

NATIONAL BARGAINING COUNCIL FOR THE

CLOTHING MANUFACTURING INDUSTRY

Tel: 021 648 4020 Fax: 021 648 4091 www.nbc.org.za		7th Floor, Inkster House, 38 Victoria Road, Salt River, 7925		P.O. Box 142 Woodstock 7801			
REGIONAL CHAMBERS							
EASTERN CAPE Chamber House 22 Waterfall Road Glenwood P.O. Box 1238 North East, P.E. 6056 Tel: 041 487 1574 Fax: 041 487 1561		KWAZULU-NATAL 121/29 Gale Street Durban Durban 4001 P.O. Box 1834 Durban 4014 Tel: 031 362 0700 Fax: 031 367 4756		NORTHERN 17th Floor, Garmar Centre 118 Kirk Street Johannesburg 2001 P.O. Box 5101 Johannesburg 2000 Tel: 011 402 2737 Fax: 011 402 5735		WESTERN CAPE Indaba House 30 Voorsveld Road Salt River 7925 P.O. Box 1142 Woodstock 7815 Tel: 021 400 4800 Fax: 021 407 0629	

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DISCLAIMER

Whilst every care has been taken to ensure that this Consolidated Agreement is accurate in full, the Council does not accept responsibility for any inaccuracy or deviation from the original text of the Agreements as published under the Government Notices listed on the front cover of this document.

GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R.1444 10 December 1999

LABOUR RELATIONS ACT 66 OF 1995

CLOTHING INDUSTRY, EASTERN PROVINCE: EXTENSION OF PROVIDENT FUND COLLECTIVE AGREEMENT TO NON-PARTIES

I, Mombathisi Mphuzi Shephard Madlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Clothing Industry, Eastern Province, 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 20 December 1999 to 30 June 2005 and from 7 October 2005 to 31 August 2006.

M. M. S. MDLADLANA

Minister of Labour

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE EASTERN CAPE REGION

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

Eastern Province Clothing Manufacturers' Association

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

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"), of the other part, being the parties to the Bargaining Council for the Clothing Industry, Eastern Province,

1. SCOPE OF APPLICATION OF AGREEMENT

(1) The terms of this Agreement shall be observed in the Clothing Industry:

(a) by all employers who are members of the employers' organisation and by all employees who are members of the trade union;

(b) within the Magisterial Districts of:

(i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to the Magisterial District of East London; and

(ii) within the Magisterial District of East London, excluding that portion which was transferred to the Magisterial District of Port Elizabeth by Government Notice No. 1485 of 27 August 1971, excluding those portions of the Ciskei which were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion which was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.

(2) The terms of this agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.

(3) Clauses 1 (1) (a), 2(1) and 7(8) of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation:

(1) in respect of the parties to this Agreement, on the date of signature;

(2) in respect of non-parties, on the date published in the Minister of Labour, to be the effective date from which the Agreement shall be extended to become binding on non-parties, and shall remain in operation for the period ending 31 August 2012.

SPECIAL PROVISIONS

The provisions of clause 7(8) of the Agreement published under Government Notice No. R. 1444 of 10 December 1999 as amended, extended and re-enacted by Government Notice No. R. 666 of 30 June 2000, No. R. 249 of 21 February 2003, No. R. 790 of 20 June 2003, R.1295 of 19 September 2003, R.516 of 30 April 2004, R.1173 of 15 October 2004 and R.588 of 24 June 2005 (hereinafter referred to as the "Former Agreement"), as further amended, extended and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

GENERAL PROVISIONS

The provisions contained in clauses 3 to 7A and 8 to 9 of the Former Agreement (as further amended, extended and re-enacted from time to time), shall apply to employers and employees.

3. DEFINITIONS

All expressions used in this Agreement, which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendments of such Act and, unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context:

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"Clothing 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 making of all classes of the undermentioned items of apparel/clothing/garments: Bells (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted underwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and vetualls), scarves, shirts, suspenders, ties (including bowties), and underwear;

A, and includes:-

(a) all operations incidental thereto and consequent thereto and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;

(b) all types of hand sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and respective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;

(d) any parts of garments whether by means of a knitting process or otherwise;

(e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;

(g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;

(h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;

(i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;

(l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;

(m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(n) the making and/or cutting of garments or parts of garments, irrespective of whether or not such operation is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and

(o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B, but excludes

(a) belts, braces, garters, suspenders and armbands manufactured from leather;

(b) boxing gloves;

(c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;

(d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;

(e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"Employing Employer" means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the Council, who has given effect to the applicable Council, Provincial and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is in accordance with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

"Council" means the Cape Chamber (Eastern Cape sub-chamber) of the National Bargaining Council for the Clothing Manufacturing Industry;

"Establishment" means any place in which any operation in connection with the Clothing Industry is carried on;

"Experience" means the total length of all periods of employment in the industry of an employee in respect of whom wages are prescribed in the Main Agreement, and shall be deemed to be continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that an employee whose service is interrupted at the end of his employer's working year and who resumes work with his former employer within 14 days of the expiry of the employer's factory shall be deemed to have worked continuously.

