



# **CONSTITUTION**

**of the**

**VOLUNTARY ASSOCIATION**

**known as**

**MASTER BUILDERS & ALLIED TRADES' ASSOCIATION,  
WESTERN CAPE**

**2009**

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# CONSTITUTION OF MASTER BUILDERS AND ALLIED TRADES' ASSOCIATION, WESTERN CAPE

## 1. NAME

- 1.1 The name of the Association shall be the "MASTER BUILDERS AND ALLIED TRADES' ASSOCIATION, WESTERN CAPE".
- 1.2 The Association shall be an association not for gain. It shall have perpetual succession and be capable of suing and being sued in its own name in respect of any contract entered into by the Association and/or any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties in terms of this Constitution.

## 2. DEFINITIONS

Any expression used in this Constitution which is defined in the Labour Relations Act, 1995, shall, unless the contrary intention appears, have the same meaning as in that Act. In the interpretation of this Constitution, unless inconsistent with the context, the singular shall include the plural, and vice versa, and the following words and expressions shall have the following meaning :

- 2.1 "The Act", unless otherwise specified, means the Labour Relations Act (Act 66 of 1995), as amended;
- 2.1 "The Association" means the Master Builders and Allied Trades' Association, Western Cape, as constituted by this Constitution read with section 4 of the Act;
- 2.2 "Building Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers, employees and suppliers of services are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings and structures (which are in the nature of buildings) and/or making of articles for use in the erection, completion or alteration of buildings and structures, whether the work is performed, the material is prepared or the necessary articles are made on the sites of the buildings or structures or elsewhere.
- 2.3 "Director" means the Director of the Association appointed in terms of Clause 15 of this Constitution, who shall also act as the secretary of the Association.

## 3. OBJECTS

The objects of the Association are:

- 3.1 to generally watch over, promote and protect the interests of members;
- 3.2 to promote excellence in work, just and honourable practice in the conduct of business, and to eradicate malpractices;

- 3.3 to regulate relations between members and their employees or trade unions;
- 3.4 to encourage the settlement of disputes by conciliatory methods;
- 3.5 to promote, support or oppose as may be deemed expedient, any proposed legislative or other measures affecting the interests of members;
- 3.6 to advise members on matters affecting the relationship between themselves and their employees or trade unions;
- 3.7 to co-operate with any other organisations which may be established to deal with matters which affect members;
- 3.8 to acquire either by purchase, lease or otherwise any movable or immovable property, or also to sell, let, mortgage or otherwise deal with and dispose of movable or immovable property or other assets belonging to the Association or use such property for such other purpose as the members may approve;
- 3.9 to borrow, invest, lend, subscribe or donate money for the furtherance of the objects of the Association;
- 3.10 to use every legitimate means to encourage all persons who are eligible for membership to become members;
- 3.11 to affiliate with or join any federation, or to otherwise co-operate with any similar association or federation;
- 3.12 to promote and uphold the status of the Building Industry in general;
- 3.13 to do such other lawful things as may appear to be in the interests of the Association or its members and which are not inconsistent with the objects or any matter specifically provided for in the Constitution;
- 3.14 to foster and encourage the training of persons for the Building Industry and its Allied Trades, and the general educational advancement of persons engaged in the Industry.

#### **4. MEMBERSHIP**

##### **4.1. Membership shall consist of**

- 4.1.1 Full Member
- 4.1.2 Probationary Members;
- 4.1.3 Associate Members;
- 4.1.4 Affiliate Members;
- 4.1.5 Retired Members;
- 4.1.6 Honorary Members; and
- 4.1.7 Life Members.

## 4.2. Parties eligible for Membership

### 4.2.1 "Full Members" shall include:

4.2.1.1 Contractors in the Building Industry who shall observe standard conditions of employment, are employers of labour and who, in the opinion of the Executive Committee, possess the necessary technical qualifications, knowledge and practical experience or who employ in positions of responsibility, a person or persons therewith to ensure that all building projects are carried out in a competent manner.

4.2.1.2 Sub-Contractors in the Building Industry who shall observe standard conditions of employment, are employers of labour for the purpose of providing specialist services in the erecting, completing, renovating, repairing, maintaining or altering of buildings and/or structures. They shall be parties who, in the opinion of the Executive Committee, possess the necessary technical qualifications, knowledge and practical experience, or who employ in a position of responsibility, a person or persons therewith to ensure that all projects are carried out in a competent manner.

4.2.1.3 Merchants, Manufacturers and Suppliers whose main business is the supply and/or manufacture of plant, machinery, equipment, materials and services used in the erection, maintenance, alteration, repair or completion of buildings.

4.2.2 "Associate Member" – shall mean a person or practice engaged in a profession or business which renders a service to members of the Association, provided there is no clash of interest with the operational activity of members of the Association.

4.2.3 "Affiliate Member" – shall mean any other Association, Corporate or Incorporate, with objectives similar to those of this Association, the membership of which is comprised of persons or businesses eligible for membership in terms of Clause 4.2.1.

4.2.4 "Candidates for membership" – an applicant who does not yet meet the requirements for membership, but has the intention of doing so, shall be deemed to be a "Candidate for Membership" provided the period be for not more than twelve (12) months.

4.2.5 "Probationary Member" - the Executive Committee shall have the power to decide whether an Applicant for membership shall be accepted as a Probationary Member for a period not exceeding thirty-six (36) months. Should a Probationary Member, after its probationary period, not be accepted as a Full Member, it shall have the same right of appeal to a General Meeting as set out in Clause 4.4.5 hereof. Probationary Members shall be subject to the same conditions as Full Members, but shall not be entitled to vote, nor serve on the Executive Committee.

