

12 January 2006

Memorandum of Agreement

On the Collection, Recycling, Re-use and Reduction of Waste Tyres in South Africa

Between

**The Department of Environmental Affairs and Tourism
(DEAT)**

and

**The South African Tyre Recycling Process Company
(an association not for gain incorporated under section 21 of the Companies Act No. 61 of 1973
and registered under registration number 2002/027503/08)
(SATRP Company)**

Representing and duly authorised by the Tyre Suppliers

and

The Waste Tyre Industry

**Representing and duly authorised by the National Integrated Tyre Recyclers Forum (NITREF), and
the Association of Cementitious Material Producers (ACMP)**

1. Preamble

Whereas –

- 1.1 The Parties to this Agreement wish to promote the collection, re-use, reduction and recycling of waste tyres in South Africa, in particular to reduce the amount and volume of waste tyres littering the country;
- 1.2 The Waste Tyre Industry anticipates being able to make use of waste tyres in various sectors of industry thereby reducing the environmental problems caused by waste tyres in South Africa;
- 1.3 The Tyre Suppliers, in agreement with all tyre industry stakeholders, have recognised the need to address the pollution problems caused by the indiscriminate disposal of waste tyres and to this end have formed the South African Tyre Recycling Process Company (association incorporated under section 21) (SATRP Company) to;
 - (a) manage a sustainable collection process for waste tyres, arising after the promulgation of the Waste Tyre Regulation, in South Africa, and to make them available to Waste Tyre Users;
 - (b) promote the expansion of the waste tyre industry;
 - (c) conduct a public awareness and support programme in respect of the environmentally sound disposal of waste tyres.

It is hereby agreed:

2. Definitions

All definitions used in the Waste Tyre Regulation, published in terms of section 24 of the Environment Conservation Act, 1989, shall apply to this agreement, unless re-defined in this Agreement.

“**collection**” shall mean the collection, transport, storage, preparation for delivery, delivery and administration of waste tyres;

“**green fee**” shall mean the amount that will be levied by the SATRP Company on the tyre suppliers, the proceeds of which will be utilised to fund the cost of the operation of the SATRP Company,

“**tyre casing**” shall mean the structural part of a used tyre which may or may not have residual tread depth for further road use and when subjected to inspection of the of the structural soundness of the casing, can be reprocessed by vulcanising new tread to the body and can be safely returned to its originally intended purpose,

“**tyre derived fuel users**” shall mean a person or institution engaged in energy recovery from waste tyres;

“**tyre suppliers**” shall mean a manufacturer, importer, or retreader of tyres in the South African market;

“**tyre movement**” shall mean any new, imported retreaded or imported tyre casing sold, donated, replaced under warrantee, provided as part of a promotional campaign or rejected as having a factory fault or otherwise disposed of;

“**user waste**” shall mean the waste tyre residue or remainder, of any process or activity, that has not been commercially disposed of by the waste tyre user to be converted or transformed into new product;

“**waste tyre industry**” means Waste Tyre Users;

“**waste tyre recycler**” means any person or institution, using any process by which waste tyres are converted or transformed into new products, or raw materials for other purposes, excluding energy

recovery and/or any other process by which a used tyre is retreaded or repaired for return to its original intended use;

“**waste tyre transporter**” means any person or institution, contracted as such to the SATRP Company, who collects, transports, prepares for delivery or stores waste tyres;

“**waste tyre users**” means any tyre derived fuel user or waste tyre recycler.

A. SATRP Company

3. Management system

The SATRP Company will: -

3.1 Develop a management system to account for the annual: -

- Number of tyres sold in South Africa,
- Number of waste tyres collected,
- Number of waste tyres disposed of,
- Amount of the Green Fee collected, and
- Distribution of the Green Fee.

The SATRP Company will only report and publish consolidated figures (not broken down between individual Suppliers and Waste Tyre Users) of tyres supplied, collected and disposed of, which consolidated figures will be used to assess the overall success of the collection process.

Appoint Waste Tyre Transporters in all provinces of South Africa.

