

## Client Services Agreement

These terms and conditions form our agreement with you. When you check the box and purchase the monthly TX Marketing Method program on our website or commence the program after direct credit card or invoice payment, these terms and conditions become binding on you, so please read them carefully. Each party acknowledges having read and agreeing to these terms and conditions.

### Who we are:

Weis Business Consultants Pty Ltd ATF The G & J Weis Family Trust,  
trading as **Phase 3 Ecom**, ABN 45 273 103 968,  
located at Office 1, 162 South Pine Rd, Brendale QLD 4500  
(referred to as in this agreement – **we, us, ours, Phase 3 Ecom**)  
found at <https://www.phase3ecom.com> Email: [admin@phase3ecom.com](mailto:admin@phase3ecom.com)

Phase 3 Ecom collectively has the expertise, education, skill and experience in Shopify, WooCommerce and other ecommerce platforms, online sales, ecommerce store development, online marketing and marketplace management. With these skills, Phase 3 Ecom offers online marketing support services to ecommerce businesses, like yours. This agreement sets out our working relationship with you.

## Terms and Conditions

### 1. Services

**1.1** By this agreement, Phase 3 Ecom agrees to supply our services on a no lock in monthly basis, including our proprietary TX Marketing Method and/or our Marketplace Management services, in exchange for the purchase price.

**1.2** Our recommendations for your online store marketing will be outlined across the duration of the program after we have fully assessed and discussed your particular online store marketing requirements with you, including your products and services, market fit, customer demographic, competitors and any other information relevant to your online store.

**1.3** You may cancel the TX Marketing Method or Marketplace Management services at any time with a minimum of 28 days notice. This stipulation allows us the time to complete any outstanding work and prepare your online marketing platforms and associated accounts for successful handover and a smooth transition.

**1.4** The TX Marketing Method core program includes the following:

**(a)** recommendations and implementation of online store CRO (conversion rate optimisation) elements, consulting in relation to online store 3<sup>rd</sup> party software and plugins, and online marketing management, (Google, Facebook & Instagram, TikTok etc), email marketing, Omni-channel, UGC, SEO and other online marketing channels etc) during the duration of the agreement;

**(b)** only works in relation to the above will be undertaken as part of your TX Marketing Method core program. Any work deemed to be outside of this scope will be quoted on a project by project basis. Any quoted work is paid in advance using the Phase 3 Ecom Priority Support Ticketing system.

**(c)** one (1) scheduled weekly one-on-one Zoom call; and

**(d)** communication and ad hoc support via Slack with the Phase 3 Ecom team Monday - Friday 9:00am to 5:00pm (Queensland time), excluding any Public Holiday.

**(e)** no minimum marketing spend. In the interest of providing the best possible marketing performance and after an assessment of the competitive market forces, we will provide you with a non-binding marketing budget recommendation for your campaigns. Marketing spend is not included in the TX Marketing Method or Marketplace Management services and is the sole responsibility of the client.

**(f)** Omni-channel platform subscription and GMV (Gross Monthly Volume) fees (sales generated through eBay, Amazon, Catch, Kogan, MyDeal, Bunnings, Woolworths etc) are not included in the TX Marketing Method or Marketplace Management services and will be invoiced monthly (or at the completion of this agreement) at the rate of 1.5% (Ex GST).

## **2. Term**

**2.1** This agreement will start on the day of purchase (start date) and continue monthly until the end of the notified cancellation period.

## **3. Roles and Responsibilities**

**3.1** You agree to work closely and diligently with us to implement the recommendations to achieve the results you are seeking, and you understand that the final outcome may be different to what you expected if you cannot or are unwilling to implement said recommendations or maintain a consistent level of marketing spend.

**3.2** Each party:

**(a)** must do or cause to be done all acts or things necessary to give effect to this agreement;

**(b)** will diligently observe and perform its obligations under this agreement.

## **4. Payment**

**4.1** You must pay the monthly rate in full in advance for our TX Marketing Method or Marketplace Management services before we proceed.

**4.2** Unless expressly stated otherwise, all prices or other sums payable (subscriptions and third party fees) or any other consideration provided or to be provided under or in connection with this agreement include GST.

## **5. Refunds**

**5.1** Phase 3 Ecom will only provide a refund in accordance with our obligations under the Australian Consumer Law (ACL) and if there is a dispute about a refund, you must first put your request in writing and submit it to our contact details listed above.

