

METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL

DISPUTE RESOLUTION AGREEMENT

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14 August 2015

**METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL
DISPUTE RESOLUTION AGREEMENT**

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SCHEDULE

METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL DISPUTE RESOLUTION AGREEMENT

in accordance with the provisions of the Labour Relations Act, No. 66 of 1995, made and entered into by and between the –

Association of Electrical Cable Manufactures of South Africa

Association of Metal Service Centres of South Africa

Cape Engineer's and Founder's Association

Construction Engineering Association (South Africa)

Eastern Cape Engineering and Allied Industries Association (ECEAIA)

Electrical Engineering and Allied Industries Association

Electrical Manufacturers Association of South Africa (EMASA)

Ferro Alloy Producers Association

Gate and Fence Association

Hand Tool Manufacturers Association (HATMA)

Iron and Steel Producers Association of South Africa (ISPA)

KwaZulu Natal Engineering Industries Association

Lift Engineering Industries Association of South Africa

Light Engineering Industries Association of South Africa

National Employers Association of South Africa (NEASA)

Non-Ferrous Metal Industries Association of South Africa

Plumbers and Engineering Brassware Manufacturer Association

Pressure Vessel Manufacturers Association of South Africa

Refrigeration and Air-conditioning Manufacturers and Suppliers Association
(RAMSA)

South African Electro-Plating Industries Association

South African Engineers and Founders Association

South African Fastener's Manufactures Association

South African Refrigeration and Air-conditioning Contractors Association
(SARACCA)

South African Post Tensioning Association (SAPTA)

South African Pump Manufacturers Association

South African Reinforced Concrete Engineers Association (SARCEA)

South African Valve and Actuators Manufacturers Association (SAVAMA)

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

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

Metal and Electrical Workers Union of South Africa

United Association of S.A. (UASA The Union)

National Union of Metalworkers of South Africa (NUMSA)

S.A. Equity Workers Association (SAEWA)

(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, to
amend the Agreement published under G.N. R.836 of 18 August 2006, as re-
enacted by G.N. R.418 of 17 April 2009, as amended by Government Notice
R.720 of 14 August 2015.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Iron, Steel, Engineering and Metallurgical Industry
 - (a) by all employers who are members of the employers' organisations and by all employees who are members of the trade unions;
 - (b) throughout the Republic of South Africa.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall apply to-
 - (a) apprentices or learners only to the extent to which they are not inconsistent with the provisions of the Manpower Training Act, 1981, or the Skills Development Act, No.97 of 1998, or any contract entered into or any conditions fixed thereunder and;
 - (b) trainees under training in terms of section 30 of the Manpower Training Act, 1981 or Section 19 of the Skills Development Act, No.97 of 1998, only in so far as they are not inconsistent with the provisions of the Act or any conditions fixed thereunder.
- (3) Notwithstanding the provisions of subclause 1(1)(a) and 2 this agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions respectively.

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 31 March 2020.

(Period of operation extended by Government Notice R.720 of 14 August 2015)

Note: The Minister of Labour has limited her extension to 30 June 2017, to co-incide with the period of accreditation.

SPECIAL PROVISIONS

The provisions contained in clause 2 of Agreement published under Government Notice No. R 720 of 14 August 2015 (hereinafter referred to as the “Former Agreement”) as further amended and re-enacted from time to time, shall apply to employers and employees.

GENERAL PROVISIONS

The provisions contained in clause 3 to 6 of the Agreement under Government Notice No. R. 418 of 17 April 2009 (as further amended and re-enacted from time to time), shall apply to employers and employees.

3. DEFINITIONS

Unless the context or this agreement indicates otherwise any expressions, words or phrases used in this Agreement shall have the same meaning as those defined in the Labour Relations Act No. 66 of 1995, and any reference to an act shall include any amendments to such Act, further -

‘Act’ means the Labour Relations Act of 1995; (Act 66 of 1995) as amended, and includes any regulation made in terms of that Act.

Commission means the Commission for Conciliation, Mediation and Arbitration

Council means the Metal and Engineering Industries Bargaining Council registered in terms of section 29 of the Act. (Functions performed by the Council in terms of this agreement shall be performed by the CEO who in turn may delegate any of his/her functions as set out in this agreement).

“council commissioner” means an individual appointed by the Council to resolve disputes.

“dispute” includes an alleged dispute and means any situation where –

- (i) two or more parties are unable to reach agreement on a matter of mutual interest between them, and one or more of those parties advise the Council in writing that they are in dispute;

OR

- (ii) the Council by way of its agents or any other person so appointed by the Council, declares a dispute against an employer and/or employee for failure to comply with the provisions of one or more of the Council's Agreements.

Notification of declaration of dispute shall be contained in a compliance order issued to the employer and/or employee in respect of the identified contraventions;

OR

- (iii) A dispute in terms of the Labour Relations Act (Act 66 of 1995).

'Electrical Contracting Industry' means the Industry in which employers and employees are associated for the design, preparation (other than manufacture for resale), erection, repair and maintenance of all electrical installations forming an integral and permanent portion of buildings , including any cable jointing and electrical wiring associated therewith.

'Electrical Engineering Industry' means-

- (a) the manufacture and/or assembly from component parts of electrical equipment namely, generators, motors, converters, 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 to include, but not to be limited to, television) ,incandescent lamps and electric cables and domestic electrical appliances, and includes the manufacture of component parts of the aforementioned equipment;
- (b) subject to (c) hereunder, the installation, maintenance, repair and service of the equipment referred to in paragraph (a) above, in the Provinces of Transvaal and Natal, but does not include the *Electrical Contracting Industry* (as defined);
- (c) the installation, maintenance, repair and service of television sets and monitors within the Republic of South Africa other than 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

'employer' means any person whomsoever [including a temporary employment service as defined in section 198(1) of the Act] who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person whosoever in any manner to assist him in the carrying on or conducting of his business;

'establishment' means any premises wherein or whereon the Industry, or part thereof, as herein defined, is carried on;

'General Engineering and Manufacturing Engineering and Metallurgical Industries' means the industries concerned with 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 *precious metals*) or parts or components thereof and structural metal work, including steel reinforcement work and 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 ,but does not include *the Motor Industry* (as defined).