4 Distribution of waste tyres collected

In order to allow free competition in the allocation of waste tyres collected, a tender process will be instituted by the SATRP Company. The SATRP Company will advise the Waste Tyre Industry of the mass of waste tyres being offered for tender from time to time.

Waste Tyre Users will tender for;

- the mass of waste tyres required,
- the category or sub-category of waste tyres required,
- the period over which they wish to receive supply, and
- the amount of the disposal fee, in terms of clause 15, that they wish to receive,

The SATRP Company will award contracts in terms of clause 4.1 and after their expiry the quantities and disposal fee will be available for re-tender by existing and possible new entrants in to the Waste Tyre Industry

If the total mass of waste tyres tendered for, by all Waste Tyre Users, exceeds the amount offered, tenders will be evaluated and waste tyres allocated based on a pre-determined process approved by the Board of the SATRP Company.

Only Waste Tyre Users that have contracted to the SATRP Company will be eligible to receive waste tyres and disposal fees from the SATRP Company.

5 Funding the SATRP Company

The Board of Directors of the SATRP Company will: -

Determine the rate at which the green fee is to be raised, in order to achieve its objectives, as provided for in annexure A.

Prepare an annual business plan and cost budget,

Advise the Tyre Suppliers, from time to time, of the rate per tyre at which the Green Fee is to be charged,

Collect the Green Fee from the Tyre Suppliers,

Administer the funds collected,

Publicise the Green Fee widely in order to: -

ensure that no profit margin is included in it at any stage between Tyre Supplier and consumer, promote education and awareness with regard to the recovery and re-use of waste tyres,

Undertake to use all funds received for the sole purpose of implementing the Company's objectives.

Not make any payment for waste tyres.

6 Promotion of Waste Tyre Industry.

An incentive based approach will be adopted by the SATRP Company to encourage the establishment and sustainability of the Waste Tyre Industry, to this end the Waste Tyre User will: -

be paid a maximum establishment subsidy of R0.38/kg of waste tyres received from a Waste Tyre Transporter for the period of the contract as awarded in terms of clause 4.2 subject to a maximum period of five years, and

be paid a maximum disposal fee of R0.14/kg of waste tyres received from a Waste Tyre Transporter for the period of the contract as awarded in terms of clause 4.2.

7 Categories of tyres and Phase in

It is recognised that there are various categories of tyres and that it will not be possible for the Collection process to begin on all categories at the same time. In this regard the various categories will be defined and a phase in programme for the process will be established.

Phase one.

Category one – new, used and retreaded tyres supplied for;

“Licensed highway vehicles with rim sizes 10” to 24.5” and an outside diameter of less than 48.5” (1230mm) falling within Custom tariff headings 4011.10 and 4011.20”

Collection of waste tyres in this category to start not later than twelve months after the date of promulgation of the Waste Tyre Regulation.

Additional categories and phase in times.

7.2.1 The SATRP Company will define, and begin the Collection process for, a minimum of one additional category of waste tyres per annum, from the date of the start of the Collection of category one waste tyres.

B. DEAT

8. Promotion of this Agreement.

The DEAT: -

- 8.1 Will encourage green procurement practises at all levels of government, including local government to further support the extension of the recycled materials market.
- 8.2 In collaboration with the Department of Trade & Industry (DTI) and the International Trade Administration Commission (ITAC) agrees to implement such legislative and other measures as are required so as to ensure that importers of tyres and tyres imported into the Republic of South Africa comply with the provisions of this Memorandum of Agreement and any regulations that may be promulgated for the equal protection of domestic producers of tyres.
- 8.3 In collaboration with the SA Bureau of Standards to implement SANS 312 and such other measures as are required so as to ensure compliance with the provisions of this Memorandum of Agreement and any regulations that may be promulgated to ensure the sustainability of the Collection process.
- 8.4 Act expeditiously in the application of Section 20 (2) of the Environment Conservation Amendment Act, 2003, when Waste Tyre Users apply for the necessary permits to operate a disposal site.
- 8.5 Advise the SATRP Company, upon request, whether a Waste Tyre User, tendering for the supply of waste tyres from the SATRP Company, is in possession of, or has an exemption from, a valid permit to operate a disposal site.
- 8.6 Will assist the SATRP Company in assuring that the Tyre Suppliers and Waste Tyre Users adhere to the principles of the Waste Tyre Regulation and this Memorandum of Agreement.

