



2017 Spectrum Industries, Inc. Partner Program Agreement

Spectrum Industries, Inc. ("Spectrum") recognizes the value of resellers who actively pursue selling efforts to specify Spectrum products, bundle Spectrum products with other goods, and promote the Spectrum brand through web-based marketing, social media, trade shows, and contracts of trade. Therefore, Spectrum is willing to allow these value added resellers to participate in the **Spectrum Industries, Inc. Partner Program** by giving them additional discounts, selling tools, and marketing services commensurate with a Partner's commitment to achieve purchases at either the Silver, Gold, or Platinum levels.

This Partner Program Agreement ("Agreement") is an agreement between Spectrum and its Partners.

1. Definitions

- a. "Agreement" means this Partner Program Agreement and all materials referred or linked to in here.
- b. "Standard Terms and Conditions" means Spectrum's Purchase Orders Terms and Conditions located at <http://www.spectrumfurniture.com/en/resources/purchasing-terms/>, as modified from time to time. Spectrum's Standard Terms and Conditions apply to all catalog Product orders.
- c. "End User" means the authorized actual user of the Spectrum Products.
- d. "List Price" means the standard price listing for all Spectrum Products, as published to all dealers, distributors, resellers, and End Users, and as updated by Spectrum on an annual basis. The most current List Price shall apply at the time of any given purchase or sale order, unless otherwise agreed to by Spectrum.
- e. "Net Value" means the actual amounts invoiced to a Partner or an End User that are actually paid to Spectrum by the Partner or by an End User for Spectrum Products. Net Value shall: (i) be calculated net of any discounts, commissions, allowances, adjustments, delivery fees, taxes payable, and subsequent refunds or returns, and (ii) shall exclude any applicable implementation, customization, training, consulting or other professional services, or fees for third-party products or services.
- f. "Partner" means a Spectrum reseller who is participating in Spectrum's Partner Program, has made a good-faith base commitment to purchase at least \$25,000, \$100,000, or \$250,000 Net Value of Spectrum Products in calendar year 2017, has followed the application and registration process for Spectrum's Partner Program, has entered into a Marketing Plan with Spectrum to meet its purchase commitment goal, and is agreeing to the terms of this Partner Program Agreement
- g. "Partner Commitment Level" means minimum purchases Net Valued in one calendar year as follows:
 - i. Silver Partner - \$25,000
 - ii. Gold Partner - \$100,000
 - iii. Platinum Partner - \$250,000
- h. "Partner Program" means Spectrum's Partner Program as described in this Agreement.
- i. "Product" means all products sold by Spectrum to Partner or Partner's End User
- j. "Registered Project" means a special purchase order that Partner has specified, registered on Spectrum's website by following all registration processes, and has been approved or validated by the Spectrum Territory Manager after the End User verifies the specification.
- k. "Territory Manager" means the sales representative assigned to Partner's region.

2. **Partner Rights and Obligations.** As a Spectrum Partner, Partner agrees to: (i) demonstrate and promote Spectrum Products to Partner's prospects and customers, (ii) provide End Users access to use Spectrum Products in accordance with this Agreement and the Standard Terms and Conditions; (iii) specify and register projects through Spectrum's web portal; and (iv) a good faith commitment to make purchase orders that reach or exceed Partner's Commitment Level. Partner agrees to comply with the terms of this Agreement at all times, including Partner's Marketing Plan, which are incorporated herein by reference.

3. **2017 Commitment.** The Spectrum Partner Program allows a Partner to make a good faith commitment to purchase its designated Partner Commitment Level of \$25,000, \$100,000, or \$250,000 Net Value of Spectrum Products in calendar year 2017. This is not a contractual obligation to buy but a good faith commitment to purchase. Given this good faith commitment, Spectrum in return will offer Partner the following benefits.

4. **Benefits.**
 - a. **Discounts.**
 - i. **Increased Price Discount:** Partners will automatically be eligible for an increased discount on all Products in Spectrum's catalog from 50% off List Price to 55% off List Price.

 - ii. **Additional Price Discount on Approved Registered Projects.** Spectrum will award Partner with an additional increased discount from 55% off List Price to 60% off List Price for Approved Registered Projects.