'Industry' means *the Iron, Steel, Engineering and Metallurgical Industry*.

'Iron, Steel, Engineering and Metallurgical Industry' means -

- (a) the Industry concerned with the production of iron and/or steel in the Republic of South Africa;
- (b) the Industry concerned with the production of 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 in the Republic of South Africa;
- (c) the *general engineering and manufacturing engineering and metallurgical industries* as defined, in the Republic of South Africa;
- (d) the building and/or alteration and/or repair of boats and/or ships, including the scraping, chipping or scaling and/or painting of their hulls and general woodwork

undertaken in connection with ship repairs in the Republic of South Africa;

- (e) the *Electrical Engineering Industry* as defined;
- (f) the *Lift and Escalator Industry* as defined, in the Republic of South Africa;
- (g) the *Plastics Industry* in the Republic of South Africa.

'Lift and Escalator Industry' means the manufacture and/or assembly and/or installation and/or repair of electrical lifts and escalators;

'Motor Industry' means -

- (a) assembling, erecting, testing, remanufacturing, repairing, adjusting, overhauling, wiring, upholstering, spraying, painting and/or reconditioning carried on in connection with-
 - (i) chassis and/or the bodies of motor vehicles;
 - (ii) internal combustion engines and transmission components of motor vehicles;
 - (iii) the electrical equipment connected with motor vehicles, including radios;
- (b) automotive engineering;
- (c) repairing, vulcanising and/or retreading tyres;
- (d) repairing, servicing and reconditioning batteries for motor vehicles;
- (e) the business of parking and/or storing motor vehicles;
- (f) the business conducted by filling and/or servicing stations;
- (g) the business carried on mainly or exclusively for the sale of motor vehicles or motor vehicle parts and/or spares and/or accessories (whether new or used) pertaining thereto whether or not such sale is conducted from premises which are attached to a part of an establishment in which the assembly or repairs of motor vehicles is carried out;
- (h) the business of motor graveyards;
- (i) the business of assembly establishments;
- (j) the business of manufacturing establishments in which vehicle parts and/or spares and/or accessories and/or components thereof are manufactured.
- (k) vehicle body building.

For the purposes of this definition;

'automotive engineering' means the reconditioning of internal combustion engines, or parts thereof for use in motor vehicles in establishments mainly or exclusively so engaged, whether such establishment is engaged in the dismantling and repair of motor vehicles or not;

'motor vehicle' means any wheeled conveyance propelled by mechanical power (other than steam) or electrically, and designed for haulage and/or for the transportation of persons and/or goods and/or loads, and includes trailers and caravans, but does not include any equipment designed to run on fixed tracks, trailers designed to transport loads of 27273kg or over, or aircraft;

'vehicle body building' means any or all of the following activities carried on in a vehicle body building establishment:

- (a) the construction, repair or renovation of cabs and/or bodies and/or any superstructure, for any type of vehicle;
- (b) the manufacture or repair of component parts for cabs and/or bodies and/or any superstructure and the assembling, adjusting and installation of parts in cabs, bodies or on the superstructure of vehicles;
- (c) fixing cabs and/or bodies and/or any superstructure to the chassis of any type of vehicle;
- (d) coating and/or decorating cabs and/or bodies and/or any superstructure with any preservative or decorative substance;
- (e) equipping, furnishing and finishing off the interior of cabs and/or bodies and/or superstructures;
- (f) building of trailers, but not including the manufacture of wheels or axles therefor;
- (g) all operations incidental to or consequent upon the activities referred to in paragraphs (a), (b), (c), (d), (e) and (f).

'vehicle' does not include an aircraft, and for the purposes of this definition,

Provided that '**Motor Industry**' as defined above shall not include the following:

- (a) the manufacture of motor vehicle parts and/or accessories and/or spares and/or components in establishments laid out for and normally producing metal and/or plastic goods of a different character on a substantial scale;
- (b) the assembling, erecting, testing, repairing, adjusting, overhauling, wiring, spraying, painting and/or reconditioning of agricultural tractors except where carried on in establishments rendering similar service in respect of motorcars, motor lorries, or motor trucks;
- (c) the manufacture and/or maintenance and/or repair of-
 - (i) civil and mechanical engineering equipment and/or parts thereof whether or not mounted on wheels;
 - (ii) agricultural equipment or parts thereof; or
 - (iii) equipment designed for use in factories and/or workshops;
 - (iv) motor vehicle or other vehicle bodies and/or superstructures and/or parts or components thereof made of steel plate of 3,175 mm thickness or thicker when carried on in establishments laid out for and normally engaged in the manufacture and/or maintenance and/or repair of civil and/or mechanical engineering equipment on a substantial scale;

Provided that for the purposes of (i), (ii) and (iii) above, '*equipment*' shall not be taken to mean motor cars, motor lorries and/or motor trucks;

'Party to dispute' means

- (i) the Council, and/or
- (ii) any or all of the employers' organisations and/or trade unions listed as members of this Council, and/or
- (iii) any employers' organisation and/or trade union not listed as a member of this Council, and/or
- (iv) any employer and/or employee and/or any of the organisations referred to in (ii) or (iii) hereof acting on their behalf.

‘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.

‘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..

