

- (5) After holding such inquiry the Employer shall notify the Employee of the findings on each of the charges in the show cause notice and the punishment, if any, imposed by the Employer. Provided that if the Employer fails to make an order except for reasons beyond the control of the Employer on the charges in the show cause notice within thirty (30) working days from the conclusion of the inquiry into such charges, the Employee shall not be liable to be punished thereafter in respect of such charges and no inference adverse to the Employee in respect of such charges shall be drawn from such charges.
- (6) If the employee is under suspension and the Employer after such inquiry makes order that -
 - (a) The employee shall not be dismissed then the Employee shall resume employment forthwith and shall subject to the provisions of Sub-clause 23(1)(c) hereof be paid all wages and entitlements due for the period of suspension irrespective of such other punishment less than dismissal that may be imposed by the Employer on the findings as to the charges in the show cause notice;
 - (b) the employee shall be dismissed, the Employee's dismissal shall take effect from the date of the Employee's suspension and accordingly the Employee shall not be paid for the period of such suspension;
 - (c) in view of the serious or involved nature of the charges in the show cause notice against the Employee, the Employer is unable to make a final order as it is necessary and desirable that the matter be referred to the Police or other authorities for further investigations or inquiries and that the matter be therefore referred to the Police or other authorities or if in view of the serious or involved nature of the charges preferred against the Employee the matter had been previously referred to the Police or other authorities for investigations or inquiries that the outcome of such investigations or inquiries be awaited, then in either of such circumstances the employee may remain suspended without pay.
- (7) If in any case where an Employee is suspended as provided for herein the Employer fails to make order under paragraphs (a) to (c) of the preceding Sub-clause for any reason other than that of the Employee's own seeking within thirty (30) working days from the date of the Employee's suspension, the Employee shall be entitled to half his normal remuneration for a period of thirty (30) days from the date of such suspension and to his full remuneration for the period of suspension in excess of thirty (30) days up to the date on which the Employer makes an order under paragraphs (a) to (c) of the preceding Sub-clause, irrespective of the outcome of the inquiry.
- (8) In any case where the employee is suspended as provided herein, the Employer shall make an order under paragraphs (a) to (c) of Sub-clause 6 within ninety (90) days of the date of suspension of the Employee unless he is prevented from so doing by reason of the Employee's own seeking or for reasons beyond the control of the Employer or it is agreed between the Employer and the Union that in the circumstances of the case the period of ninety (90) days be extended for such further time as may be agreed.
- (9) The Employer shall not be required to hold an inquiry as referred to in Sub-clauses 4 and 5 hereof where the Employer proposes to warn the Employee or where the Employee admits to the charge or charges. Provided however, that if the Union disputes the warning or punishment imposed on the Employee by the Employer and requests the holding of an inquiry the Employer shall comply with such request and the provisions relating to the holding of an inquiry shall then apply subject to the exception that the fact that the inquiry had not commenced within ten (10) working days after the receipt of the Employee's explanation shall not be material or relevant.

25. **Retirement.**- On reaching the age of fifty five (55) years an Employee shall *ipso facto* retire and cease to be employed by the Employer and there shall be no obligation on the Employer to give the Employee any notice of such retirement. Provided however, that an Employee who has retired may, in the discretion of the Employer, be employed after his retirement on a temporary basis on such terms as may be mutually agreed.

26. **Termination of Services.**- (1) Every contract, whether oral or written, for the hire of any Employee by the Employer except for work usually performed by the day, or by the job, or by the journey, shall (subject to the provisions of Clause 4 hereof or unless otherwise expressly stipulated) be deemed and taken in law to be a contract for hire and service for the period of one month and to be renewable from month to month and shall be deemed and taken in law to be so renewed, unless one month's previous notice be given by either party to the other of his intention to determine the same and such month has expired.

(2) Where an Employee is engaged for a particular job or period such as casual or temporary work, he shall be informed thereof at the commencement of his employment and his contract of service will terminate on the completion of the job or period or the failure of the Employee to complete the job within reasonable time.