4.2.6 "Retired Members" - The Executive Committee may, on application and by a two-thirds (2/3) majority of those present, elect as a Retired Member any person who has retired from active business in the Building Industry and who was a member or a partner in a firm or a director of a Company which is or was a member of the Association. Such Retired Member shall not be eligible for appointment onto the Executive Committee, not be entitled to a vote, and shall not be taken into account in determining the quorum at meetings and shall not be regarded as a member for the purpose of the Act. Such Retired Member shall pay an annual subscription equal to ten

percentum (10%) of the annual subscription paid by Full Members at the time of this election but shall not be required to pay any levy.

- 4.2.7 “Honorary Members” - The Executive Committee may grant Honorary membership to any person at the pleasure of the Executive Committee. Such Honorary Member shall not pay subscriptions or levies, but shall otherwise be subject to the same obligations as a Full Member, provided that an Honorary Member, who is not eligible for Full membership of the Association, shall not be eligible for appointment onto the Executive Committee, nor be entitled to a vote, and shall not be taken into account in determining the quorum at meetings and shall not be regarded as a member for the purpose of the Act.
- 4.2.8 “Life Members” - A person who has served the Association may be elected a Life Member on nomination of the Executive Committee and approved by an Annual General Meeting, and shall thereafter be entitled to all the privileges of membership without paying the annual subscription or any special payment for such Life Membership, or on such terms as may be agreed upon. A two-thirds (2/3) vote of those present in favour of the recommendation shall be necessary for such election. Such member shall otherwise be subject to the same obligations as a Full Member, provided that a Life Member who is not eligible for Full membership of the Association shall not be eligible for appointment onto the Executive Committee nor be entitled to a vote and shall not be taken into account in determining the quorum at meetings and shall not be regarded as a Member for the purpose of the Act.

**4.3. The Association’s records shall indicate clearly the style of Membership granted to an applicant.**

**4.4. Applications for Membership**

- 4.4.1. Applicants for Membership shall apply in writing on such form and shall furnish such particulars as may be prescribed by the Executive Committee from time to time.
- 4.4.2 Applications, unless otherwise decided by the Executive Committee, must be accompanied by the enrolment fee and the pro rata subscription fee for the current year.
- 4.4.3 Applications for Membership shall be lodged with the Director or with the Association Offices at least twenty-one (21) days prior to the next Executive Committee meeting, but the Executive Committee shall have the right to consider an application lodged on shorter notice being given. Applications for membership shall be considered by the Executive Committee at its first meeting following the date of application.
- 4.4.4 The Executive Committee may, as a matter of procedure, require that confidential reports be obtained on Applicants for its guidance. It may similarly require that the Applicant appear before the meeting at which the Application for membership will be considered.
- 4.4.5 The admission or rejection of an Application shall be decided by the votes of the majority of the Members present at the meeting at which the Application is considered, provided that an Applicant whose Application for membership has been rejected by the Executive Committee, shall have the right to appeal to the next General Meeting, by giving notice in writing to the Director within twenty-one (21) days of the date of notification of such rejection. When such

appeal is heard, the Applicant shall have the right to state its case personally to a General Meeting and to call witnesses in support of statements made by it, if desired. At such meeting, if the majority of the Members present vote in favor of the Applicant's admission, he/she/it shall be admitted to membership.

- 4.4.6 An Applicant to whom admission to membership is refused shall be entitled to a refund of the subscription fee paid.
- 4.4.7 Where a Partnership or a Company is admitted to membership only one person may represent such Member at any one time, provided that where this Constitution provides for Members to be co-opted to serve on the Executive, this restriction shall not apply.
- 4.4.8 A Member who has more than one place of business, excluding a bona fide branch/depot, shall, unless otherwise determined by the Executive Committee, be deemed to be a separate party in respect of each such establishment and accordingly shall be obliged to secure separate membership for each such establishment and shall possess and be subject to the rights and obligations of membership for each separate establishment.

#### **4.5 Alterations in Management, Ownership or Control**

- 4.5.1 Where a partnership or a Company is a Member and a change of Partners or Directors, or of ownership, management or control occurs, the Member must immediately notify the Director of the Association of such change. The Executive Committee shall then decide whether such Member is required to apply afresh for membership and also whether a new entrance fee shall be paid by such Member if re-admitted to membership.
- 4.5.2 For the purpose of this sub-clause, the terms "alterations in management, ownership or control" shall be deemed to include the participation by any principal, partner or director in the affairs of a Company, other than the Company holding membership in terms of this Constitution established to carry on business in the Building Industry or its Allied Trades within the meaning of this Constitution.

#### **4.6 Resignations from Membership**

- 4.6.1 Any Member of the Association desirous of resigning shall advise the Director thereof in writing. Until the resignation of a Member is accepted by the Executive Committee, who shall decide thereon within three (3) months, such Member shall remain bound by the conditions attached to membership.
- 4.6.2 No resignation shall take effect until all monies due to the Association by the Member concerned have been paid. Unless notice of resignation is given before 30 September in any particular year, such Member shall be liable for the ensuing year's subscription.
- 4.6.3 No Member may resign during any strike or lockout or other industrial action but shall continue to be a Member during any such strike or lockout or other industrial action and conform to and observe all the conditions and resolutions of the Association.

