

Affiliate Program Agreement

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Affiliate Program Agreement

Last Modified: [July 17th, 2023](#)

PLEASE READ THIS AFFILIATE PROGRAM AGREEMENT CAREFULLY.

This is a legal contract between you (the “Affiliate”) and us (“MOTIS Brands”) which outlines the specifics of this business relationship. You must agree to the terms of this agreement before you will be allowed to participate in our Affiliate Program (the “Affiliate Program”). We reserve the right to update these terms, and will notify our affiliate partners by email of any changes. If an affiliate doesn’t agree to the updated terms, they can choose to terminate as we describe below.

Definitions

“We”, “us”, “our”, and “MOTIS Brands”: MOTIS Brands and any company owned, operated or controlled by MOTIS Brands, including Discount Ramps, Race Ramps, Black Widow, Mobility Mart, Elasco Products, Mac’s Custom Tiedowns and Heavy Duty Ramps.

“You” and “Affiliate”: the party, other than MOTIS Brands, entering into this Agreement and participating in the Affiliate Program.

“Affiliate Program”: our affiliate program as described in this Agreement.

“Affiliate Link”: the unique tracking link you place on your site or promote through other channels.

“Affiliate Policies”: the policies applicable to affiliates which we may make available to you from time to time.

“Affiliate Tool”: the tool that we make available to you upon your acceptance into the Affiliate Program and for you to use in order to participate in the Affiliate Program.

“Agreement”: this Affiliate Program Agreement and all materials referred or linked to in here.

“Commission”: an agreed-upon amount payable for each Customer Transaction.

“Customer”: the authorized actual user of the MOTIS Brands Products who has purchased MOTIS Brands products.

“Referred Customer”: each new and unique customer referred from Affiliate through a Link that provides valid account and billing information.

“Customer Transactions”: those transactions by Affiliate Leads that are eligible for Commission pursuant to the ‘Customer Transactions’ section of this Agreement.

"Customer Data": all information that Customer submits or collects via the MOTIS Brands products and all materials that Customer provides or posts, uploads, inputs or submits for public display through the MOTIS Brands Products.

"MOTIS Brands Content": all information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags that we incorporate into our product listings and promotional messaging.

“MOTIS Brands Products”: all purchasable items that MOTIS Brands offers.

Non-Exclusivity

This Agreement does not create an exclusive agreement between you and us. Both you and we will have the right to recommend similar products of third parties and to work with other parties in connection with the design, sale, installation, implementation and use of similar products of third parties.

Affiliate Enrollment

To begin the enrollment process, you must submit a completed Affiliate Program Signup Form. The Signup Form can be found at <http://app.impact.com/campaign-campaign-info-v2/Race-Ramps.brand?io=smS74I8nQHkBDWAvWT1aH46dETa4dk7TZqtnAI5Lj1W%2BCFuuH2ZYOCzy402p%2FhH>

We will evaluate your application in good faith and will notify you of your acceptance or rejection in a timely manner. We may reject your application if we determine (in our sole discretion) that your website is not suitable for the Affiliate Program for any reason.

If we reject your application, for any reason, you may not re-apply to the Affiliate Program utilizing the same domain name/URL or reapply using a different domain/URL name and then add the previously rejected domain name/URL to your affiliate account. MOTIS Brands, in its sole discretion, reserves the right to notify or to not notify any prospective affiliate of their rejection or removal from the Affiliate Program at any time.

Affiliate Acceptance

Once you complete an application to become an Affiliate, we will review your application and notify you whether you have been accepted to participate in the Affiliate Program, or not. Before we accept an application, we may want to review your application with you, so we may reach out to you for more information. We may require that you complete certain requirements or certification(s) before we accept your application.

If you are accepted to participate in the Affiliate Program, then upon notification of acceptance, the terms and conditions of this Agreement shall apply in full force and effect, until terminated, pursuant to the terms set forth below. Further, you will need to complete any enrollment criteria set out in the Program Policies Page, if applicable. Failure to complete any enrollment criteria within thirty (30) days of your acceptance will result in the immediate termination of this Agreement and you will no longer be able to participate in the Affiliate Program.

You will comply with the terms and conditions of this Agreement at all times, including any applicable Program Policies.