‘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 be the greater part in value of such alloy;

‘Rules’ means the rules for conciliating and arbitrating disputes in the Metal and Engineering Industries Bargaining Council;

4. DISPUTE RESOLUTION

PREAMBLE

- (a) Subject to paragraph (c) below; the procedures set out in this Agreement shall be utilised to deal with all disputes arising within the Council’s jurisdiction as defined in clause (1) above.
- (b) Different processes shall be utilised for different types of disputes, as set out below. In the event of a dispute over which section should be applied, the dispute shall be processed in accordance with subclause 4.2.1 below. Notwithstanding this Agreement, parties may agree to meet whenever they mutually deem it necessary for the purpose of resolving a dispute. They may

give consideration at their own cost to privately appointing a mediator, arbitrator or referring the dispute to any other process, as agreed between them.

- (c) Notwithstanding paragraph (a) above, employers and employees may, through a collective agreement establish their own dispute procedure which does not necessitate them having to refer disputes to the Council, even though the parties fall within the Council's jurisdiction.
- (d) If at any stage after a dispute has been referred to the Council, it becomes apparent that the dispute ought to have been resolved through private dispute resolution in terms of a collective agreement or in terms of a private agreement between the parties to the dispute, the Council may refer the dispute back to the referring parties for processing in terms of their private dispute resolution procedure.
- (e) The Council is in terms of Section 127(5) of the Labour Relations Act No.66 of 1995 as amended accredited to conciliate and arbitrate disputes.

4.1 Negotiating Procedure

- (a) Where any party to the Council wishes to initiate negotiations for the amendment of any existing agreement or the introduction of a new agreement, that party shall submit its proposals in writing to the CEO of the Council at the address as listed in Schedule 1 to the Rules.
- (b) The CEO shall immediately arrange for the proposal to be circulated to all interested parties and shall take steps to arrange a negotiating meeting within 45 days of receipt of the proposal. Where the CEO, in consultation with the President of the Council, decides that the proposal relates to the negotiation of an industry matter, the date of the first negotiating meeting shall be decided at the next meeting of the Council's Management Committee, and

such negotiating meeting shall be held within 30 days of that Management Committee meeting.

- (c) Further negotiating meetings may be held by agreement between the parties, who may also agree on any procedures, documentation, or any other matters for the purposes of assisting the negotiations.
- (d) If the negotiations have not been resolved in terms of paragraph (b) above, or as otherwise agreed between the parties, any party to those negotiations may declare a dispute by notice in writing to the Council and must satisfy the Council that a copy of the referral has been served on all other parties to the dispute. Industry disputes shall be processed in accordance with subclause 4.1.1 below.

4.1.1 Disputes about Negotiations

- (a) In the event that the CEO, in consultation with the President of the Council, decides that a dispute declared in terms of subclause 4.1 (d) above is an industry matter, he/she shall arrange for the Management Committee to meet within 14 days of the declaration of such dispute, for the purposes of considering the matter.
- (b) The Management Committee shall use its best endeavours to settle the dispute and shall meet as often as it deems necessary for this purpose. In the course of its deliberations the Committee may give consideration to the following:-
 - (i) appointing a sub-committee to meet within a specified number of days, for the purposes of attempting to resolve the dispute, or to recommend

- to the Management Committee a process by which the dispute can be resolved;
- (ii) referring the dispute to conciliation in terms of the Act and the Rules for conciliating and arbitrating disputes attached as Schedule A hereto. This shall be compulsory, in the case of a dispute involving a non-party to the Council;
 - (iii) referring the dispute to arbitration in terms of the Act and the Rules;
 - (iv) instructing the CEO to issue a certificate stating that the dispute remains unresolved.
- (c) Subject to this Agreement, if the dispute has not been settled within 30 days from the date on which the dispute was referred to the Council, and if the parties have not within that period agreed on a process to resolve the dispute, any party to the dispute shall be entitled to pursue whatever means are available in the Act to process that dispute.

4.2 Dispute Settlement Procedures

Disputes within the Council's jurisdiction in terms of section 51 of the Act and which do not fall within the scope of subclause 4.1 above, shall be dealt with in terms of the Act in conjunction with the Rules attached as Annexure A.

4.2.1 Disputes about the Interpretation or Application of the Council's Collective Agreements

- (a) In the event of a dispute arising relating to the interpretation or application of a Collective Agreement in terms of section 24(2) of the Act, it shall be processed in terms of the Rules in Annexure A.

- (b) This section excludes demarcation disputes referred to in section 62 of the Act and which are to be referred to the Commission.
- (c) A party wishing to refer such a dispute, may refer the dispute in writing, setting out the details of the dispute to the Council if:
 - (i) The collective agreement does not provide for a procedure.
 - (ii) The procedure provided for in the collective agreement is inoperative.
 - (iii) Any party to the collective agreement has frustrated the resolution of the dispute in terms of the collective agreement.

4.2.2 Enforcement of Collective Agreements by the Council

- (1) Despite any other provision the council may monitor and enforce compliance with its collective agreements in terms of this clause or a collective agreement concluded by the parties to the Council.
- (2) For the purpose of this clause the collective agreement is deemed to include –
 - (a) any condition of employment of any employee covered by a collective agreement; and
 - (b) the rules of any fund or scheme established by the Council
- (3) The council may refer any unresolved dispute concerning compliance with any provision of a collective agreement to arbitration by an arbitrator appointed by the Council.
- (4) If a party to an arbitration in terms of this clause that is not a party to the Council, objects to the appointment of an arbitrator in terms of subsection (3), the Commission, on request by the Council must appoint an arbitrator.

