public holidays;
 - 5.21.2 trade union representative leave days;
 - 5.21.3 the first 3 days per annum of paid sick leave days on condition that an acceptable medical certificate is presented by the employee to his employer and that such sick leave days do not fall on a Monday or a Friday or on the day before or after a public holiday; and
 - 5.21.4 family responsibility leave days for the first 2 days only which are related to the death of an employee's spouse, life partner, employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling and upon submission of the relevant death certificate by the employee to his employer.
- 5.22 Any existing agency shop agreement at establishment level shall be superseded by this agreement.

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 10th day of the month following the month in respect of which the amounts relate, 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 11th day of the month until the day upon which the payment is actually received by the Council.
- 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 Shop Fees.
- 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 Furniture Bargaining Council's Main Collective Agreement.

7. EXEMPTIONS

- 7.1 Exemptions Body and Independent Exemptions Appeal Body
An exemptions body and an Independent Exemptions Appeal Body is hereby established to consider all applications for exemptions from the provisions of this Agreement and to hear and decide, as soon as possible and according to the prescribed criteria, any appeal against-
- 7.1.1 the Bargaining Council's refusal of a party's or non-party's application for an exemption from the provisions of this Collective Agreement; and
- 7.1.2 the withdrawal of an exemption by the Bargaining Council.

7.2 Administration

- 7.2.1 Any person, establishment or body bound by this Collective Agreement may apply for an exemption from any of the provisions of this Agreement.
- 7.2.2 An application for exemption shall be in writing on the Bargaining Council's prescribed application form obtainable from the Council's offices, fully motivated and served on the Bargaining Council. The Applicant or the Appellant, depending on the nature of the process, shall satisfy the Body concerned that a proper application or appeal has been served on the appropriate body.
- 7.2.3 The Exemption Body or the Independent Exemptions Appeal Body shall decide on an application for exemption or appeal and inform the applicant as soon as possible but not later than 30 days of receipt.
- 7.2.4 Whenever an employer applies for an exemption he or she shall consult with the affected workforce through their trade union representatives or, where there are no trade union representatives, with the affected workforce itself as to the need for the exemption and its effect on the affected employees and shall include in the application written proof of matters discussed during such consultation and written proof of the views expressed by the affected workforce during the consultation in this regard as well as the signed confirmation of all individually affected employees.
- 7.2.5 The Bargaining Council shall issue to every person, establishment or body to whom an exemption has been granted or for whom an appeal has been considered by either the Exemptions Body or the Independent Exemptions Appeal Body, a notice of exemption or outcome of the appeal, setting out the following:
- 7.2.5.1 the full name of the person(s), body or bodies or establishment concerned;
 - 7.2.5.2 the trading name of the employer;

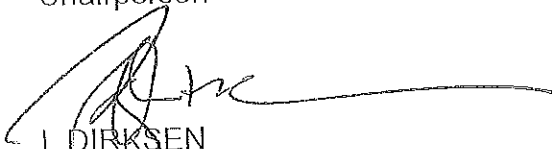
- 7.2.5.3 the exact provision(s) of this Collective Agreement from which the exemption has been granted or refused;
 - 7.2.5.4 the conditions subject to which the exemption is granted;
 - 7.2.5.5 the period for which the exemption is applicable; and/or
 - 7.2.5.6 the outcome of an appeal.
- 7.2.6 The Bargaining Council must ensure that:-
- 7.2.6.1 all notices of exemptions granted or refused and notices of appeal outcomes are issued to the applicants or appellants; and
 - 7.2.6.2 a copy of each exemption granted or refused and a notice of an appeal outcome is retained by the Bargaining Council.
- 7.2.7 The Bargaining Council may, on good cause shown, give the holder of an exemption 30 days' notice of its intention to apply to the Independent Exemptions Appeal Body for the withdrawal of a particular exemption.
- 7.2.8 The following processes and criteria shall be considered with regard to an application for exemption from the provisions of any collective agreement concluded in the Bargaining Council or the application for the withdrawal of an exemption previously granted or when any appeal against a decision of the Council is considered:
- 7.2.8.1 Processes: Any employer, employee, trade union or employer's association may at any point in time apply for an exemption from any of the provisions of this Collective Agreement. The applicant is required to complete and submit in writing with the relevant office of the Council, a fully and properly completed prescribed application for exemption form, accompanied by all relevant supporting documentation.
 - 7.2.8.2 Criteria: The Council and/or the Independent Exemptions Appeal Body shall, without limiting its own considerations, *inter alia* consider the following criteria to wit:

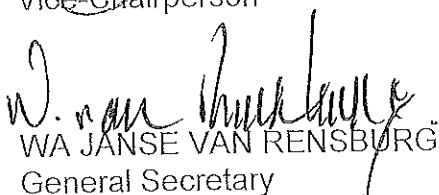
- 7.2.8.2.1 The financial and social implications on the applicants, competitors, employees and the Industry as a whole;
- 7.2.8.2.2 viability of the continued existence of the establishment;
- 7.2.8.2.3 the views expressed by the employees and/or the applicants' competitors;
- 7.2.8.2.4 the views and recommendations submitted by the bargaining council or any other person or body with an interest in the matter;
- 7.2.8.2.5 the possibility of job losses if the exemption is granted or refused;
- 7.2.8.2.6 the limitation on any employment opportunities if the exemption is granted or refused;
- 7.2.8.2.7 any other relevant information that might have an impact on the outcome of either an application or an appeal;
- 7.2.7.2.8 the applicant's past record (if applicable) of compliance with the provisions of the main agreement and/or exemption certificates;
- 7.2.8.2.9 any special circumstances that exist or any precedent that might be set;
- 7.2.8.2.10 the interests of the Industry in relation to unfair competition, centralised collective bargaining as well as the economic stability of the Industry;
- 7.2.8.2.11 the interests of the employees with regards to exploitation, job preservation, sound conditions of employment, potential financial benefits, health and safety and the possible infringement of basic rights; and
- 7.2.8.2.12 the interests of the employer with regards to its financial stability, the impact on productivity, its future relationship with employees and recognised trade union operational requirements and the viability of the employers business.

- 7.2.9 an exemption should not contain terms and conditions that would have an unreasonably detrimental effect on the fair, equitable and uniform application in the Industry of any collective agreement concluded in the Bargaining Council;
- 7.2.10 no exemption shall be granted for an indefinite period or as a total (blanket) exemption;
- 7.2.11 no exemption should be granted retrospectively for any liabilities incurred by an employer in terms of this agreement, such as levies and/or contributions, which became payable by the employer to the Council prior to the date on which the application for such an exemption was received by the Council.

Agreement signed at Parktown on this 10th day of April 2019.


P NTIMANE
Chairperson


L DIRKSEN
Vice-Chairperson


WA JANSE VAN RENSBURG
General Secretary