C. Tyre Suppliers

9. Raising and Administration of Green Fee

The Tyre Suppliers will apply the Green Fee as advised by the SATRP Company, and

Calculate the Green Fee based on their monthly Tyre Movement,

Complete the SATRP Company monthly return and submit it to the auditor of the SATRP Company by the 15th of every month,

Pay the Green Fee as calculated on the monthly return referred to in clause 9.2 to the SATRP Company, or its auditor, not later than 60 (sixty) days after the due date of that return,

Invoice the Green Fee as a separate line item on all new tyre sales,

Invoice the Green Fee, to their clients, at the same rate as published by the SATRP Company without providing for a profit margin or discount,

Include the Green Fee in the cost of imported used tyres and imported retreaded tyres and not charge a Green Fee on any retreaded tyre sales.

10. Supplier Audit

- 10.1 The Tyre Suppliers will ensure that the auditor of the SATRP Company, or its appointed agent, is, at all reasonable times, provided with access to, and opportunity

for review of, all necessary documentation supporting the Green Fee calculations and payments.

- 10.2 The auditor and its appointed agent will maintain the confidentiality of the Tyre Supplier's information.

D. Waste Tyre Users

11 Waste tyre usage

The Waste Tyre Users will provide, in the format required by the SATRP Company, by the 15th of every month with: -

- Their waste tyre requirement forecast,
- A certificate of the mass of waste tyres received,
- A certificate of the mass of waste tyres processed,
- A certificate of safe disposal of waste tyres processed,
- A certificate of the mass of User Waste generated from the waste tyres processed in clause 11.3.

12. Facilities to be provided

The Waste Tyre Users will: -

- 12.1 Provide a weighbridge, or other SATRP Company approved system, to verify the mass of waste tyres received,
- 12.2 Be responsible for the unloading of all deliveries of waste tyres delivered by Waste Tyre Transporters within a reasonable time.

13 User Waste

- 13.1 The SATRP Company will not be responsible for the collection of any User Waste from the Waste Tyre User and if required to do so the cost of such Collection shall be borne by the Waste Tyre User.

14 Establishment subsidy

In accordance with paragraph 6.1.1 the SATRP Company will pay the Waste Tyre User a one time establishment subsidy, monthly in arrears, subject to and based on: -

- 14.1 The verified monthly mass of waste tyres received by the Waste Tyre User from Waste Tyre Transporters,
- 14.2 The proportion of the waste tyre used in the Waste Tyre User's process. E.g. 100% usage of the waste tyre will qualify for the full subsidy whereas 25% usage will attract 25% of the subsidy,
- 14.3 The establishment subsidy will be calculated monthly from the date of the first delivery of waste tyres from a Waste Tyre Transporter to the Waste Tyre User for the period of the contract,
- 14.4 The establishment subsidy will be paid by cheque or electronic transfer made to the account of the Waste Tyre User, no cash payments will be made,

- 14.5 The establishment subsidy will only be paid to Waste Tyre Users that are recipients of waste tyres from Waste Tyre Transporters.
- 14.6 The SATRP Company reserves the right to employ Waste Tyre Users to process waste tyres in order to reduce transport costs. Any Waste Tyre User so employed and paid for their services from the Green Fee will not be entitled to receive an establishment subsidy on the quantities processed.