27. **Union Recognition.**– The Union shall be competent to make representations on behalf of any of its members who is employed in any workplace of the Employer bound by this Agreement. In regard to issues of general application or to the effect of principle such as matters affecting general terms and conditions of employment either in the workplace or the trade as a whole, the following provisions shall apply–

- (1) When the Union is representative of not less than forty per cent (40%) of the employees whose membership subscription is not in arrears, the Employer of such employees will recognize the Union for the purpose of general claims and matters and negotiate with it on that basis. If there is any other Union which is also representative of not less than forty per cent (40%) of such Employees the Employer will be at liberty to require that general claims and matters be discussed and negotiated with the Union competent to make general demands by virtue of the requisite membership and not separately with each such Union.
- (2) When the Employer carries on more than one type of business or has more than one workplace and the claim or matter is restricted to one type of business or one workplace but is applicable or capable of being applicable to other Employees in the service of the Employer, the competence of the Union to make such claims or raise such matter shall be determined by reference to the duly qualified members of such Union in proportion to the total number of Employees in the service of the Employer in Sri Lanka.

28. **Disputes Procedure.**– (1) In the first instance the Union shall submit any demand on behalf of its members to the Employer of such members and give the Employer at least ten (10) working days time within which to reply. If in the Union's opinion the Employer's reply is unsatisfactory the Union and the Employer shall explore the possibility of reaching a settlement.

(2) If there is no settlement the Union shall take up such unresolved dispute with the Employer's Federation of Ceylon and the discussion would be held at the Employers' Federation of Ceylon with all parties to resolve such dispute.

(3) When the Union concludes that negotiations with the Employer have been abortive it shall ask the Department of Labour to intervene and give the Department not less than ten (10) working days to arrange conference and or discussions with a view to a settlement of the dispute. Negotiations under the aegis of the Department of Labour shall then proceed until the Department of Labour reports failure.

(4) Subject to the provisions of Clause 30 hereof all disputes between the Union and the Employer or between the parties hereto shall be settled in accordance with the provisions of the Industrial Disputes Act and the regulations made thereunder.

(5) Any party to this Agreement shall not instigate, support or engage in any unfair labour practice during the currency of this Agreement.

29. **How Anomalies in the Course of Implementing this Agreement shall be Dealt with.**– Any anomaly, arising from the implementation of this Agreement shall be settled by negotiation between the Employer and the Union and if the matter cannot be settled by negotiation, it shall be settled in accordance with the provisions of the Industrial Disputes Act and the regulations made thereunder.

30. **Trade Union Action.**– The Union and the Employees jointly and severally agree with the Employer that during the continuance in force of this Agreement they shall not engage in any strike or other form of trade union action against the Employer, in respect of any dispute between the Union or the Employees and the Employer, whether or not such dispute is related to the Agreement, except where such dispute has been caused by an act of the Employer which in the opinion of the controlling body (by whatsoever name called) of the Union is mala fide or vindictive or calculated to threaten or undermine the existence or the legitimate activities of the Union and / or its members or is grossly unfair or seriously detrimental to the interest of the Union and / or its members. Provided however that at least seven (7) days notice in writing shall be given by the Union to the Employer, the Federation and the Commissioner General of Labour before the date of commencement of any intended strike or other form of trade union action consequent upon an act of the Employer which in the opinion of the controlling body (by whatsoever name called) of the Union is mala fide or vindictive or calculated to threaten or undermine the existence or the legitimate activities of the Union and or its members is grossly unfair or seriously detrimental to the interest of the Union and / or its members.

31. **Variation of Terms and Conditions of Employment and Benefits.**– (1) The Union and the Employees jointly and severally agree with the Employer that during the continuance in force of this Agreement they will not seek to vary, alter or add to all or any of the terms and conditions of employment presently applicable to any of the Employees covered and bound by this Agreement as amended or altered in terms of this Agreement, or all or any of the benefits presently enjoyed by any of the Employees covered and bound by this Agreement other than by mutual agreement.

(2) The Employer agrees with the Union and the Employees that the Employer shall not seek to vary, alter or withdraw all or any of the benefits presently enjoyed by the Employees other than by mutual agreement.