 - iii. **Volume Discount.** Partners may be eligible for an additional volume discounts. Spectrum encourages Partners aggressive selling efforts on large projects. Spectrum also recognizes the commitment required to position and close these projects. When these projects are being defined Spectrum is willing to consider special project quotations where the size, scope and effort justify possible pricing accommodations.

 - iv. **Showroom Discount.** All Partners are eligible for a 65% discount off List Price for all showroom Products. Partners are allowed one showroom order in a calendar year, however, Spectrum, in its sole discretion, may consider and authorize multiple showroom orders in a calendar year for the same partner.

 - b. **Registered Project Order Commission.** In the event another Spectrum reseller is awarded a purchase order that Partner had specifically been approved for as a Registered Project, Spectrum will award the Partner with a commission fee of 5% of the purchase order Net Value that Spectrum receives. In order to receive the commission, Partner must complete and submit the Project Registration Commission Form prior to the shipping of the order. The Project Registration Commission Form can be found on the Spectrum Registration Web Portal. The commission will be paid to Partner at the time Spectrum receives payment.

 - c. **Onsite Product and Training Support.** Upon the Partner's request, Partner's Territory Manager will provide technical support (including joint sales calls with Partner at an End User's location) and live demonstrations to improve lead generation. Spectrum will also deliver Products to Partner's show and provide booth manning assistance as requested.

Spectrum will also provide a full line of technical presentations that are appropriate for architects and information technology specialists.

- d. **Website Technology Links.** Spectrum provides a full range of product technical information via its website, available on demand 24/7. Partner may also create and review project registrations online 24/7 through a Spectrum provided web portal.
 - e. **Custom Products.** Spectrum will specialize and customize Products for Partners as long as such customization requests are within Spectrum's capability. Partner's customized requests are completed in Spectrum's ISO 9000:2001 facility, and Spectrum will save all full drawings and documentations for repeat orders from Partner. Any customization proprietary designs that Spectrum creates or improves upon for Partner remains or becomes the intellectual property of Spectrum, which Spectrum may use or further improve upon for future Products at Spectrum's sole discretion.
 - f. **Spectrum Layout Services.** For no additional consideration or payments, Spectrum will assist Partner's certified designer with floor plan layouts upon request by Partner. Spectrum will electronically provide Partner auto CAD layout plans with classroom dimensions and architectural details noted. The plans are intended for general lay out information only and should not be construed or relied upon for construction planning.
 - g. **Spectrum Contract Teaming.** Where Spectrum's Partners hold a contract with federal, state, and local governments, Spectrum will consider proposals to append Spectrum's catalog to a Partner contract. Team Partners are expected to faithfully bid on projects when requested. Partners should contact Judy Steinmetz at jsteinmetz@spectrumfurniture.com or call 1-800-235-1262 to request a reseller authorization letter for Partner's contract.
 - h. **Market Development Funds.** Market Development Funds may be available to Gold and Platinum Partners that are in good standing. Partners, in good standing, committing at a Gold or Platinum level may be eligible for development of joint MDF programs (market development funds). These funds will be directed at specific joint marketing efforts to assist in building demand for Spectrum products and revenue for Partners. The fund percentage/level will be based on specific programs and marketing plans mutually defined and agreed to. In lieu of developing new MDF programs, Gold and Silver partners with existing vendor MDF programs, may submit their program(s) to Spectrum for consideration.
5. **Trademarks and other Intellectual Property Rights.** During the Term of this Agreement, Partner may use the appropriate color Spectrum Partnership trademark and other intellectual properties, such as photographs, images, videos, or any other marketing materials of individuals and Spectrum products, only as provided by Spectrum, to market Spectrum Products and designate Partner's Commitment Level as a Silver, Gold, or Platinum Partner on Partner's website, publication, and place of business identifying Partner's brand with Spectrum. Partner must (i) only use the images of Spectrum's intellectual properties that Spectrum makes available to Partner, without altering them in any way; (ii) only use Spectrum's intellectual properties in connection with the Partner Program and this Agreement; and (iii) immediately comply if Spectrum requests discontinue of use. Partner must not: (i) use Spectrum's intellectual properties in a misleading or disparaging way; (ii) use Spectrum's intellectual properties in a way that implies Spectrum endorses, sponsors, or approves of Partner's third party products; or (iii) use Spectrum's intellectual properties in violation of applicable law or in connection with an obscene, indecent, or unlawful topic or material. Upon

termination or expiration of the Term, Partner shall remove all Spectrum intellectual properties within a reasonable time.