## **4.7 Insolvency / Assignment**

- 4.7.1 A Member shall ipso facto cease to be a Member if it :
- 4.7.1.1. is sequestrated or liquidated, whether provisionally or finally, by an Order of Court;
  - 4.7.1.2. makes or agrees to make any assignment for the benefit of its creditors or enter into any trust or other deed or agreement for an arrangement with its creditors; or
  - 4.7.1.3. take the benefit of any statutory provisions for a compromise or arrangement with its creditors, or a winding-up or judicial management whether provisional or final as contemplated in the Companies Act (Act No. 61 of 1973) as amended from time to time.
- 4.7.2. Notwithstanding the provisions of sub-clause 4.7.1, a Member who ceases to be a Member in the circumstances detailed under sub-clause 4.7.1.2 or 4.7.1.3 may, on application, be re-admitted to membership by resolution of the majority present at a meeting of the Executive Committee on such terms and conditions as the Executive Committee may determine.

## **4.8 Complaints**

In the event of a complaint in regard to the conduct of a Member of the Association being lodged with the Executive Committee, the Executive shall, as early as practicable, enquire into the matter and determine the action to be taken. All such complaints shall be made in writing.

## **4.9 Discipline**

- 4.9.1 A Member may be suspended, fined or expelled as may be determined by the Executive Committee if it departs from, contravenes or infringes any of the provisions of this Constitution, the Rules, By Laws or any directives issued by the Association of the Executive Committee, or acts in a manner which is detrimental to the interests of the Association, or is guilty of conduct which, in the opinion of the Executive Committee, renders it unworthy of membership of the Association.
- 4.9.2 No Member may be suspended, fined or expelled unless it has been afforded an opportunity to state its case personally at a meeting of the Executive Committee of which it has received not less than seven (7) days notice in writing from the Director. The matter with which the Member is charged shall be set out in such notice.
- 4.9.3 A Member who has appeared before the Executive Committee in accordance with sub-clause 4.9.2 shall have the right to appeal against any decision by the Executive Committee to the first ensuing General Meeting. Notice of such appeal, stating the grounds of appeal, shall be given in writing to the Director within twenty-one (21) days of the date on which the decision of the Executive Committee was communicated to the Member concerned. Unless such notice is given within the period stipulated, the right of appeal shall be deemed to have lapsed. The Member concerned shall have the right to state its case personally to the General Meeting, who shall then act in terms of sub-clause 4.9.5 hereof.



- 4.9.4 A Member shall be entitled to call witnesses in support of its case when attending a meeting of the Executive Committee or a General Meeting in terms of sub-clause 4.9.2 or sub-clause 4.9.3 as the case may be.
- 4.9.5 Any decision taken by the Executive Committee in terms of this clause shall, when an appeal has been lodged, be subject to ratification, variation or reversal by a General Meeting.
- 4.9.6 Upon expulsion of a Member, all monies due to the Association by such Member shall become payable. If payment thereof is not made within fourteen (14) days, the Executive Committee may take such steps as it deems necessary, to secure a settlement.
- 4.9.7 A Member shall cease to be entitled to any of the benefits of membership including the right to vote and shall be deemed to be out of good standing during any period which it is under suspension in terms of this Constitution, or if the subscriptions or other charges due by it to the Association are more than three (3) months in arrears.
- 4.9.8 In the event of subscriptions or other charges due to the Association by a Member being more than three (3) months in arrears, the Member shall continue to be subject to the disabilities imposed by sub-clause 4.9.7 until all arrears have been paid.
- 4.9.9 Any notice required to be sent to a Member in terms of this Clause shall be regarded as delivered if posted by prepaid registered letter to the address furnished by such Member in terms of sub-clause 4.13.

#### **4.10 By Laws, Rules and Directives**

- 4.10.1 The Association may, for the purpose of regulating its affairs, frame By Laws relating to procedural, administrative or disciplinary matters provided that such By Laws shall not be inconsistent with the provisions of this Constitution or contrary to the Act, or any other South African law.
- Unless otherwise provided, no By Law of the Association shall be framed, amended or rescinded except by a majority of not less than two-thirds (2/3) of those present at a General Meeting of the Association, and after fourteen (14) days notice by circular shall have been given of the intended change, such alteration to be specified in the notice convening the meeting.
- 4.10.2 The Executive Committee may also make rules and/or issue directives relating to tendering, contractual, procedural, administrative or disciplinary matters.
- 4.10.3 All Members shall make themselves conversant with, and shall ipso facto be bound by, the By Laws of the Association, whether the same may or may not have been signed by them.

#### **4.11 Fines**

Wherever provision is made in this Constitution for the imposition of a fine on a Member, such fine shall not exceed an amount equal to one hundred (100) times the annual subscription, which is payable by Members at the time, in the case of a first offence, and an amount equal to two hundred (200) times such annual

subscription in respect of every further offence, that may be imposed by the Executive Committee vide sub-clause 11.15.

#### 4.12 Disputes

Should any Member desire to have an expression of opinion on any matter in dispute between itself and another Member, or other Members, such Member shall be entitled to lay its case before the Executive Committee which shall deal with the matter. The details of such dispute shall be in writing.

#### 4.13. Change of Address

Every Member shall notify the Director in writing of its postal address, and/or any other changes, within fourteen (14) days of the date on which the change took place.

### 5. ENROLMENT FEE

- 5.1 The maximum enrolment fee payable by applicants shall be R1000,00 (One Thousand Rand).
- 5.2 The Executive Committee shall from time to time determine the enrolment fee. In determining the amount payable, the Executive Committee shall be entitled to differentiate between different classes of members and members for whom limited services are provided.
- 5.3 The Executive Committee may, in its discretion, waive such payment in respect of any Applicant who, at the time of admission, is a Member in good standing of any Association affiliated to the Building Industries Federation South Africa, or who has previously been a Member of the Association and whose membership was terminated whilst in good standing.
- 5.4 The enrolment fee shall be paid on Application for membership.