15 Disposal fee

In accordance with paragraph 6.1.2 the SATRP Company will pay the Waste Tyre User a disposal fee, monthly in arrears, subject to and based on: -

- 15.1 The verified monthly mass of waste tyres received by the Waste Tyre User from Waste Tyre Transporters,
- 15.2 The disposal fee will be calculated monthly from the date of the first delivery of waste tyres from a Waste Tyre Transporter, to the Waste Tyre User, for the period and at the rate agreed to in the contract,
- 15.3 The disposal fee will be paid by cheque or electronic transfer made to the account of the Waste Tyre User, no cash payments will be made,
- 15.4 The disposal fee will only be paid to Waste Tyre Users that are recipients of waste tyres from Waste Tyre Transporters.
- 15.5 The SATRP Company reserves the right to employ Waste Tyre Users to process waste tyres in order to reduce transport costs. Any Waste Tyre User so employed and paid for their services from the Green Fee will not be entitled to receive a disposal fee on the quantities processed.

16 Waste Tyre User Audit

- 16.1 The Waste Tyre Users will ensure that the auditor of the SATRP Company, or its appointed agent, is, at all reasonable times, provided with access to, and opportunity for review of, all necessary documentation supporting the establishment subsidy and disposal fee claims and payments.
- 16.2 The Waste Tyre Users will ensure that the auditor of the SATRP Company, or its appointed agent, is, at all reasonable times, provided with access to, and opportunity for review of, the Waste Tyre User's disposal process.
- 16.3 The auditor and its appointed agent will maintain the confidentiality of the Waste Tyre Users information.

E. General

17. Dispute resolution

- 17.1 Any dispute arising from or in connection with this agreement shall if so required by any party by giving written notice to that effect to the other be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa (AFSA) by an arbitrator or arbitrators appointed by AFSA. There shall be no right of appeal as provided for in article 22 of the aforesaid rules.
- 17.2 Each party to this agreement: -
 - 17.2.1 Expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

17.2.2 Irrevocably authorises the other to apply, on behalf of all parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

18. Waste Tyre Forum

In order to allow a free flow of information the SATRP Company and the Waste Tyre Users will establish a Waste Tyre Forum. This Forum will;

Be convened by the SATRP Company a minimum of twice per annum,

At least 21 days prior notice of meetings of the Forum will be given to all members of the SATRP Company, the DEAT and the associations of the waste tyre users,

The Forum will be chaired by the SATRP Company and it will be responsible for ensuring that minutes of the meeting are kept and distributed to all attendees,

The SATRP Company will be represented at meetings of the Forum by a minimum of two of its directors,

Additional meetings of the Forum may be convened at the request of the associations of the waste tyre users or the DEAT by giving at least 21 days prior notice,

The DEAT will be requested to attend all meetings of the Forum,

Should any dispute arise between the SATRP Company and the Waste Tyre Users it will be dealt with in terms of paragraph 16 of this agreement,

19. Entire agreement

This Agreement constitutes the entire agreement between the parties.

No addition to, variation, or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

The agreement shall commence on the date of the signature by the last party to sign this agreement, and shall continue until terminated for any reason whatsoever, provided that reasonable notice shall be given prior to such termination.

The Parties shall review this agreement every four years, from the date of commencement, with the objective of determining whether the agreement has achieved its purpose, whether it should be amended or terminated.

20. Effective date

This Agreement shall commence on the date of the promulgation of a Waste Tyre Regulation that substantially includes the issues as negotiated between the Tyre Industry, the Waste Tyre industry, DEAT and other stakeholders.

21. Domicilium and Notices

Annexure A

Guideline to calculation of green fee

	Cost centre	Method of calculation	
A	<u>Transportation</u> Collection from dealers Storage at site Preparation for delivery Delivery to Users	Fixed price established by awarding of contracts	
B	<u>Waste tyre user</u> Establishment subsidy Disposal fee	Based on User contracts One time payment for five years Subject to tender by the User	
C	<u>Stockpile reduction</u> Community projects Collection from community Storage at site Preparation for delivery Delivery to Users	Provision to allow for the reduction of existing stockpiles	
D	<u>Administration</u> Audit Awareness campaign Other	Build up of expected administration costs.	
E	<u>Contingency</u>	Provision in the first year of operation for unexpected expenses	
F	<u>Forecast Green fee</u> Category one tyres Rim size 10-19" Rim size 19.5-24.5"	<u>Percentage on retail price</u> 2-10%	<u>Expected fee</u> R20.00 R140.00