(3) Any dispute or difference arising from negotiations under the provision of Sub-clauses 1 or 2 may be resolved by voluntary arbitration but only if all the parties, concerned agree to submit such dispute or difference for settlement by voluntary arbitration.

PART II

CONTAINING THE FACILITIES AND CONCESSIONS GRANTED BY THE EMPLOYER TO THE UNION

1. **Breaches of Collective Agreement.** - If in the opinion of the Employer and the Federation, the Union shall commit a breach of any of the terms of this Agreement, then and in any such event the Union shall cease to be entitled to enjoy the facilities and concessions granted by the Employer in the succeeding clauses of this part and same shall stand withdrawn without prejudice to the Employer's right to restore such facilities and concessions upon such terms and conditions as the Employer may decide.

2. **Domestic Inquiries.** - If an employee who is furnished with a show cause notice in terms of Clause 24 is a member of the Union, the following provisions shall apply to the inquiry held by the Employer pursuant to such show cause notice -

- (a) The Employer will, subject as hereinafter provided, allow another member of the Union (hereinafter referred to as 'an Observer') to be present as an Observer without loss of wages for absence from work.
- (b) If the Employer who is served with a show cause notice desires an 'Observer' to be present at the inquiry to be held pursuant to such show cause notice, he shall forty eight (48) hours at least before the time appointed for the commencement of the inquiry submit to the Employer the name of such Observer.
- (c) An Observer may answer any questions which the person who conducts the inquiry may ask him, but an Observer shall not be entitled to represent the Employee who is served with a show cause notice or otherwise partake in the inquiry.
- (d) The person who conducts an inquiry shall be entitled to require an Observer who obstructs such inquiry, in any manner whatsoever to withdraw therefrom an Observer shall forthwith comply with such requirement.
- (e) The absence of an Observer from the whole or part of an inquiry for any reason whatsoever shall not vitiate such inquiry, nor the proceedings there at, nor the findings pursuant thereto.

3. **Union Meetings.** - The following provisions shall apply to meetings of the Union -

- (a) In respect of each meeting which the Union desires to hold at the Employer's premises, as application for permission shall be previously made to the Employer.
- (b) If the Employer decides to grant permission, the Employer shall be entitled to impose inter-alia, one or more of the undernoted conditions:
 - (i) that no person other than an Employee in the service of that Employer shall be present at a meeting of the Union;
 - (ii) on occasions such as the Annual General meeting of the Union, office bearers of the Parent Union may, with the previous approval of the Employer, attend;
 - (iii) fix a time limit within which a meeting of the Union shall be concluded or adjourned.
- (c) It shall be the duty of the Union and its office bearers to ensure that the terms on which permission to hold a meeting of the Union is granted are duly complied with.
- (d) It shall be the duty of the Union and its office bearers to ensure that no damage is caused in the course of the, or in connection with a meeting of the Union to the Employer's property or any other person at the Employer's premises and the Union shall indemnify the Employer and keep the Employer indemnified against any such damage.

4. **Duty Leave.** - (1) THE FOLLOWING PROVISIONS SHALL APPLY TO DUTY LEAVE. - Without prejudice to the right of the Employer, to refuse to grant permission if, in his discretion the exigencies of the circumstances warrant refusal, the Employer will generally grant permission for not less than two Office Bearers of the Union -

(a) to be present at conferences held under the aegis or the Employer of the Employers' Federation of Ceylon or the Department of labour in connection with a dispute between the Union and the Employer.

or

(b) to attend inquiries before Industrial Courts, arbitrators or Labour Tribunals -

without loss of wages for such absence.

- (2) The Employer will, in his discretion, grant leave without remuneration to an Employee to attend a Trade Union course or seminar or conference either in Sri Lanka or abroad unless the Employee concerned is entitled to annual or other holidays which he wishes to utilise for the purpose.

5. **Check-Off.** - (1) The facility of check-off shall be granted, subject to Clause I of Part II hereof only so long as the Union represents no less than forty (40) percent of the Employees covered and bound by this Collective Agreement.

(2) The Employer shall on the written request of an Employee deduct from the wages due to such Employees the current monthly Union dues as are specified by the Employee to be payable monthly by the Employee to the Union and remit the amount so deducted to the Union in accordance with the procedure and upon and subject to the condition hereinafter set forth.