### 6. SUBSCRIPTIONS

- 6.1 The maximum annual subscription payable by Members shall be R5000,00 (Five Thousand Rand).
- 6.2 The Executive Committee shall from time to time determine the annual subscription payable by different classes of membership. In determining the amounts payable the Executive Committee shall be entitled to differentiate between different classes of members and members for whom limited services are provided.
- 6.3 Annual subscriptions shall be payable in advance on or before **1 August** in each year.
- 6.4 Any party admitted to membership of the Association shall, on admission, in addition to any enrolment fee which may be payable in terms of Clause 5, be liable for payment of one-twelfth (1/12) of the annual subscription in respect of each complete calendar month of membership which it will enjoy during the remainder of the Financial Year ending on 30 June.
- 6.5 A Member whose subscription is in arrear on **1 November** of any year, shall be suspended from any rights of membership, unless the Executive Committee decides otherwise.

- 6.6 Should any Member's subscription be in arrears by 1 December of any year, such Member, without prejudice to the Association's right to recover arrear subscriptions, shall ipso facto cease to be a Member, unless the Executive Committee determines otherwise.

## **7. LEVY**

- 7.1 Subject to the provisions of Clause 11, the Executive Committee may determine that the Members shall pay a levy not exceeding R2,00 (Two Rand) per week per employee employed by the Member. The amount of such levy and the conditions under which it shall be paid, shall be determined by the Executive Committee. This provision shall not affect the right to the Association to impose a special levy in terms of sub clause 7.2 of this Constitution.
- 7.2 Subject to the provisions of Clause 9 a special levy not exceeding R1000,00 (One Thousand Rand) per Member per year for any purpose falling within the objects set out in Clause 3 of the Constitution, may at any time be imposed by the Executive Committee on Members of the Association, if two-thirds (2/3) of the Members present at a General Meeting vote in favour thereof, provided that notice of the proposed levy appeared in the Agenda for the meeting, and provided further that not more than one such special levy shall be imposed in any period of eighteen (18) months.

## **8. MEETINGS OF THE EXECUTIVE COMMITTEE**

- 8.1 The management of the affairs of the Association shall be vested in an Executive Committee, as elected in terms of Clause 10 of this Constitution.
- 8.2 Members of the Executive Committee shall hold office from the 1st day of July in each year of their election or from the date of their election, whichever is the later, until the last day of June in the next succeeding year, or until their successors have been elected, whichever is the later, and shall be eligible for re-election on termination of their period of office.
- 8.3 Any vacancy occurring on the Executive Committee during the year shall be filled by the remaining Members of the Executive Committee who shall choose a Member of the Association from the same section of trade as that to which the late Member of the Executive Committee belonged. This shall not apply to Office Bearers whose election shall be made at the next General Meeting.
- 8.4 A Member of the Executive Committee shall vacate his or her seat in any one of the following circumstances :
- 8.4.1 on the Member or the company the member represents, ceasing to be in good standing;
  - 8.4.2 if the Member is no longer actively engaged in the Building Industry;
  - 8.4.3 on resignation, suspension or expulsion from membership of the Association of the Member or the Company which the Member represents;
  - 8.4.4 on resigning by giving one month's notice in writing to the Director;
  - 8.4.5 on absenting himself or herself without permission of the Executive Committee from four (4) consecutive meetings of the Committee.

- 8.5 Executive Committee meetings shall be held at such intervals on such days as the Executive Committee shall determine. Special meetings of the Executive Committee shall be called by the President whenever he deems it advisable or upon a requisition by not less than three (3) members of the Executive Committee.
- 8.6 The proceedings of the Executive Committee shall be considered confidential.
- 8.7 The majority of the Members elected onto the Executive Committee in terms of sub-clause 10.1.1. shall form a quorum at Executive Committee meetings. If after thirty (30) minutes of the time fixed for the Executive Committee meeting a quorum is not present, such meeting shall stand adjourned to the same day in the week following (and if that day is a public holiday then to the next succeeding working day) at the same time and place, or to such other date and on such notice as the President may determine. At such adjourned meeting, of which written notice shall be given, the Members present shall form a quorum.
- 8.8 The Director shall notify Members of the Executive Committee in writing of the time and place of meetings of the Committee at least two (2) weeks before the dates of such meetings; provided that the Director may give shorter notice, being not less than 24 hours, in respect of special meetings. An agenda shall be attached to every notice of a meeting.
- 8.9 Meetings of the Executive Committee and all other Committees shall be strictly private and any Member being proved to have violated the secrecy of any meeting may be fined, suspended, or both, or expelled from the Association, and be deemed by the Executive Committee to have forfeited all claims on the funds of the Association.
- 8.10 All questions before the Executive Committee shall be decided by a majority of votes of the Members present. The President shall have a deliberative vote, and also a casting vote, at meetings over which he or she presides.
- 8.11 Three months prior to the end of its term of office the Executive Committee shall consider possible candidates to be nominated as Office Bearers for the ensuing year.