Order Processing

MOTIS Brands will process orders placed by Referred Customers who follow the Links from an Affiliate Site to MOTIS Brands. We reserve the right, in our sole discretion, to reject orders that do not comply with certain requirements that we may establish from time to time. All aspects of order processing and fulfillment, including MOTIS Brands' services, cancellation, processing, refunds and payment processing will be our responsibility. We will track the Customer Transactions generated by your Affiliate Site and will make this information available to you through our Affiliate Tool. To permit accurate tracking, reporting, and commission accrual, you must ensure that the Links between your website and our website are properly formatted.

Commission and Payment

Eligibility

To be eligible for Commission:

- A Customer Transaction must have occurred

You are not eligible to receive Commission or any other compensation from us based on transactions for other products or if:

- Such compensation is disallowed or limited by federal, state or local law or regulation in the United States or the laws or regulations of your jurisdiction;
- The applicable Customer objects to or prohibits such compensation or excludes such compensation from its payments to us;
- The Commission payment has been obtained by fraudulent means, misuse of the Affiliate Link, in violation of any Affiliate Program Policies that we make available to you, or by any other means that we deem to breach the spirit of the Affiliate Program, or
- You engage in self-dealing.

We may discontinue Commission payments should any of the eligibility criteria set forth in this subsection fail to be met at any time.

Requirements for Payment

In order to receive payment under this Agreement, you must have:

- Agreed to the terms of this Agreement (generally completed through the Affiliate Tool)
- Completed all steps necessary to create your account in the Affiliate Tool in accordance with our directions
- Have a valid and up-to-date payment account and updated the Affiliate Tool with such account
- Completed any and all required tax documentation in order for MOTIS Brands to process any payments that may be owed to you

Forfeiture

Notwithstanding the foregoing or anything to the contrary in this Agreement, if any of the requirements set forth in the "Requirements for Payment" section remain outstanding for six (6) months immediately following the close of a Customer Transaction, then your right to receive Commission arising from any and all Customer Transactions with the associated Customer will be forever forfeited (each, a "Forfeited Transaction").

We will have no obligation to pay you Commission associated with a Forfeited Transaction.

Once you comply with all of the requirements in "Requirements for Payment" section, then you will be eligible to receive Commission on Customer Transactions, as long as these Customer Transactions do not involve the same Customer associated with a Forfeited Transaction.

Commission Payment

You will be paid according to the agreed-upon terms set up in the process of your Affiliate Program enrollment.

We will not pay more than one Commission payment or other similar referral fee on any given Customer Transaction (unless we choose to in our discretion).

Taxes

You are responsible for payment of all taxes applicable to the Commission. All amounts payable by us to you are subject to offset by us against any amounts owed by you to us.

Commission Amounts

We reserve the right to alter or change the Commission amount.

Use of Links

If you qualify and agree to participate as an Affiliate, we will make a variety of graphic and textual links available to you (each referred to herein as a "Link" or collectively, as the "Links"). The Links will serve to identify your website as a member of the Affiliate Program and will establish a link from your website or e-mail to MOTIS Brands' website.

Unless expressly permitted by MOTIS Brands, the Links are to be used on your website and you shall not distribute the Links to third parties to be posted on websites that you do not own. You agree to cooperate fully with us in order to establish and maintain such Links. You further agree that your use of the Links must be in compliance with this Agreement at all times. MOTIS Brands may modify the Links from time to time in its sole discretion.

You will not use graphic or textual images (indicating a Link) or text messages to promote MOTIS Brands that are not approved in advance by MOTIS Brands. All Affiliate Sites shall display the Links prominently in relevant sections of their website. Furthermore, you agree not to use cookie stuffing techniques that set the affiliate tracking cookie without the Referred Customer's knowledge (e.g. iframe).

Any information with respect to MOTIS Brands that is going to be displayed on the Affiliate Site must be preapproved by MOTIS Brands in writing.

Excluded Products and Categories

MOTIS Brands reserves the right to exclude certain products and product categories at our own discretion. We will notify our Affiliates of these changes.

Trademarks

Affiliate Trademarks

You grant to us a nonexclusive, nontransferable, royalty-free right to use and display your trademarks, service marks and logos (“Affiliate Marks”) in connection with the Affiliate Program and this Agreement.

MOTIS Brands Trademarks

During the term of this Agreement, in the event that we make our trademark available to you within the Affiliate Tool, you may use our trademark as long as you follow the usage requirements in this section.