- (5) An arbitrator conducting an arbitration in terms of this clause has the powers of a commissioner in terms of section 142 of the Act, read with the changes required by the context.
- (6) Part E of the Rules read with the changes required by the context, applies to any arbitration conducted in terms of this clause.
- (7) An arbitrator acting in terms of this clause may determine any dispute concerning the interpretation or application of a collective agreement.
- (8) An arbitrator conducting an arbitration in terms of this clause may make an appropriate award, including –
 - (a) ordering any person to pay any amount owing in terms of a collective agreement;
 - (b) imposing a fine for a failure to comply with a collective agreement in accordance with subclause (12) and Tables One and Two as set out hereunder;
 - (c) charging a party an arbitration fee;
 - (d) ordering a party to pay the costs of the arbitration;
 - (e) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (f) any award contemplated in section 138(9) of the Act.
- (9) Interest on any amount that a person is obliged to pay in terms of a collective agreement accrues from the date on which the amount was due and payable at the rate prescribed in terms of section 1 of the prescribed Rate of Interest Act, 1975 (Act 55 of 1975), unless the arbitration award provides otherwise.

- (10) An award in an arbitration conducted in terms of this clause is final and binding and may be enforced in terms of section 143 of the Act.
- (11) If an employer upon whom a fine has been imposed in terms of this clause files an application to review and set aside an award made in terms of subclause (8), any obligation to pay a fine is suspended pending the outcome of the application.
- (12) The maximum fines that may be imposed by an arbitrator acting in terms of this clause is subject to variation by notice of the Minister as published in the Government Gazette. A notice in terms of this paragraph may specify the maximum fine that may be imposed –
- (a) for a breach of a collective agreement –
 - (i) not involving a failure to pay any amount of money;
 - (ii) involving a failure to pay any amount of money; and
 - (b) for repeated breaches of the collective agreement contemplated in subparagraph (a).

4.2.2.1 Arbitration in terms of Clause 4.2.2 above

- (1) The maximum fine that may be imposed by an arbitrator:
- (a) for a failure to comply with a provision of a collective agreement not involving a failure to pay any amount of money, is the fine determined in terms of Table One; and
 - (b) involving a failure to pay an amount due in terms of a collective agreement, is the greater of the amounts determined in terms of Table One and Table Two.

TABLE ONE: MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provisions within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four or more previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

TABLE TWO: MAXIMUM PERMISSIBLE FINE INVOLVING AN UNDERPAYMENT

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provisions within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order.

5. GENERAL

1. The Council shall establish and maintain a record of all arbitration awards given under its jurisdiction, which shall be available to all parties within the industry.
2. The Council shall establish and maintain panels of sufficient conciliators and arbitrators to carry out the conciliation and arbitration functions in terms of this agreement. The Council may at any stage decide to remove a person from a panel for whatever reason it considers appropriate including but not limited to incapacity or serious misconduct.
3. Without in any way detracting from the rights and obligations emanating from this agreement, it shall be interpreted and applied in a manner that promotes effective dispute resolution.

6. EXEMPTIONS

(1) General

- (a) Any person bound by this Agreement may apply for exemption.
- (b) The authority of the Council is to consider applications for exemptions and grant exemptions.
- (c) An application for exemption will be decided upon within 30 days of receipt of an application.

(subclause 1(c) substituted by Government Notice R.720 dated 14 August 2015)

(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 the Council 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.
- (d) Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application.
- (e) Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.
- (f) 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.
- (g) 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) The Council or Chairperson and Vice Chairperson will consider the application, make a decision and communicate that decision to the applicant 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), shall be appointed and shall consider any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption in respect of parties and non-parties.
- (b) The Council Secretary will, on receipt of an appeal against a decision of the Council, 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 and any further submissions by the employers or employees and shall take into account the criteria set out above and also any other representations received in relation to the application.
- (d) An appeal be heard, if required, and decided upon within 30 days after an appeal is lodged.

(subclause (d) inserted by Government Notice R.720 dated 14 august 2015)

- (e) Should the appeal be successful an exemption licence shall be issued in terms of subclause 4 (a) and (b) above and shall be subject to subclauses 4 (c) and (d).”

Signed for and on behalf of the parties at Johannesburg on 9 February 2015

Seifsa on behalf of its Associations :.....

Name:

- Association of Electrical Cable Manufacturers of South Africa
- Association of Metal Service Centre of South Africa
- Cape Engineers and Founders Association
- Constructional Engineering Association (South Africa)
- Eastern Cape Engineering and Allied Industries Association (ECEAIA)
- Electrical Engineering and Allied Industries' Association
- Electrical Manufacturers' Association of South Africa
- Ferro Alloy Producers Association
- Gate and Fence Association
- Hand Tool Manufacturers' Association (HATMA)
- Iron and Steel Producers Association of South Africa (ISPA)
- KwaZulu-Natal Engineering Industries' Association
- Lift Engineering Association of South Africa
- Light Engineering Industries' Association of South Africa
- Non-ferrous Metal Industries' Association of South Africa
- Plumbers and Engineering Brassware Manufacturers Association
- Pressure Vessel Manufacturers Association of South Africa
- Refrigeration and air Conditioning Manufacturers' and Suppliers' Association (RAMSA)
- South African Electro-Plating Industries' Association
- South African Engineers' and Founders' Association
- South African Fasteners Manufacturers' Association
- South African Refrigeration and Air Conditioning Contractors' Association (SARACCA)
- South African Post Tensioning Association (SAPTA)
- South African Reinforced Concrete Engineers' Association (SARCEA)
- South African Valve and Actuator Manufacturers' Association (SAVAMA)

Numsa :.....
Name

Mewusa :.....
Name

Uasa :.....
Name

Saewa :.....
Name

Ceppwawu :.....
Name

General Secretary :.....
Name

ANNEXURE A

RULES FOR CONCILIATING AND ARBITRATING DISPUTES IN THE METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL Arrangement of Rules