Partner grants to Spectrum, a nonexclusive, nontransferable, royalty-free right to use and display Partner's trademarks, service marks, and logos (collectively "Marks"), as provided by Partner, in connection with the Partner Program and this Agreement. Spectrum may display Partner's Marks on Spectrum's website or printed promotional materials to indicate that Partner is a partner of Spectrum's Partner Program.

6. **Non-Exclusivity.** This Agreement does not create an exclusive agreement between Spectrum and Partner. Both Spectrum and Partner have the right to sell, purchase, and to work with other parties in connection with the design, sale, production, implementation, and use of similar services and products of third parties.
7. **Partner Payment Obligations.** The Partners Program is available only to Partners who maintain an acceptable payment history.
8. **Term and Termination.** This Agreement shall continue in full force and effect for a period of twelve (12) months from January 1 – December 31 of each calendar year. This Agreement shall automatically renew for a period of twelve (12) months each year thereafter unless revised or terminated as set forth herein.
 - a. Spectrum or Partner may terminate this Agreement if one of the following conditions exists, in which case such termination shall be effective immediately: a party becomes insolvent, makes a general assignment for the benefit of creditors, a receiver is appointed to conduct the party's business or manage the party's assets, or the party files for federal bankruptcy protection.
 - b. Partner may terminate this Agreement by providing written notice of termination to Spectrum, and such termination shall be effective ninety (90) days after receipt of such notice.
 - c. Spectrum may terminate this Agreement by providing written notice of payment delinquency to Partner, and such termination shall be effective ten (10) days after receipt of such notice if Partner or Partner's End User fails to fully satisfy such payment(s) due.
 - d. Spectrum may terminate this Agreement for **good cause** by providing written notice of termination and reasons for such termination to Partner and such termination shall be effective ninety (90) days after receipt of such notice, unless within sixty (60) days of receiving such notice, Partner successfully rectifies such deficiency as stated by Spectrum in its notice. Any violations or breaches of Partner's obligations as set forth below constitute good cause for termination, non-renewal, and cancellation of this Agreement:
 - i. Failure to reasonably implement its Marketing Plan.

- ii. Failure to make enough purchases sufficient to reach its Partner Commitment Level.
 - iii. Failure to follow Spectrum's application and registration protocols for Registered Projects.
 - iv. Violation of Spectrum's Standard Terms and Conditions or applicable local, state, federal, or foreign laws, or regulations.
 - v. Violation of Spectrum's Partner Program Agreement
9. **Marketing Plans.** Partner's Marketing Plans shall continue in full force and effect for a period of twelve (12) months from January 1 – December 31 of each calendar year unless Partner is terminated from the Partner Program as set forth above. Partners who achieve their Partner Commitment Level will be automatically renewed into Spectrum's Partner Program for the following calendar year. Partners who exceed their Partner Commitment Level may be eligible for advancement to the next level of Gold or Platinum, as applicable. Partners who fail to achieve their Partner Commitment Level because of a lack of good faith base effort may be eligible to participate at the Silver Partner Commitment Level but must submit a new Application to be considered for reinstatement. Partners who fail to purchase altogether may be reverted to a reseller with a 50% discount off List Price with no additional Partner benefits. Partners who fail to make any reasonable attempts to comply with their Marketing Plans may be terminated early. Consideration for a Partner's continued participation in the Partner Program for failure to meet a Commitment Level or Marketing Plan will be made by Spectrum in its sole discretion.
10. **Partner Representations and Warranties.** Partner represents and warrants that: (i) Partner's participation in the Partner Program will not conflict with any of Partner's existing agreements or arrangements and (ii) Partner owns or has sufficient rights to use and to grant to Spectrum rights to use the Partner Marks.
11. **Indemnification.** Partner will indemnify, defend and hold Spectrum harmless, at Partner's expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against Spectrum, its officers, directors, employees, agents, service providers, licensors, and affiliates, by a third party not affiliated with Spectrum to the extent that such Action is based upon or arises out of (a) Partner's participation in the Partner Program, (b) Partner's noncompliance with or breach of this Agreement, or (c) Spectrum's use of the Partner Marks.
12. **Disclaimers; Limitations of Liability**
 - a. **Disclaimer of Warranties.** SPECTRUM AND ITS AFFILIATES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, OR ACCURACY OF THE PARTNER PROGRAM FOR ANY PURPOSE. TO THE EXTENT PERMITTED BY LAW, THE PARTNER PROGRAMS IS PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. SPECTRUM DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH REGARD TO THE PARTNER PROGRAM INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
 - b. **No Indirect Damages.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER SPECTRUM OR PARTNER BE LIABLE FOR ANY INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES.