You must:

- Only use the images of our trademark that we make available to you, without altering them in any way;
- Only use our trademarks in connection with the Affiliate Program and this Agreement; and
- Immediately comply if we request that you discontinue use.

You must not:

- Use our trademark in a misleading or disparaging way;
- Use our trademark in a way that implies we endorse, sponsor or approve of your services or products; or
- Use our trademark in violation of applicable law or in connection with an obscene, indecent, or unlawful topic or material.

Support

We have a dedicated account rep who will assist with providing support to our Affiliates, and who will respond to inquiries within a timely manner to the best of their ability.

Proprietary Rights

MOTIS Brands' Proprietary Rights

No license to any software is granted by this Agreement. The MOTIS Brands Products are protected by intellectual property laws. The MOTIS Brands Products belong to and are the property of us or our licensors (if any). We retain all ownership rights in the MOTIS Brands Products. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the MOTIS Brands Content, or the MOTIS Brands Products in whole or in part, by any means, except as expressly authorized in writing by us. MOTIS Brands, the Sprocket Design, the MOTIS Brands logos, and other marks that we use from time to time are our trademarks and you may not use them without our prior written permission, except as otherwise set forth in this Agreement.

We encourage all customers, affiliates and partners to comment on the MOTIS Brands Products, provide suggestions for improving them, and vote on suggestions they like. You agree that all such comments and suggestions will be non-confidential and that we own all rights to use and incorporate them into the MOTIS Brands Products, without payment to you.

Customer's Proprietary Rights

As between you and Customer, Customer retains the right to access and use the Customer portal associated with the MOTIS Brands Products. For the avoidance of doubt, Customer will own and retain all rights to the Customer Data.

Opt Out and Unsubscribing

You will comply promptly with all opt out, unsubscribe, "do not call" and "do not send" requests. For the duration of this Agreement, you will establish and maintain systems and procedures appropriate to effectuate all opt out, unsubscribe, "do not call" and "do not send" requests.

Confidentiality

As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party") whether orally or in writing, that is designated as confidential, and MOTIS Brands customer and prospect information, whether or not otherwise designated as confidential.

Confidential Information does not include any information that is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party or was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party.

The Receiving Party shall:

- Protect the confidentiality of the Confidential Information of the Disclosing Party using the same degree of care that it uses with its own confidential information, but in no event less than reasonable care,
- Not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement,
- Not disclose Confidential Information of the Disclosing Party to any third party, and
- Limit access to Confidential Information of the Disclosing Party to its employees, contractors and agents.

The Receiving Party may disclose Confidential Information of the Disclosing Party if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

Term and Termination

Term

This Agreement will apply for as long as you participate in the Affiliate Program, until terminated.

Termination without Cause

Both you and we may terminate this Agreement on fifteen (15) days written notice to the other party.

Termination for Agreement Changes

If we update or replace the terms of this Agreement, you may terminate this Agreement on five (5) days written notice to us, provided that you send us written notice within ten (10) days after we send you notice of the change.

Termination for Cause

We may terminate this Agreement:

After **thirty (30) days' notice** to you after a material breach if such breach remains uncured at the expiration of such period.

After **fifteen (15) days' notice** to you if non-payment of any amount due to us remains unpaid at the expiration of such period.

Immediately if:

- You become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors,
- We determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers.

Effects of Expiration/Termination

Expiration of this Agreement, and termination of this Agreement without cause by us, by you with cause, or by you according to the 'Termination for Agreement Changes' section, shall not affect our obligation to pay you a Commission, so long as the related payment by the Customer Transaction is recognized by us within thirty (30) days after the date of such termination or expiration.

We will not pay you fees on Customer Transactions recognized by us after thirty (30) days after the date of such termination or expiration set out above. Provided however, in the event of termination without cause by you, or for cause by us, our obligation to pay and your right to receive any Commission will terminate upon the date of such termination, regardless of whether you would have otherwise been eligible to receive Commission prior to the date of termination. Except as expressly set forth in this section, you are not eligible to receive a Commission payment after expiration or termination of this Agreement. Upon termination or expiration, you will discontinue all use of all Affiliate materials that we make available to you for your participation in the Affiliate Program. Upon termination or expiration, an Affiliate Lead is not considered valid, and we may choose to maintain it in our database and engage with such a prospect.

Upon termination or expiration, you will immediately discontinue all use of our trademark and references to this Affiliate Program from your website(s) and other collateral.