PART A: SERVING AND FILING DOCUMENTS

1. Council addresses at which documents must be filed
2. How to calculate time periods
3. How to serve documents on other parties
4. How to file documents with the Council
5. Documents and notices sent by registered post
6. How to seek condonation for documents served late

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7. How to refer a dispute to the Council for conciliation
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9. Council may seek to resolve dispute before conciliation hearing
(item 10 deleted by G.N. R.961 of 9 October 2009)

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16. Who may represent a party at the Council
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20. Disclosure of documents
21. What happens if a party fails to attend proceedings before the Council

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22. How to bring an application
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24. How to refer a dismissal dispute to the Labour Court

PART G INQUIRY BY ARBITRATOR

26. How to request an Inquiry by Arbitrator in terms of section 188A.
 - (1) An employer requesting the Council to conduct an inquiry by arbitrator, must do so by delivering a completed referral form to the Council.
 - (2) The employee must sign the referral form consenting to the inquiry by the arbitration. If an employee has consented in terms of section 188A(4)(b),

the referral form does not have to be signed by the employee but the copy of the contract containing the consent must be attached to the form.

- (3) When filing the referral form, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by:
 - (a) bank guaranteed CHEQUE; OR
 - (b) electronic transfer into the bank account of the Council.
- (4) Within fourteen days of receiving a request in terms of sub-clause (1) and payment of the prescribed fee, the Council must notify the parties to the inquiry by an arbitrator of when and where the inquiry will be held.
- (5) unless the parties agree otherwise, the Council must give the parties at least fourteen days notice of the commencement of the inquiry by an arbitrator.
- (6) The Council is only required to refund a fee paid in terms of sub-rule (3), if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (4).

PART H: GENERAL

27. Unrepresented applicants without postal addresses and fax numbers
28. Condonation for failure to comply with the rules
29. Recordings of Council proceedings
30. How to have a subpoena issued
31. Payment of witness fees
32. Taxation of Bills of Cost
33. What words mean in these rules

PART A

SERVING AND FILING DOCUMENTS

1. Council addresses at which documents must be filed

1. The addresses, email addresses, telephone and telefax numbers of the offices of the Council are listed in Schedule One.
2. Documents may only be filed with the Council at those addresses or telefax numbers.

2. How to calculate time periods

- (1) For the purpose of calculating any period of time in terms of these rules –
 - (a) a day means any day of the week including Saturdays, Sundays and public holidays but excludes the days from the 16th of December to the 7th of January, both days inclusive.

Example1

Rule 5 refers to 7 days of the date the document was posted. If the document was posted on a Friday then the seven days would include the next Saturday and Sunday.

Example2

Rule5 refers to 7 days of the date the document was posted. If the date of postage was on a Friday the 12th of December, the first four days would be counted (the days before the 16th) and final three days would be counted from 7th of January – in other words the period would run from 12 December to the 10th of January

- (b) the first day is excluded and the last day is included, subject to sub-rule (2).

Example3

Rule 8 refers to a 14 days notice period for conciliation. If notice was faxed on Thursday 10 October, the conciliation must be scheduled on Friday 25 October or any day thereafter, within the 30 day period.

- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on any day between 16 December to 7 January.

3. How to serve documents on other parties

- 1. A party must serve a document on the other parties to the dispute –
 - (a) by handing a copy of the document to -
 - (i) the person if that person is a party to the dispute;
 - (ii) a person authorised in writing to accept service on behalf of a party to the dispute;
 - (iii) a person who appears to be at least 16 years old and in charge of a party's place of residence, business or employment;
 - (b) by emailing, faxing or telexing a copy of the document to that party;
 - (c) by sending a copy of the document by registered post or telegram to the last-known address of the party or to an address chosen by the party to receive service.

4. How to file documents with the Council

- (1) A party must file documents with the Council -
 - (a) by handing the document in at an office of the Council; or
 - (b) by sending a copy of the document by registered post to the Council; or
 - (c) by faxing the document to the Council; or
 - (d) by emailing the document to the Council.
- (2) A document is filed with the Council when –

- (a) the document is handed to the office of the Council; or
 - (b) a document sent by registered post is received by the Council; or
 - (c) the transmission of a fax is completed; or
 - (d) when email notification is received that the email was successfully transmitted.
- (3) The Council may serve awards or rulings on parties by email. The original award or ruling will be kept at the Council.

5. Documents and notices sent by registered post

Any document sent by registered is presumed, unless the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

6. How to seek condonation for documents served late

1. This rule applies to any document, including a referral or an application, served outside of a time period prescribed in the Act or these rules.
2. A party must apply for condonation, in terms of rule 23, when serving the document to the Council.
3. An application for condonation must set out the grounds for seeking condonation and must include details of the following:
 - (a) the degree of lateness;
 - (b) the reasons for the lateness and degree of fault;
 - (c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
 - (d) any prejudice to the other parties; and
 - (e) any other relevant factors.

PART B

CONCILIATION OF DISPUTES

7. How to refer a dispute to the Council for conciliation

1. A party must refer a dispute to the Council for conciliation by completing the Council's referral form and serving it on the Council.
2. The referring party must –
 - (a) sign the referral form;

- (b) attach written proof, that the referral form was served on the other parties to the dispute;
 - (c) if the referral form is filed late, attach an application for condonation in accordance with rule 6.
- (3) The Council must refuse to accept a referral until sub-rule (2) has been complied with.
 - (4) The Council must assist applicants administratively, that earn below the threshold as determined by the Basic conditions of Employment Act.

(item (4) inserted by Government Notice R.720 dated 14 August 2015)

8. What notice must the Council give of a conciliation hearing

The Council must give the parties at least 14 days notice in writing of a conciliation hearing, unless the parties agree to a shorter period of notice. The Council will give notice by fax, registered post or email, depending on the information provided by the parties.