"Week week" means a week calculated from midnight between Friday and Saturday to midnight between the next Friday and Saturday;

"Main Agreement" means the Agreement of the Council, published in terms of the Act, which prescribes wages for employees in the industry;

"Member" or "member of the Fund" means any person who contributes or has contributed to the Fund as an employee in terms of this Agreement;

"National Council", means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

"Nominee" means any person appointed by a member to whom any benefits accruing to such member at the time of his death shall be paid;

"Redundancy/retrenchment" means the termination of the employment of an employee for any or all of the following reasons:

(a) The business activity of the company is decreasing because of a deteriorating economic situation, resulting in organisation changes whereby certain positions in the company will be eliminated on a permanent basis, and/or sufficient work is not available, thereby necessitating a cutback in the workforce;

(b) The operations of the company, or parts thereof are closing down or are undergoing changes because of:

(i) a relocation of facilities;

(ii) technological or technical changes;

(iii) automation;

(iv) merges and takeovers; or

(v) any other which may be deemed by the company and the trade union to be of such a nature that it warrants redundancy/retrenchment of employees;

"Retiral age" means the age of 60 years;

"Secretary" means the Secretary of the Council and includes any official appointed to assist the Secretary;

"Wage" means the weekly wage (excluding overtime or any supplementary wage) prescribed in the Main Agreement.

4. PROVIDENT FUND

(1) The Fund established in terms of the Agreement published under Government Notice No. R. 607 of 20 March 1963, and known as the Provident Fund for the Clothing Industry, Eastern Province (hereinafter referred to as "the Fund"), is hereby continued for the purpose of providing benefits to employees in the industry.

The Fund shall consist of:

(a) any moneys standing to the credit of the said Fund as at the date of coming into operation of this Agreement;

(b) contributions paid into the Fund in accordance with this clause;

(c) interest derived from the investment of any moneys of the Fund;

(d) any other moneys to which the Fund may become entitled.

(2) The Fund shall be under the control of a Management Committee appointed by the Council, consisting of three representatives of the employees and three representatives of the union.

An alternate may be appointed in respect of each representative. The Management Committee shall elect a chairperson and a vice-chairperson from among its members and shall specify its own rules of procedure. Should the Management Committee be unable to perform its duties for any reason, the Council shall perform such duties and exercise its powers.

(3) The Management Committee shall have the power to make, amend and alter rules governing the administration of the Fund and copies of such amendments must be forwarded to the Department of Labour.

(4) The Management Committee shall collect all revenue and shall have the power to invest moneys surplus to current requirements as set out in clause 4 (7) (b). The Management Committee shall have the power to appoint an auditor, an actuary, a secretary and staff on such terms and conditions as it thinks fit, and may vary such appointments.

CONTRIBUTIONS

(2) (a) All employees for whom wages are prescribed in the Main Agreement of the Council, having not less than a total of six months' experience in the industry, shall become members of the Fund and contribute on the following basis:

(i) All employees earning an amount equal to or more than the weekly wage of a qualified machinist, shall contribute 3.5% per week;

(ii) All employees earning an amount less than the weekly wage of a qualified machinist, shall contribute 3.0% per week;

(b) Every employer shall on each pay day contribute for each of his employees who are members of the Fund, the following amount in accordance with paragraph (a):

(i) All employees who are earning an amount equal to or more than the weekly wage of a qualified machinist—6.79% per week;

(ii) All employees who are earning an amount less than the weekly wage of a qualified machinist—6.99% per week;

The employer shall forward the total amount to the Secretary by not later than the seventh day of the following month, together with a statement in such form as the Management Committee may from time to time specify.

(c) Contributions in respect of a member who receives wages for one day or more during a fund week shall be payable in respect of a whole week;

(d) Where a member is employed by more than one employer in the industry during a fund week, the employer by whom he is last employed during such week shall pay both his own contributions and those due by the member in respect of the whole week, and may deduct the contribution due by such member from his earnings as provided in clause 4 (5) (b); and no further contribution shall be payable by or in respect of such member in respect of that week;

(e) An employer shall not deduct the whole or any part of his own contributions from the earnings of a member or receive any consideration from the member in respect of such contributions.