Affiliate Representations and Warranties

You represent and warrant that:

- You have all sufficient rights and permissions to participate in the Affiliate Program
- Your participation in this Affiliate Program will not conflict with any of your existing agreements or arrangements
- You own or have sufficient rights to use and to grant to us our right to use the Affiliate Marks

You further represent and warrant that:

- you will ensure that you are compliant with any trade or regulatory requirements that may apply to your participation in the Affiliate Program (*for example, by clearly stating you are a MOTIS Brands Affiliate on any website(s) you own where you make an Affiliate Link available*)
- you will accurately provide in the Affiliate Tool all websites and domains you own where you intend to use Affiliate Links
- You will not purchase ads that direct to your site(s) or through an Affiliate Link that could be considered as competing with MOTIS Brands' own advertising, including, but not limited to, our branded keywords
- You will not participate in cookie stuffing or pop-ups, false or misleading links are strictly prohibited;
- You will not attempt to mask the referring URL information
- You will not use your own Affiliate Link to purchase MOTIS Brands products for yourself.

Indemnification

You will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of any of the following:

- Your participation in the Affiliate Program
- Your noncompliance with or breach of this Agreement
- Your use of the Affiliate Tool
- Your use of the Affiliate Marks

We will notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defense or settlement of the claim.

You shall not accept any settlement that imposes an obligation on us; requires us to make an admission; or imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

Disclaimers; Limitations of Liability

No Indirect Damages

To the extent permitted by law, in no event shall either party be liable for any indirect, punitive, or consequential damages, including lost profits or business opportunities.

Limitation of Liability

If, notwithstanding the other terms of this agreement, we are determined to have any liability to you or any third party, the parties agree that our aggregate liability will be limited to the total commission amounts you have actually earned for the related customer transactions in the twelve month period preceding the event giving rise to a claim.

Cookie Duration

Cookies used as part of this affiliate program have a 30 day duration. If a potential customer clears their cookies during this period, MOTIS Brands shall not be liable for any commissions that may have been owed to you.

Non-Solicitation

You agree not to intentionally solicit for employment any of our employees or contractors during the term of this Agreement and for a period of twelve (12) months following the termination or expiration of this Agreement. Both you and we acknowledge that any newspaper or other public solicitation not directed specifically to such person shall not be deemed to be a solicitation for purposes of this provision, and this provision is not intended to limit the mobility of either our employees or contractors.

General

Amendment; No Waiver

We may update and change any part or all of this Agreement, including by replacing it in its entirety. If we update or change this Agreement, we will notify you by email. The updated Agreement will become effective and binding on the next business day after we have notified you. When we change this Agreement, the "Last Modified" date above will be updated to reflect the date of the most recent version. We encourage you to review this Agreement periodically. If you don't agree to the update, change or replacement, you can choose to terminate as we describe above. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

Applicable Law

This Agreement shall be governed by the laws of the Wisconsin, without regard to the conflict of law provisions thereof. In the event either of us initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in Wisconsin.

Force Majeure

Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

Actions Permitted

Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

Relationship of the Parties

Both you and we agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this Agreement.

Compliance with Applicable Laws

You shall comply, and shall ensure that any third parties performing sales or referral activities on your behalf comply, with all applicable foreign and domestic laws (including without limitation export laws and laws applicable to sending of unsolicited email), governmental regulations, ordinances, and judicial administrative orders. You shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to us, our customers, or to the public. Export laws and regulations of the United States and any other relevant local export laws and regulations may apply to the MOTIS Brands Products. You will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury. You will not directly or indirectly export, re-export, or transfer the MOTIS Brands Products to prohibited countries or individuals or permit use of the MOTIS Brands Products by prohibited countries or individuals.

Severability

If any part of this Agreement is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

Notices

Notice will be sent to the contact address set forth herein (as such may be changed by notice given to the other party), and will be deemed delivered as of the date of actual receipt.

To MOTIS Brands: MOTIS Brands, N102W19400 Willow Creek Way, Germantown, WI 53022, U.S.A.
Attention: Sarah Mohs, Maggie Krebs

To you: Your address as provided in our affiliate account information for you.

We may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you.