## **9. OFFICE BEARERS**

- 9.1 The Office Bearers of the Association shall be a President, a Senior Vice-President, a Junior Vice-President, an Honorary Treasurer, and the Immediate Past President of the Association.
- 9.2 The President of the Association shall be elected at the Annual General Meeting each year. Nominations shall be in writing bearing the signature of the Proposer and Secunder and the person nominated. Such nominations must be in the hands of the Director at least twenty-one (21) days before the Annual General Meeting.
- 9.3 The President shall :
- 9.3.1 preside at all meetings of the Executive Committee;
  - 9.3.2 be an ex officio Member of all Committees appointed by the Association;

- 9.3.3 conduct meetings according to the rules or debate, and sign the Minutes of the previous meeting after confirmation;
  - 9.3.4 generally exercise supervision over the affairs of the Association and;
  - 9.3.5 perform such other duties as by usage and custom pertain to the office; and
  - 9.3.6 have a deliberative vote, and also a casting vote, at all meetings over which he or she presides.
- 9.4 With the exception of the Immediate Past President, the Vice-Presidents and the Honorary Treasurer shall be elected in a manner similar to the election of the President.
- 9.5 The Senior Vice-President, and in his absence the Junior Vice-President, shall exercise the powers and carry out the duties of the President in the absence of the latter.
- 9.6 In the event of the President and the Vice-Presidents being unable, either temporarily or permanently, to perform their duties, the Executive Committee shall appoint a member of the Committee to act as President, who shall hold office until the President or Vice-Presidents are able to assume their duties or until the next election, as the case may be. In the absence of the President, any person presiding in his stead shall have a deliberative vote, and also a casting vote.
- 9.7 Election of Office Bearers shall be for one (1) year only, but each Officer shall be eligible for re-election, provided that no person may hold office as President for more than two (2) consecutive years.
- 9.8 If any Office Bearer does not intend seeking re-election, this fact shall be notified to Members in the Notice of the Meeting.
- 9.9 In the case of more than one Member being nominated for an office, a ballot shall be held and the Member who receives an absolute majority, i.e. more than the combined votes cast for the other candidates, shall be declared elected. If there are three (3) or more candidates nominated for an office and should none of them secure an absolute majority on the first ballot, the one receiving the least number shall fall out and another ballot taken of the remaining candidates. This process shall be repeated until one candidate receives an absolute majority of the votes cast, who shall then be elected.
- 9.10 Any Office Bearer of the Association may be removed from Office if :-
- 9.10.1 The Office Bearer infringes any of the provisions of this Constitution; or
  - 9.10.2 The Office Bearer acts in a manner which is detrimental to the interests of the Association.
- 9.11 No Office Bearer may be removed from Office unless afforded the opportunity to state their case personally at a meeting of the Executive Committee.
- 9.12 An Office Bearer who has appeared before the Executive Committee shall have the right to appeal to the first ensuing General Meeting of the Association. Notice of appeal shall be given to the Director, in writing, within the period stipulated, the right of appeal shall be deemed to have lapsed. The Office Bearer shall

have the right to state their case personally, to the General Meeting who may confirm or reverse the decision of the Executive Committee, thereafter the decision of the General Meeting shall be final.

## 10. THE EXECUTIVE COMMITTEE

- 10.1 10.1.1 The Executive Committee shall consist of the President, the Senior and Junior Vice-Presidents, the Honorary Treasurer, the Immediate Past President, and twenty-six (26) Ordinary Members.
- 10.1.2 Past Presidents of the Association shall be entitled to attend and speak at all meetings of the Executive Committee but shall not be entitled to vote at such meetings.
- 10.2 The twenty-six (26) Ordinary Members of the Executive Committee shall be elected at the Annual General Meeting of the Association in the following manner :
- 10.2.1 Nominations of persons to serve on the Executive Committee shall be in writing, signed by the Proposer and Secunder, and the person nominated to serve, and shall be in one of the following categories of Full Membership:
- C: Contractors
- Subcontractors
- S1: Bricklaying and Masonry
- S2: Ceilings and Partitions
- S3: Glazing, Aluminium and Metalwork
- S4: Joinery and Shopfitting
- S5: Painting and Decorating
- S6: Plastering and Tiling
- S7: Plumbing
- S8: Roofing
- S9: Waterproofing
- S10: Other Trades
- M: Manufacturers, Merchants and Suppliers
- 10.2.2 The Proposer, the Secunder and the person nominated shall be in the same category of Full Membership that best describes their businesses.
- 10.2.3 The nominations must be in the hands of the Director at least seven (7) days before the date of the Annual General Meeting of the Association.
- 10.2.4 Full Members of the Association shall be eligible to vote.
- 10.2.5 There shall be thirteen (13) Ordinary Members elected to represent the Contractor Category.
- 10.2.6 There shall be one (1) Ordinary Member elected to represent each of the Subcontractor categories, provided that there shall be two (2) Ordinary Members elected to represent Other Trades, and provided further that if no persons are nominated to represent one or more of the

Subcontractor categories, the person or persons receiving the next highest number of votes in the other Subcontractor categories shall be elected as an additional Subcontractor representative.

- 10.2.7 There shall be two (2) Ordinary Members elected to represent the Manufacturers, Merchants and Suppliers category.
- 10.3 Any member of the Executive Committee may be removed from Office if:-
- 10.3.1 the member of the Executive Committee infringes any of the provisions of this Constitution ; or
- 10.3.2 the member of the Executive Committee acts in a manner which is detrimental to the interests of the Association.
- 10.4 No member of the Executive Committee may be removed from Office unless offered the opportunity to state their case personally at a meeting of the Executive Committee.
- 10.5 A member of the Executive Committee who has appeared before the Executive Committee shall have the right of appeal to the first ensuing General Meeting of the Association. Notice of appeal shall be given to the Director, in writing within twenty-one (21) days of the date on which the decision of the Executive Committee was communicated to the member of the Executive Committee concerned. Unless such notice is given within the period stipulated, the right of appeal shall be deemed to have lapsed. The member of the Executive Committee shall have the right to state their case personally to the General Meeting who may confirm or reverse the decision of the Executive Committee. Thereafter the decision of the General Meeting shall be final.