9. Council may seek to resolve dispute before a conciliation hearing

The Council or a council commissioner may contact the parties by telephone or by other means prior to the commencement of the conciliation in order to seek to resolve the dispute.

(Rule 10 deleted by G.N. R.961 of 9 October 2009)

PART C CON-ARB

11. Conduct of con-arb in terms of section 191(5A) of the Act

- 1. The Council must give the parties at least fourteen days notice in writing that a matter has been scheduled for con-arb in terms of section 191(5A) of the Act.
- 2. A party that intends to object to a dispute being dealt with in terms of section 191(5A) must serve a written notice to the Council and the other party, at least seven days prior to the scheduled date in terms of sub-rule (1).
- 3. Sub-rule (2) does not apply to a dispute concerning-
 - (a) the dismissal of an employee for any reason related to probation; or
 - (b) an unfair labour practice relating to probation.
- 4. If the respondent party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1), the council commissioner must conduct the con-arb on the date specified in the notice issued in sub-rule (1) or adjourn the proceedings till a later date.

5. Sub-rule (4) applies irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).
6. The provisions of the Act and these rules that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.
7. If the arbitration does not commence on the dates specified in terms of the notice in sub-rule (1) the Council must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of Rule 23.

PART D ARBITRATION OF DISPUTES

[Part D does not apply to arbitrations in respect of failure to comply with the provisions of a collective agreement in terms of section 33A (4) of the Act.]

12. Referral of a dispute to arbitration

1. The Council may immediately schedule a dispute for arbitration if the dispute remains unresolved after conciliation, and the Council has jurisdiction to arbitrate the dispute, unless the applicant indicates that they do not want the dispute to proceed to arbitration.
2. An applicant may indicate that they do not want the dispute to proceed to arbitration by –
 - (a) Completing the relevant provision in the Referral Form;
 - (b) Not signing the relevant provision on the Certificate of Outcome;
 - (c) Any other communication.
3. If an applicant has indicated on the Certificate of Outcome that they do not wish to refer the dispute to arbitration, and they subsequently decide to refer the dispute to arbitration, the applicant must complete a Form referring the dispute to arbitration, serve a copy of the form on the employer and file the form with the Council with proof of service.
4. If the Referral Form in sub-rule (3) is filed with the Council more than 90 days after the Certificate of Outcome has been issued, the applicant will have to apply to the Council for condonation in terms of Rule 6.
5. If an applicant has indicated on the Referral form, or on the Certificate of Outcome or in any other communication that they want the dispute to proceed to arbitration, and they subsequently decide not to proceed to arbitration, they must notify the Council of their intention more than seven days prior to the scheduled date of arbitration.

13. When parties may be directed to file statements

1. The Council or a council commissioner may direct –
 - (a) the referring party in an arbitration to file a statement of case within a specified time period; and

- (b) the other parties to file an answering statement within a specified time period.

2. A statement in terms of sub-rule (1) must –

- (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
- (b) be filed within the time-period specified with the Council or council commissioner.

14. When the parties may be directed to hold a pre-arbitration conference

The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (2) if directed to do so by the Council or a Council Commissioner.

15. What notice must the council give of an arbitration hearing

The Council must give the parties at least 14 days notice in writing of an arbitration hearing, unless the parties agree to a shorter period.

16. How to postpone an arbitration

- (1) The Council must postpone an arbitration without the parties appearing if–
 - (a) all the parties to the dispute agree in writing to the postponement; and
 - (b) the written agreement for the postponement is received by the Council more than seven days prior to the scheduled date of the arbitration; and
 - (c) there are compelling reasons to postpone.
- 2. Any party may apply in terms of rule 23 to postpone an arbitration, by serving an application on the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.

PART E

RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS

17. Who may represent a party at the council

- (1) In conciliation proceedings a party to the dispute may appear in person or be represented only by -
 - (a) A director or employee of that party and if a close corporation, also a member thereof or
 - (b) A member, official or office bearer of a registered employer's organization or registered employers' federation representing registered employers organizations party to Collective

Agreements concluded by, or under the auspices of the Metal and Engineering Industries Bargaining Council.

- (c) Any member, office bearer or official of that party's registered trade union or registered employer's organization.
- (2) In any arbitration proceedings, a party to the dispute may appear in person or be represented only by:
- (a) A legal practitioner
 - (b) A director or employee of that party and if a close corporation, also a member thereof.
 - (c) A member, official or office bearer of a registered employer's organization or registered employers' federation representing registered employers organizations party to Collective Agreements concluded by, or under the auspices of the Metal and Engineering Industries Bargaining Council.
 - (d) Any member, office bearer or official of that party's registered trade union or registered employer's organization.
- (3) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, the parties, despite subrule 2(a) are not entitled to be represented by a legal practitioner in the proceedings unless -
- (a) The commissioner and all the other parties consent;
 - (b) The commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering –
 - (i) the nature of the questions of law raised by the dispute;
 - (ii) the complexity of the dispute;
 - (iii) the public interest; and
 - (iv) the comparative ability of the opposing parties or their representatives to deal with the dispute."

(Rule 17 substituted by G.N. R.961 of 9 October 2009)

18. How to join or substitute parties to proceedings

1. The Council or a council commissioner may join any number of persons as parties in proceedings, if the right to relief depends on substantially the same question of law or fact.
2. A council commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.

3. A council commissioner may make an order in terms of sub-rule (2) -
 - (a) of the council commissioner's own accord;
 - (b) on application by a party; or
 - (b) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
4. An application in terms of this rule must be made in terms of rule 23.
5. If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council for an order substituting that person for an existing party, and a council commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.
6. An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that persons representative is already in possession of the documents.
7. Subject to any order made in terms of sub-rules (2) and (5), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

19. How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the Council may, on application and on notice to the parties concerned, correct the error or defect. The application must be made in terms of Rule 23.