- c. Limitation of Liability. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, SPECTRUM IS DETERMINED TO HAVE ANY LIABILITY TO PARTNER OR ANY THIRD PARTY, THE PARTIES AGREE THAT SPECTRUM'S AGGREGATE LIABILITY WILL BE LIMITED TO HALF THE TOTAL NET VALUE SALES SPECTRUM ACTUALLY RECEIVED FROM PARTNER IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM.
13. **Amendment; No Waiver.** Spectrum may update and change any part or all of this Agreement. If Spectrum updates or changes this Agreement, the updated Agreement will be posted on Spectrum's Partner Portal and e-mailed to Partner. The updated Agreement will become effective and binding on the next business day after it is posted. When Spectrum changes this Agreement, the "Last Modified" date below will be updated to reflect the date of the most recent version. Spectrum encourages Partner to review this Agreement periodically.
14. **No Waiver.** The failure of Spectrum to enforce provisions of any part of this Agreement or the Marketing Plan at any time or for any period of time shall not constitute a waiver of such provisions or of Spectrum's right to enforce such provisions and all other provisions in the future.
15. **Applicable Law.** This Agreement shall be governed by the laws of the State of Wisconsin, without regard to the conflict of laws provisions thereof. In the event either party 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 courts in Chippewa County, Wisconsin and federal court of the Western District of Wisconsin.
16. **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.
17. **Relationship of the Parties.** The parties agree that no joint venture, partnership, employment, or agency relationship exists between them as a result of Partner's participation in the Partner Program.
18. **Compliance with Applicable Laws.** Partner shall comply, and shall ensure that any third parties performing sales or referral activities on Partner's 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. Partner shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to Spectrum, its 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 Spectrum Products. Partner will not directly or indirectly export, re-export, or transfer the Spectrum Products to prohibited countries or individuals or permit use of the Spectrum Products by prohibited countries or individuals.
19. **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.

20. **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 Spectrum Industries, Inc.: 925 First Avenue, PO Box 400, Chippewa Falls, WI 54729
Attention: Dave See

To Partner: the Partner's address as provided in the Partner Program Application.

Spectrum may give electronic notices to Partner by email to the e-mail address(es) on record in Partner's Program Application.

21. **Entire Agreement.** Partner's Application, its Marketing Plan, and this Agreement are the entire agreements between Spectrum and Partner for Partner's participation in the Partner Program and supersede all other proposals and agreements, whether electronic, oral or written, between the parties.
22. **Assignment.** Partner 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 prior written consent from Spectrum. Spectrum may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of Spectrum's assets, change of control or operation of law.
23. **No Licenses.** Spectrum grants to Partner only the rights and expressly stated in this Agreement, and Partner receives no other rights or licenses with respect to Spectrum, the Spectrum Products, Spectrum's intellectual property, or any other property of rights of Spectrum.
24. **Sales by Spectrum.** This Agreement shall in no way limit Spectrum's right to sell Spectrum Products, directly or indirectly, to other third parties.
25. **Survival.** The following sections shall survive the expiration or termination of this Agreement: 'Partner Payment Obligations', 'Indemnification', 'Disclaimers; Limitation of Liability', 'No Waiver', 'Applicable Law', 'Severability', and 'Notices'.

Last Modified: January 2017