## 11. POWERS OF EXECUTIVE COMMITTEE

In addition to any other powers conferred upon it by this Constitution, the Executive Committee shall have the powers set out hereunder :-

- 11.1 to acquire, either by purchase, lease or otherwise, any moveable or immovable property on behalf of the Association and to sell, let, mortgage, or otherwise deal with or dispose of any movable or immovable property belonging to the Association;
- 11.2 to appoint the Director, Clerks, Agents or employees of the Association, determine their duties, fix their salaries or remuneration, and to remove any of them;
- 11.3 to regulate the form of procedure in Committee;
- 11.4 to suspend, fine or to expel members in the manner prescribed in terms of Clause 4; and to remove from office any Office Bearer or member of the Executive Committee in the manner prescribed in terms of Clauses 9 and 10 respectively.
- 11.5 to regulate the admission of visitors to meetings, to admit Retired Members, Honorary Members, or recommend the admission of Life Members;

- 11.6 to have custody of the funds and other property of the Association and, subject to Clause 13, delegate to such of their Members as they think fit the power to sign all Powers of Attorney, agreements, negotiable instruments and other documents on behalf of the Association;
- 11.7 to apply the funds in payment of the Agents and employees of the Association, and for the promotion of the objects of the Association, or for any purpose in connection with same;
- 11.8 to consider and determine upon all Applications for Membership;
- 11.9 to enforce the By Laws of the Association;
- 11.10 to appoint Committees from among themselves for the purpose of investigating and reporting on any matter referred to them by the Executive Committee;
- 11.11 to donate or subscribe money to charitable or benevolent funds, and to vote money for the relief of necessitous and deserving persons or societies;
- 11.12 to institute legal proceedings on behalf of, or to defend proceedings against, the Association, and to institute legal proceedings on behalf of, or to provide legal assistance to, members on matters affecting relations between themselves and their employees, and to institute legal proceedings against individual members;
- 11.13 to do such other lawful things as, in the opinion of the Executive Committee, may appear to be in the interests of the Association or its members and which are not inconsistent with the objects set out in Clause 2 or any matter specifically provided for in this Constitution;
- 11.14 to open, operate on or close the banking account of the Association;
- 11.15 to prescribe such enrolment fees and subscriptions as may be necessary from time to time subject to the provisions of Clause 5 and 6;
- 11.16 subject to the provisions of Clause 7, to impose such levies on members as may be necessary from time to time;
- 11.17 to recover subscriptions, enforce fines and levies and all penalties imposed by action in a competent court or in such manner as may be approved;
- 11.18 subject to the provisions of Clause 4.10., to frame from time to time, such By Laws or to make such rules or issue such directives as may be necessary to give effect to the objects of the Association;
- 11.19 to do, subject to the rules and regulations for the time being in force, all other things that they may consider conducive to the interests and good management of the Association or the promotion of its objects;
- 11.20 to call a Special General Meeting of the Association of which not less than seven (7) days notice shall be given. The notice shall set out fully the object of the meeting;
- 11.21 to deal with disputes between members;





11.22 to do such other lawful things, as in the opinion of the Executive Committee, appear to be in the interests of the Association and which are not inconsistent with the objects set out in Clause 3 or any matter specifically provided for in this Constitution.

## **12. ANNUAL GENERAL MEETING**

- 12.1 The Annual General Meeting of the Association shall be held each year within three (3) months of the end of the Financial Year.
- 12.2 Special General Meetings shall be held, as and when considered necessary by a majority of the Executive Committee present, or at the request in writing of not less than five (5) Members of the Association in good standing.
- 12.3 Not less than fourteen (14) days written notice of an Annual General Meeting, and not less than seven (7) days written notice of a General or Special Meeting, shall be given to all members by the Director stating the subject to be discussed.
- 12.4 At the Annual General Meeting the President shall present a Report for the past year.
- 12.5 The quorum for any General Meeting shall be ten percentum (10%) of the total membership in good standing. If after thirty (30) minutes of the time fixed for the meeting a quorum is not present, such meeting shall stand adjourned to the same day in the week following (and if that day is a public holiday then to the next succeeding working day) at the same time and place or to such other date and on such notice as the President may determine. At such adjourned meeting, of which written notice shall be given, the Members present shall form a quorum.
- 12.6 The accidental omission to give notice of a meeting to any of the Members, or the non-receipt of such a notice, shall not invalidate any Resolution passed at any such meeting, or at any other of the meetings of the Association.
- 12.7 Unless otherwise specifically provided, the votes of the majority of the Members present shall be binding on the Association.
- 12.8 All matters on which this Constitution is silent shall be decided on motion by a majority vote of the Members present at a General Meeting.

## **13. FINANCE**

- 13.1 The Financial year of the Association shall commence on the 1st day of July in each year.
- 13.2 The Honorary Treasurer shall be responsible for the funds of the Association and shall cause proper books of account to be kept of the assets and liabilities and of the receipts and expenditure and the matters in respect of which such receipts and expenditure shall take place in such form as prescribed by the Executive Committee. The funds of the Association shall, subject to the provisions of Clause 11, be applied for the payment of expenses, the acquisition of property and for the attainment of the objects specified in Clause 3.