(f) When a member is not on leave on full pay or pay less than full pay, both his own and the employer's contributions shall be continued;

(g) Where a member works short-time, both his own and his employer's contributions shall be continued in accordance with subclause (a) hereof;

(h) If any contribution is made in error to the Fund, the Fund shall not be liable to repay that contribution after the lapse of six months from the date of such payment;

(i) Whenever any benefit has been mistakenly paid to a member as a result of such member having made to the Fund payments which were not due, the Management Committee may set off the amount of benefits so paid:

(ii) against any sum claimed from the Fund as a repayment of such contributions which were not due; and

(iii) against any future benefits that may be payable by the Fund to the said member;

(j) Any member who re-enters the industry after having left and received benefits in terms of clause 4 (6) (a) hereof, shall on production of evidence of previous membership of the Fund forthwith be readmitted to membership, but shall be regarded as a new member as from the date of readmission: Provided that if he repays to the Fund in full the amount which he has received having received the Industry, the Management Committee shall have the power to restate him with credit for his previous period of membership;

(k) A member who becomes re-engaged in the industry without having received payment of benefits in terms of clause 4 (6) (a) hereof, shall immediately become disentitled to any benefits which might have been payable had he not so become re-engaged and shall have credit from his previous period of membership.

BENEFITS

(2) (a) If a member shall leave the industry permanently for any reason other than those under paragraph (b), (dA) and (c) hereof, he shall be entitled to the following benefits:

(i) If the total period of his contributions does not exceed one year, the total amount contributed by him;

(ii) If the total period of his contributions exceeds one year, the total amount contributed by him plus 10 per cent thereof;

(iii) If the total period of his contributions exceeds two years, the total amount contributed by him plus 20 per cent thereof;

(iv) If the total period of his contributions exceeds three years, the total amount contributed by him plus 30 per cent thereof;

(v) If the total period of his contributions exceeds four years, the total amount contributed by him plus 40 per cent thereof;

(vi) If the total period of his contributions exceeds five years, the total amount contributed by him plus 50 per cent thereof;

(vii) If the total period of his contributions exceeds six years, the total amount contributed by him plus 60 per cent thereof;

(viii) If the total period of his contributions exceeds seven years, the total amount contributed by him plus 70 per cent thereof;

(ix) If the total period of his contributions exceeds eight years, the total amount contributed by him plus 80 per cent thereof;

(x) If the total period of his contributions exceeds nine years, the total amount contributed by him plus 90 per cent thereof;

(xi) If the total period of his contributions exceeds ten years, the total amount contributed by him plus 100 per cent thereof;

and the total amount shall be paid three months after his leaving the industry: Provided that the Management Committee may pay moneys due to members in instalments over a period not exceeding six calendar months, should members so desire.

(b) If a member leaves the industry or after reaching retirement age, or if a member is compelled to retire from work owing to incapacity prior to reaching retirement age and the Management Committee is satisfied that such incapacitated member is totally unable to earn his living in the industry, it shall grant such member benefits up to the full amount of his own and the employer's contributions;

(c) If a member leaves the industry as a result of redundancy/retrenchment, and his employer submits proof to this effect acceptable to the Management Committee, the provisions of subclause (b) (a) shall not apply and he shall be entitled to the following redundancy/retrenchment benefits:

(i) the total amount contributed by the member in terms of subclause (b) (a); plus

(ii) the total amount contributed towards the member's retirement benefit by the employer in terms of subclause (b) (a); plus

interest on the amounts referred to in subparagraphs (i) and (ii) hereof at a rate determined by the Management Committee and based on the report of the auditor upon the financial position of the Fund as at 31 December prior to the member's leaving the employer's service.

Provided that where an employee has been certified as being terminally ill by a registered medical practitioner, the disability benefit shall become immediately due and payable.

(c) On proof of satisfactory benefit to the Management Committee, of the death of a member, the Fund shall pay a lump sum equal to the aggregate amount of his own and the employer's contributions to a nominee appointed by the member before his death, or into the estate of the deceased member. In the event of the appointed nominee being dead at the time when payment of the benefit is due, such benefit shall be paid to the estate of the deceased member. If the nominee is a minor, the Management Committee shall pay the benefit to such minor's legal guardian.

On similar proof of the death of an employee who has retired from his employment, and was receiving benefits from the Fund, the Fund shall pay to a nominee or into the deceased's estate, as provided in the foregoing paragraph, the difference, if any, by which the aggregate amount calculated in terms of clause 4 (7) (a) or (b) exceeds the total payments which have been made to the retired member.

The Management Committee shall be advised in writing of the appointment of a nominee or of any change in regard to such appointment and of the address of such nominee. If a deceased member shall have failed to advise the Management Committee in writing of the name and address of his nominee in terms of this subclause, any benefit due in terms of this subclause shall be paid into the estate of such deceased member.