Entire Agreement

This Agreement is the entire agreement between us for the Affiliate Program and supersedes all other proposals and agreements, whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the MOTIS Brands Products or dependent on any oral or written public comments made by us regarding future functionality or features of the MOTIS Brands Products. It is the express wish of both you and us that this Agreement and all related

documents be drawn up in English. We might make versions of this Agreement available in languages other than English. If we do, the English version of this Agreement will govern our relationship and the translated version is provided for convenience only and will not be interpreted to modify the English version of this Agreement.

Assignment

You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of its assets, change of control or operation of law, without our prior written consent. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Program Policies Page

We may change the Program Policies from time to time. Your participation in the Affiliate Program is subject to the Program Policies, which are incorporated herein by reference

Sales by MOTIS Brands

This Agreement shall in no way limit our right to sell the MOTIS Brands Products, directly or indirectly, to any current or prospective customers.

Authority

Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.

Survival

The following sections shall survive the expiration or termination of this Agreement: 'Commission and Payment', 'Proprietary Rights', 'Confidentiality', 'Effects of Termination/Expiration', 'Indemnification', 'Disclaimers; Limitation of Liability', 'Non-Solicitation' and 'General'.

General Data Processing

This General Data Processing section ("GDP section") sets out the terms that apply as between MOTIS Brands and the Affiliate when processing EEA personal data in connection with the Affiliate Program.

Definitions:

- "controller," "processor," "data subject," and "processing" (and "process") shall have the meanings given to them in Applicable Data Protection Law
- "Applicable Data Protection Law" means any and all applicable privacy and data protection laws and regulations applicable to the Personal Data in question, including, where applicable, EU Data Protection Law (in each case, as may be amended, superseded or replaced from time to time)
- "EU Data Protection Law" means:
 - (i) The EU General Data Protection Regulation (Regulation 2016/679) ("GDPR")
 - (ii) The EU e-Privacy Directive (Directive 2002/58/EC)
 - (iii) Any national data protection laws made under or pursuant to clause (i) or (ii)
- "Personal Data" means any information relating to an identified or identifiable natural person to the extent that such information is protected as personal data under Applicable Data Protection Law

Purposes of Processing

The parties acknowledge that in connection with the Affiliate Program, each party may provide or make available to the other party Personal Data. Each party shall process such data for the purposes described the Agreement; and/or as may otherwise be permitted under Applicable Data Protection Law.

Relationship of the Parties

Each party will process the copy of the Personal Data in its possession or control as an independent controller (not as a joint controller with the other party). For the avoidance of doubt and without prejudice to the foregoing, MOTIS Brands shall be an independent controller of any Personal Data that it receives or shares with Affiliate in connection with the Affiliate Program.

Compliance with Law

Each party shall separately comply with its obligations under Applicable Data Protection Law and this section of the Agreement when processing Personal Data. Neither party shall be responsible for the other party's compliance with Applicable Data Protection Law. In particular, each party shall be individually responsible for ensuring that its processing of the Personal Data

is lawful, fair and transparent, and shall make available to data subjects a privacy statement that fulfils the requirements of Applicable Data Protection Law.

International Transfers

Where Applicable Data Protection Law in the European Economic Area ("EEA"), and/or its member states, United Kingdom and/or Switzerland (collectively for the purposes of this Addendum, the "EU"), applies to the Personal Data ("EU Personal Data"), neither party shall process any EU Personal Data (nor permit any EU Personal Data to be processed) in a territory outside of the EU unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. To the extent an Affiliate transfers EU Personal Data to MOTIS Brands and MOTIS Brands is located in a territory outside the EU that does not provide adequate protection for Personal Data (as determined by Applicable Data Protection Law), MOTIS Brands agrees to abide by and process such EU Personal Data in accordance with the Standard Contractual Clauses for Controllers as approved by the European Commission and available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004D0915> (as amended, superseded or updated from time to time) ("Model Clauses"), which are incorporated by reference in, and form an integral part of, this Addendum. MOTIS Brands agrees that it is a "data importer" and the Affiliate is the "data exporter" under the Model Clauses (notwithstanding that MOTIS Brands may be an entity located outside of the EEA).

Security

Each party shall implement and maintain all appropriate technical and organizational measures to protect any copies of the Personal Data in their possession or control from accidental or unlawful destruction, and loss, alteration, or unauthorized disclosure or access (a "Security Incident") and to preserve the security and confidentiality of such Personal Data. Each party shall notify the other party without undue delay on becoming aware of any breach of EU Data Protection Law/Applicable Data Protection Law.