- 13.3 In the event of the absence of the Honorary Treasurer, the Executive Committee shall appoint a Member of the Executive to act in his or her stead during such absence.
- 13.4 At the Annual General Meeting in each year the Honorary Treasurer shall lay before the Members a statement of the income and expenditure for the past year, together with a balance sheet duly audited by a qualified Auditor, who shall be appointed by the Executive Committee, showing the position of the Association made up to 30 June in each year. The Executive Committee shall have the power to invest surplus monies in such a manner that the Association stands to benefit from such investments.
- 13.5 Cheques drawn on the Association must be signed by at least two of the following persons :
- The President; Senior Vice-President; Junior Vice-President; Honorary Treasurer; or Director.
- 13.6 No single item of expenditure in excess of R5 000,00 (five thousand rand), other than the remuneration of the Association's employees, shall be met from the funds of the Association unless such expenditure is approved by the Executive Committee.

#### 14. INDEMNIFICATION

- 14.1 No Member shall have any claim of whatsoever nature and howsoever arising against any officer, committee member or employee of the Association unless such claim arises from dishonesty, fraud, breach of trust, willful default or willful breach of duty.
- 14.2 The President, the Vice-Presidents, the Honorary Treasurer, the Director, any Committee Member or other officer or employee of the Association shall be indemnified and held harmless by the Association against all costs, losses and expenses they may incur as a result of their carrying out the instructions of the Association, and it shall be the duty of the Executive Committee to pay out of the funds of the Association, all costs, losses and expenses which any such officer, Committee Member or employee may incur or become liable to pay by reason of any contract entered into, any act or omission done or omitted to be done in the discharge of their duties or in their capacity as such officer or employee, provided that the indemnity provided herein shall not apply to any costs, losses or expenses attributable to the dishonesty, fraud, breach of trust, willful default or willful breach of duty of any such officer, Committee Member or employee.
- 14.3 The President, the Vice-Presidents, the Honorary Treasurer, the Director, any Committee Member or other officer or employee of the Association shall not be liable to any act or omission of any other officer, Committee Member or employee of the Association; or for any loss or expense suffered by the Association in consequence of any absence of, or any defect in, any title to any property acquired by order of the Executive Committee for or on behalf of the Association, or for any absence of, or defect in, any security upon which any of the monies of the Association shall be invested; or for any loss or damage arising from the insolvency or delictual act of any person with whom monies, securities or assets shall be deposited; or for any loss or damage occasioned by an error of judgement or oversight on the part of such officer, Committee Member or employee; or for any loss or damage occasioned by any advice given or recommendation made by such officer, Committee Member or employee; or for any such loss, damage or misfortune of whatsoever nature which shall happen in or in relation to the execution of his office or employment unless the same be attributable to their own dishonesty, fraud, breach of trust, willful default or willful breach of duty.

## 15. DIRECTOR

The Executive Committee shall appoint a Director who shall have custody of the records of the Association and shall be its chief administrative official, who shall discharge such duties and be obliged to conform to such terms of employment as may be determined from time to time by the Executive Committee. The Director shall also take the necessary steps to ensure that the requirements of sections 98, 99 and 100 of the Act are complied with.

## 16. REPRESENTATION ON A BARGAINING COUNCIL

- 16.1 The Executive Committee may, after consultation with the Members of the Association, decide that the Association shall become a party to a Bargaining Council established in terms of the Act.
- 16.2 The Association's representatives on any such Council shall be nominated by the Executive Committee and shall be elected each year by the Executive Committee.
- 16.3 Representatives on a Bargaining Council may be removed by the Executive Committee and may resign giving one (1) months' notice to the Executive Committee or such notice as may be prescribed in the Constitution of the Bargaining Council.
- 16.4 All vacancies caused by any reason whatsoever shall be filled by the Executive Committee.
- 16.5 Representatives shall have full power to enter into agreements on behalf of the Association and such agreements shall not be subject to ratification by the Executive Committee or a General Meeting.

## 17. BALLOTS

- 17.1 In addition to those cases in respect of which the taking of a ballot is compulsory in terms of this Constitution, a ballot on any question shall be taken if a General Meeting or the Executive Committee so decide, and shall also be taken -
  - 17.1.1 if demanded in writing by not less than ten percentum (10%) of the Members of the Association in good standing; or
  - 17.1.2 on any proposal to declare or take part in a lockout.
- 17.2 Ballots shall be conducted in the following manner :-
  - 17.2.1 Notice of a ballot shall be given to each Member of the Association in writing by the Director, at least three (3) days before the ballot is to be taken, provided that a ballot may be taken without notice at any General Meeting or Executive Committee Meeting on the decision of a majority of the Members present.
  - 17.2.2 Two scrutineers shall be appointed by the Executive Committee to supervise any ballot and to ascertain the result thereof.