(3) Every employer who agrees to the deduction of Union dues from his wages shall sign a statement to that effect in the form set out in Form No. 1 referred to as an 'Authorization'.

(4) Every Employee shall be entitled to withdraw his agreement to check-off at any time by signing a statement to that effect in the form set out in Form No. 2 hereinafter referred to as a 'Revocation'.

(5) As far as practicable deduction under an authorization shall commence from the wages due immediately after the date of receipt of such authorization and shall continue thereafter until the authorization is cancelled by a revocation.

(6) As far as practicable deductions under and authorization shall cease from the date of receipt of a revocation canceling such authorization. Provided however -

(a) that the Employer shall not be liable in any manner whatsoever to the Union or the Employee concerned for failure to comply with Sub-clause 5 or 6;

(b) that at his discretion the Employer shall be entitled not to make deductions by way of check-off in any month in which the deductions from the Employee's wages in that month exceed the deduction permitted by Law;

(7) The Employer shall not later than the tenth (10th) day of each month remit the Union dues deducted from the wages of the Employees in the month immediately preceding, to the Treasurer of the Union in accordance with the tenor of each authorization by a cheque payable to the treasurer thereof and crossed 'Account Payee'.

(8) The cheque shall be sent at the risk of the Union and the Employees concerned by post in a prepaid envelope addressed to the Treasurer of the Union at its address for the time being.

(9) The Treasurer of the Union shall promptly acknowledge receipt of the cheque.

(10) The Employer shall not be liable to pay to the Union or the Treasurer on its behalf as aforesaid any sum other than the Union's dues actually deducted.

FORM No. 1

Name of Employer : HAYMAT LIMITED

AUTHORIZATION

As I am an Employee covered and bound by the Haymat Limited Collective Agreement 2004 and I desire to avail myself of the facility for check-off contained in the Collective Agreement to which I am eligible as a member of the United Tea Rubber and Local Produce Workers' Union, please deduct from my wages each month a sum of Rupees..... (Rs.) in respect of my current monthly membership dues to the said Union and remit same to the said Union on my behalf. The first payment should please be made from my wages due immediately following the date hereof.

.....
(Date of signing)

.....
(Signature of Employee)

.....
(Full name of Employee)

.....
Checkroll Number

Received on
(To be filled by the Employer)

FORM No. 2

Name of Employer : HAYMAT LIMITED

REVOCATION

With reference to the authorization submitted by me, please cease to deduct from my wages any further membership dues in favour of United Tea Rubber and Local Produce Workers' Union, with effect from the wages next due to me immediately following the date hereof.

.....
(Date of signing)

.....
(Signature of Employee)

.....
(Full name of Employee)

.....
Checkroll Number

Received on
(To be filled by the Employer)

PART III

CONTAINING DEFINITIONS OF CERTAIN WORDS

In Parts I and II of this Agreement unless excluded by the Subject or context, the following words shall have the meaning set opposite to them.

<i>Words</i>	<i>Meaning</i>
Branch Union	The Branch Union at the factory
Check-off	The act of the Employer deducting in terms of Clause 5 of Part II the subscriptions payable to the Union by an employee from the latter's pay.
Dispute	Shall have the same meaning as in the Industrial Disputes Act.
Employee (For convenience sometimes referred to as 'he' or its grammatical variations)	An employee covered and bound by this Agreement
Employer	Haymat Ltd
Federation	Employers' Federation of Ceylon
Industrial Disputes Act	The Industrial Disputes Act, No. 43 of 1950
Normal Incremental Date	The date on which an employee would normally receive an increment
Relevant Wages Board	The Wages Board which covers the Trade in which the particular employee is employed in.
Union	United Tea Rubber and Local Produce Workers' Union
Wage	The monthly wage according to the scales of consolidated wages in the First Schedule hereto.
Week	The period between midnight on any Saturday night and midnight on the succeeding Saturday night.
Year	A continuous period of twelve (12) months

Words importing the masculine gender shall include the feminine

Words importing the singular number shall include the plural and vice versa