20. When the Council may consolidate disputes

The Council or a council commissioner, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

21. Disclosure of documents

Any party may request a council commissioner to make an order requiring any other party to the dispute to disclose all relevant documents.

22. What happens if a party fails to attend proceedings before the Council

1. If a party to a dispute fails to attend in person or be represented at Arbitration or Con-Arb proceedings before the Council, and that party -
 - (a) has referred the dispute to the Council, a council commissioner may dismiss the matter by issuing a written ruling; or
 - (b) has not referred the matter to the Council, the council commissioner may –

- (i) continue with the proceedings in the absence of that party;
or
 - (ii) adjourn the proceedings to a later date.
2. A council commissioner must be satisfied that the party has been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1).
 3. If a matter is dismissed, the Council must send a copy of the ruling to the parties.”

(Rule 22 substituted by Government Notice R.961 of 9 October 2009)

PART F APPLICATIONS

23. How to bring an application

- (1) An application must be brought on notice to all persons who have an interest in the application.
- (2) The party bringing the application must sign the notice of application and must state -
 - (a) the title of the matter;
 - (b) the case number assigned to the matter by the Council;
 - (c) the relief sought;
 - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
 - (e) at any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within fourteen days after the application has been delivered to it;
 - (f) that the application may be heard in the absence of a party that does not comply with sub-paragraph (e);
 - (g) a schedule listing the documents that are material and relevant to the application.
- (3) The application must be supported by an affidavit. The affidavit must clearly and concisely set out-
 - (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
 - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;

- (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 6; and
 - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these rules.
- (4) The application must be served on all the parties to the application and on all the parties to the original dispute. Proof of service on these parties must accompany the application that is filed with the Council.
- (5) (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within fourteen days from the day on which the application was served on that party.
- (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.
- (6) (a) The party initiating the proceedings may deliver a replying affidavit within seven days from the day on which any notice of opposition and answering affidavit are served on it;
- (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (7) A council commissioner may permit the affidavits referred to in this rule to be substituted by a written statement.
- (8) In an urgent application, or a council commissioner may -
- (a) dispense with the requirements of this rule; and
 - (b) only grant an order against a party that has had reasonable notice of the application.
- (9) (a) The Council may allocate a date for a hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first;
- (b) The Council must notify the parties of the date, time and place of the hearing of the application;
- (c) Applications may be heard on a motion roll on a day determined by the Council.
- (10) Despite this rule, a council commissioner may determine an application in any manner it deems fit. A Council Commissioner may consider the application on written submissions only.

24. How to apply to vary or rescind arbitration awards or rulings

1. An application for the variation or rescission of an arbitration award or ruling must be made within fourteen days of the date on which the applicant became aware of–

- (a) the arbitration award or ruling; or
 - (b) a mistake common to the parties to the proceedings.
2. A ruling made by a council commissioner which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

25. How to refer a dismissal dispute to the Labour Court

- (1) An application in terms of section 191(6) of the Act to refer a matter to the Labour Court, must be made within fourteen days of the dispute being certified unresolved in conciliation.
- (2) Despite sub-rule (1), a party that requests arbitration may not thereafter make an application in terms of section 191(6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven days of receipt of the application.
- (5) The Council must notify the parties of its decision in terms of section 191(8) within fourteen days of receiving the objection.

**PART G
PRE-DISMISSAL ARBITRATIONS**

26. How to request an Inquiry by Arbitrator in terms of section 188A.

- (1) An employer requesting the Council to conduct an inquiry by arbitrator, must do so by delivering a completed referral form to the Council.
- (2) The employee must sign the referral form consenting to the inquiry by the arbitration. If an employee has consented in terms of section 188A(4)(b), the referral form does not have to be signed by the employee but the copy of the contract containing the consent must be attached to the form.
- (3) When filing the referral form, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by:
 - (a) bank guaranteed CHEQUE; OR
 - (b) electronic transfer into the bank account of the Council.

- (4) Within fourteen days of receiving a request in terms of sub-clause (1) and payment of the prescribed fee, the Council must notify the parties to the inquiry by an arbitrator of when and where the inquiry will be held.
- (5) unless the parties agree otherwise, the Council must give the parties at least fourteen days notice of the commencement of the inquiry by an arbitrator.
- (6) The Council is only required to refund a fee paid in terms of sub-rule (3), if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (4).

(inserted by Government Notice R.720 of 14 August 2015)

PART H GENERAL

27. Unrepresented applicants without postal addresses and fax numbers

- (1) An unrepresented applicant who intends to refer a dispute to the Council and who does not have a postal address or fax number must hand deliver the referral form to the Council.
- (2) If a referral form is received by hand delivery by an unrepresented applicant, the Council must provide the applicant with a case number and written instructions to contact the Council by telephone or in person, within seven days of the date of referral, in order for the Council to notify the applicant of the details of the hearing.
- (3) The administrator who notifies the applicant of the hearing in terms of sub-rule (2) must record on the case file and on the case management system that the applicant has been notified of the details of the hearing.
- (4) The record made in terms of sub-rule (3) will constitute proof that the applicant was notified of the hearing.

28. Condonation for failure to comply with the rules

The Council or a council commissioner may condone any failure to comply with the time frames in these rules, on good cause shown.

29. Recordings of Council proceedings

- (1) The Council must keep a record of –
 - (a) any evidence given in an arbitration hearing;

- (b) any sworn testimony given in any proceedings before the Council;
and
 - (c) any arbitration award or ruling made by a council commissioner.
- (2) The record may be kept by legible hand-written notes or by means of an electronic recording.
 - (3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of sub-rule (2), on payment of the costs of the transcription.
 - (4) After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the Council.
 - (5) The transcript of a record certified as correct in terms of sub-rule (4) is presumed to be correct, unless the Labour Court decides otherwise.