- 17.2.3 Ballots shall be conducted at the place, on the date and during the hours as may be specified in the notice referred to in sub-clause 17.2.1 of this Clause.
- 17.2.4 Ballot papers shall be provided by the Director. The issue to be voted upon shall be set forth clearly on the ballot papers and such papers shall not contain any information by means of which it would be possible to identify the voters.
- 17.2.5 One ballot paper only shall be issued on demand at the place and during the hours fixed for the taking of the ballot, to each Member who is entitled to vote.
- 17.2.6 Each voter shall, in the presence of the scrutineers, be issued with one ballot paper which he shall thereupon complete, fold and deposit in a container provided for the purpose.
- 17.2.7 Ballot papers shall not be signed or marked in any way apart from the mark required to be made by a Member recording his vote. Papers bearing any other marks shall be regarded as spilt and shall not be counted.
- 17.2.8 On completion of the ballot or so soon thereafter as possible, the result thereof shall be ascertained by the scrutineers in the presence of the Director and made known through this official in the case of elections, the candidates up to the required number receiving the highest number of votes shall be declared elected.
- 17.2.9 Ballot boxes shall be inspected by the scrutineers and sealed by the Director in their presence prior to the issue of ballot papers.
- 17.2.10 Ballot papers, after they have been counted, including spoilt papers, shall be placed in a container which shall be sealed and retained by the Director for not less than three (3) years.
- 17.3 Except as provided in Clause 11 of this Constitution, the Executive Committee shall be bound to take action according to the decision of a majority of the Members voting by ballot.
- 17.4 No ballot involving the declaration of or participation in a lock-out shall be taken until the matter giving occasion therefor has been dealt with as provided for in the Act and that the rights of members as detailed in the Act are complied with.

## **18. AMALGAMATION WITH SIMILAR ASSOCIATIONS**

- 18.1 Notwithstanding anything to the contrary contained in this Constitution, the Executive Committee is empowered to negotiate a written agreement on such terms and conditions as it deems expedient, with any other registered employers' organisation, hereinafter referred to as "the other organisation", for the automatic admission to full membership of this Association of all Members of the other organisation.
- 18.2 The membership of this Association of these Members of the other organisation affected by a transfer in terms of an agreement entered into in terms of sub-clause 18.1. above, shall automatically commence as from the date to be stipulated in the agreement and membership of the other organisation shall cease as from that date.

- 18.3 The conditions of membership of those Members of the other organisation admitted to membership of this Association in terms of an agreement entered into in terms of sub-clause 18.1. above, shall not be less favourable than the conditions applying to the existing Members of this Association and the terms and conditions of such agreement shall not be inconsistent with the provisions of the Act.
- 18.4 A copy of any agreement entered into in terms of sub-clause 18.1., shall be lodged with the Registrar of Labour Relations for record purposes within one (1) month of the date on which the agreement becomes effective.

## 19. WINDING UP

- 19.1 The Association shall be wound up if at a ballot conducted in the manner prescribed in the Constitution, not less than three-fourths (3/4) of the number of members in good standing present at a General Meeting, vote in favour of a resolution that the Association be wound up or if for any reason the Association is unable to continue to function.
- 19.2 If a resolution for the winding up of the Association has been passed as provided in sub-clause 19.1., or if for any reason the Association is unable to continue to function and which cannot be remedied in terms of the Act, the following provisions shall apply :
- 19.2.1 The last appointed President of the Association, or if he is not available, the available Members of the last appointed Executive Committee of the Association, shall forthwith transmit to the Registrar of Labour Relations appointed in terms of the Act , a statement signed by him or them setting forth the resolution adopted or the reasons for the Association's inability to continue to function, as the case may be, and the available members of the Association's last appointed Executive Committee shall appoint a Liquidator to carry out the winding up. The Liquidator shall not be a member of the Association and shall be paid such fees as may be agreed upon between him and the said members of the Association's last appointed Executive Committee, who were in good standing as at the date of dissolution. Should the parties fail to agree upon the fees to be paid, the said Registrar shall fix the basis on which the Liquidator shall be paid.
- 19.2.2 The Liquidator so appointed shall call upon the last appointed Office Bearers of the Association to deliver to him the Association's books of accounts showing the Association's assets and liabilities together with the Register of members showing for the twelve (12) months prior to the date on which the Resolution for winding up was passed or to the date as from which the Association was unable to continue to function, as the case may be, hereinafter referred to as the date of dissolution, the subscriptions paid by each member and his address as at the said date.
- The Liquidator shall also call upon the said Office Bearers to hand over to him all unexpended funds of the Association and to deliver to him the Association's assets and the documents necessary in order to liquidate the assets.
- 19.2.3 The Liquidator shall take the necessary steps to liquidate the debts of the Association from its unexpended funds and any other monies realised from any assets of the Association and if the said funds and monies are insufficient to pay all creditors after the Liquidator's fees and the expenses of winding up have been met, the order in which creditors shall be paid shall, subject

to the provisions of sub-clause 19.2.5., be the same as that prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, and the Liquidator's fees and the expenses of winding up shall rank in order or preference as though he were a liquidator of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.

- 19.2.4 After payment of all debts in accordance with sub-clause 19.2.3, the remaining funds, if any, shall be distributed by the liquidator amongst the members, or in accordance with the wishes of the members, of the Association in good standing at the date of dissolution, in accordance with a formula as agreed upon by the members present at a General Meeting called in terms of sub-clause 19.1.
- 19.2.5 The liability of members shall for the purpose of this Clause be limited to the amount of subscriptions due by them to the Association in terms of this Constitution as at the date of dissolution.
- 19.2.6 After the payment of all the liabilities and assets that cannot be disposed of in accordance with the provisions of this clause shall be realised by the liquidator and the proceeds paid to the Commission for Conciliation Mediation and Arbitration in accordance with section 103 (5) of the Act.

## 20. AMENDMENTS

- 20.1. No provision of this Constitution shall be altered, added to or amended, nor any new provision adopted, except by the votes of three-fourths (3/4) of the Members present at a General Meeting of the Association and after seven (7) days notice shall have been given by circular of the proposed change and specified in the notice convening the meeting.
- 20.2. No amendments or additions shall have any force or effect until certified and registered in terms of Section 101(3) of the Act .