(d) If a member has received benefits of which he is not entitled under the provisions of this Fund and the matter is not dealt with in the manner set out in clause 4 (5) (b), he shall be liable to repay the Fund the amount of the benefit so received: Provided that if the Management Committee deems it equitable in any particular case to demand repayment of the whole amount of the benefit, it may in its discretion demand repayment of any lesser amount or receive such member of the repayment of the whole amount.

(e) Any member who leaves the industry while having an outstanding housing loan offered by the Fund Housing Loan Scheme through a financial institution, the balance of the housing loan shall be deducted before the Provident Fund benefit is paid out to the member.

(f) Such as is provided in this subclause, no benefit or right to benefit shall be capable of being assigned or transferred or otherwise coded or of being pledged or hypothecated, nor shall any contribution made by a member or on his behalf be attached or subject to any execution under a judgment or order of a court of law, and if a member attempts to assign, transfer or otherwise code or to pledge or hypothecate any benefit or right of benefit, payment of benefit may be withheld, suspended or entirely discontinued if the Management Committee so determines.

(g) Nothing contained in this Agreement shall in any way affect the right of any member of his dependants to claim compensation or damages payable to workmen or dying from any accident arising out of and in the course of their employment; and the amount payable under this subclause shall not be reduced by reason of any payment that may be made under any other contract.

(h) On admission to the Fund a member shall submit a birth certificate or such other proof of age as is stipulated in the Management Committee.

If any benefit due and payable, other than to a nominee appointed in terms of subclause (c) of this clause, is not claimed within one year from the date of due date thereof, the Management Committee shall within three months of the expiration of the said period of one year cause a notice to be published in successive issues of two newspapers circulating in the Eastern Province, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union, and in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of the Agreement.

Such claims shall be met in accordance with the provisions of paragraphs (a), (b) and (c) of this subclause: Provided that the Management Committee may, if it deems fit, deduct the cost of advertising. In the event of a claim being made by or on behalf of the person whose name appears on the list, any benefits due to him shall be forfeited to the Fund: Provided that the Management Committee may at its discretion authorise the payment of benefits in the event of a claim being made after the benefits have been forfeited to the Fund.

FINANCE

(7) (a) The moneys accruing to the Fund shall be paid into bank or banks or building society or societies on current or deposit account, and all cheques shall be signed by such persons as the Management Committee may appoint.

(b) Any moneys not required to meet current payments and are therefore surplus to the Fund's requirements, or the expenses of the Fund, shall be invested in:-

(i) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;

(ii) internal registered stock as contemplated in section 21 of the Exchange Act, 1975 (Act No. 66 of 1975);

(iii) a registered unit trust; or

(iv) any other manner approved by the Registrar.

(7A) The Management Committee shall also have the power to furnish a guarantee in respect of a loan by or to some other person to a member for the purpose of a housing loan.

(8) An accountant shall, at such times as the Management Committee in its discretion may require, conduct investigations into the Fund and the valuation of the liabilities of the Fund, and shall make recommendations for the declaration as a bonus or the creation of a reserve for additional benefits.

(9) The Management Committee shall, if it deems fit, declare a bonus additional based on the recommendations of the auditor and any bonus so declared shall be credited to the contributors' accounts and shall be payable to such members at the time and in addition to the benefits described in clause 4 (6) of this Agreement, or shall, if it deems fit, create a financial reserve for the payment of additional benefits to members who are compelled to retire from the industry in terms of clause 4 (7) (b). Such additional benefits shall be based on a formula to be approved by the Council and related to the period of service in the industry of such member.

(10) (a) The Secretary of the Management Committee shall, as soon as possible after 31 December each year, prepare statements in a suitable manner showing the position of the Fund as at that date. The statements shall be audited by a public accountant appointed by the Management Committee and shall be submitted to the Council.

(b) The audited consolidated statements and the auditor's report thereon shall be for inspection at the head office of the Council and copies of them shall be sent to the Registrar of Labour Relations within three months of the close of the period covered by it.

GENERAL

(11) If an employee is transferred or promoted to an extension thereof, and in the event of no subsequent agreement being negotiated for the purpose of continuing the operation of the Fund within 12 months from the expiration of this Agreement or any extension thereof, the Fund shall continue to be administered by the Management Committee and, in the event of a subsequent agreement not being negotiated within a period of 12 months from the expiration of this Agreement or any extension thereof, the Fund shall be either liquidated as though the employees in question had left the industry, or transferred by the Council to any other Fund constituted for the same purpose as that for which the original Fund was created.