30. How to have a subpoena issued

- (1) Any party who requires the Council or a council commissioner to subpoena a person in terms of section 142(1) of the Act, must file a completed subpoena form, requesting a subpoena together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- (2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness.
- (3) An application in terms of sub-rule (1) must be filed with the Council at least ten days before the arbitration hearing, or as directed by the council commissioner hearing the arbitration.
- (4) The Council or a council commissioner may refuse to issue a subpoena if–
 - (a) the party does not establish why the evidence of the person is necessary;
 - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;
 - (c) the Council or a council commissioner is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed.
- (5) A subpoena must be served on the witness subpoenaed –
 - (a) by the person who has requested the subpoena or by the Sheriff, at least seven days before the scheduled date of the arbitration;
 - (b) and if so directed by the Council, accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Gazette in terms of section

142(7) of the Act and the witnesses' reasonable travel costs.

- (6) Sub-rules 4(c) and 5(b) do not apply if the Council in terms of section 142(7)(c) has waived the requirement for the party to pay witness fees.

31. Payment of witness fees

- (1) A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the Gazette in terms of section 142(7) of the Act.
- (2) The witness fee must be paid by –
- (a) the party who requested the Council to issue the subpoena; or
 - (b) the Council, if the issue of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fees in terms of section 142(7)(c).
- (3) Despite sub-rule (1), the council commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

32. Taxation of Bills of Cost

- (1) The basis, on which a council commissioner may make an order as to costs in any arbitration, is regulated by Section 138(10) of the Act.
- (2) The Council may appoint taxing officers to perform the functions of a taxing officer in terms of these rules.
- (3) The taxing officer must tax any bill of costs for services rendered in connection with proceedings in the Council, on Schedule A of the prescribed Magistrate Court tariff, in terms of the Magistrates Court Act, no 32 of 1944, unless the parties have agreed to a different tariff.
- (4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that in the taxing officer's opinion is necessary to properly determine any matter arising from the taxation.
- (5) Any person requesting a taxation must complete a referral form requesting taxation and must satisfy the taxing officer -
- (a) of that party's entitlement to be present at the taxation; and
 - (b) that party liable to pay the bill has received notice of the date, time and place of the taxation.
- (6) Despite sub-rule (4), notice need not be given to a party -
- (a) who failed to appear or to be represented at the hearing; or
 - (b) who consented in writing to the taxation taking place in that party's absence.

(7) Any decision by a taxing officer is subject to review by the Labour Court.

33. TARIFF OF ARBITRATION FEE FOR COMPLIANCE ARBITRATIONS

AN ARBITRATOR MAY MAKE AN ORDER FOR PAYMENT OF AN ARBITRATION FEE BY USING THE FOLLOWING TARIFF:

UNOPPOSED TARIFF

Item	Description	Tariff of fees
1	Referral of Dispute	R75.00
2	Unopposed Arbitration Fee	R400.00
3	Unopposed Award Fee	R100.00

OPPOSED TARIFF

1	Referral of Dispute	R75.00
2	Arbitration Fee	R600.00
3	Award Fee	R250.00

(item 33 inserted by Government Notice R.418 dated 17 April 2009 w.e.f. 28 April 2009)

34. What words mean in these rules

Any expression in these rules that is defined in the Labour Relations Act¹, 1995 (No. 66 of 1995) has the same meaning as in that Act and

“**Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995), and includes any regulation made in terms of that Act.

“**chief executive officer**” means Chief Executive Officer of the Council (CEO);

“**con-arb**” means proceedings held in terms of section 191(5A), where an arbitration commences immediately after certifying that the dispute remains unresolved in conciliation.

“**Council**” means the Metal and Engineering Industries Bargaining Council registered in terms of Section 29 of the Act.

“**council commissioner**” means an individual appointed by the council to resolve disputes.

“**deliver**” means serve on other parties and file with the Commission.

¹ The following words used in the rules are defined in section 213 of the Act: Commission, dispute, dismissal, employee, employers' organisation, trade union, and workplace.

“Director” means the Director of the Commission appointed in terms of section 118 of the Act, and includes any person delegated by the director to perform any of the functions of the director.

‘file’ means to lodge with the Council in terms of rule 4.

“Labour Court” means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court.

“party” means any party to proceedings before the Council.

“legal practitioner” means a practicing advocate, a practicing attorney and a candidate attorney.

“public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994). These currently include –

- 1 January, New Years Day
- 21 March, Human Rights Day
- Easter Friday and Monday
- 27 April, Freedom Day
- 1 May, Workers Day
- 16 June, Youth Day
- 9 August, National Women’s Day
- 24 September, Heritage Day
- 16 December, Day of Reconciliation
- 25 December, Christmas Day
- 26 December, Day of Goodwill

“rules” means these rules.

“serve” means to serve in accordance with rule 3 and “service” has a corresponding meaning; and

“taxing officer” means any competent person appointed by the Secretary in terms of rule 32.

SCHEDULE 1

The Chief Executive Officer
 Metal & Engineering Industries Bargaining Council
 77 Marshall Street P O Box 9381 Tel: 011 639-8000
 Johannesburg Johannesburg Fax: 086 636 8690
 2001 2000

GAUTENG, NORTH WEST, MPUMALANGA & LIMPOPO PROVINCES

Centre for Dispute Resolution
 1st Floor P O Box 9381 Tel: 011 834 4660
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 42 Anderson Street 2000 Email: cdr@meibc.co.za
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WESTERN CAPE

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