## **6. Force Majeure**

**6.1** If a party becomes completely or significantly unable to carry out its duties or obligations under this agreement as a result of Force Majeure:

**(a)** the affected party must give written notice to the other party with details of the Force Majeure and the likely extent that party will be delayed or unable to perform its obligations;

**(b)** provided notice is given, the affected obligations will be suspended while the Force Majeure remains in effect; and

**(c)** the parties will use all reasonable efforts to overcome the effects of the Force Majeure as soon as possible.

**6.2** The estimated time for completion will be extended by the period of delay caused by the Force Majeure.

## 7. Representations and Warranties

7.1 At the time of entering into this agreement, each party warrants that it:

- (a) has correctly identified its legal name and address and any other relevant contact details;
- (b) has made no false representations or material omissions, in relation to this agreement;
- (c) has not been induced to enter into this agreement as a result of any representation, statement or warranty of the other party, other than those expressly set out in this agreement;
- (d) it has the power and authority to enter into and perform its obligations under this agreement; and
- (e) In entering into this agreement, each party relies upon the warranties, representations and obligations of the other party.

## 8. Abandonment

8.1 If after repeated attempts to begin, continue or finalise the delivery of our services, you fail to participate or provide required materials in a timely manner, or become unresponsive to our Slack messages, Zoom calls, emails or phone calls for a period of ten (10) business days without explanation (abandonment), the services will be placed in abeyance or cancelled at our discretion.

8.2 If the services are cancelled or placed in abeyance, we are not under any obligation to continue to provide any services.

8.3 If you ask us to restart the work, you agree we may charge a reactivation fee to reactivate the services. This amount is calculated based on a genuine estimate of our hourly rate times the estimated amount of time required to reinstate the services being provided to you prior to being placed in abeyance or cancelled.

## 9. Intellectual Property

9.1 Intellectual property rights means all intellectual property rights whether now existing or created after the start date, including copyright and related rights, registered and unregistered trade and service marks, business and domain names, all rights in relation to inventions (including patents and patent applications), designs, coding, confidential information, manuals, trade secrets, know how, research data, formulae, discoveries and any other intangible proprietary rights whether registered or not, arising from intellectual activity related in any way to products or services offered or provided by us.

9.2 What intellectual property rights belong to us:

(a) all intellectual property rights in our tools used to complete the services, including training material, videos and tools, templates, presentations, supporting documentation, third-party applications, software, or generally any item or service not provided by you, remain our exclusive property.

(b) nothing in this agreement can be construed to confer on you any rights or ownership to our tools. Other than stated below, we do not grant you any other right or license to use our intellectual property.

9.3 License: For materials produced exclusively for you pursuant to this agreement, and provided all fees are paid up-to-date, we grant to you a non-exclusive, revocable, limited license to use the marketing tools and materials we supply:

(a) for their intended use; and within your business only.

9.4 What does this mean? It means you may only use our intellectual property, pursuant to this agreement. When we cease providing our services, you may only use the materials we have provided for the original purpose for which they were provided and cannot resell or share them with others. Our intellectual property is a valuable asset of our business and we take steps to protect it.

**9.5** You may not share our copyright material with any other person.

## **10. Confidentiality**

**10.1** In performing services for you, both parties will have access to confidential information about the other party's business, such as business information, videos or other systems unique to them, and other information which a reasonable person would consider to be confidential (collectively called 'confidential information'). If either party are unsure whether information is confidential or not, assume it remains confidential until told otherwise.

**10.2** Both parties' confidential information remains their property and must always be kept confidential including this Client Services Agreement.

**10.3** Neither party will keep, store or share any confidential information about the other party's business, except for the purpose of delivering and implementing the services.

**10.4** Both parties agree to keep confidential information confidential unless:

**(a)** the confidential information is transferred to the public domain through no fault or action of the other party;

**(b)** written authority is given to release it by the party who owns it; or

**(c)** required by a legal notice to disclose that information and have written to the other party and first advised of that obligation.

**10.5** Any disclosure of confidential information may result in the immediate termination of this agreement, as well as legal action for damages resulting from that breach.

## **11. Cancellation**

**11.1** You may cancel the TX Marketing Method or Marketplace Management Services at any time with a minimum of 28 days notice. This stipulation allows us the time to complete any outstanding work and prepare your online marketing platforms and accounts for handover and a smooth transition.

**11.2** If you cannot complete for any reason a paid monthly period, no refunds will be provided to you.

**11.3** A party will be in default of its obligations under this agreement if it:

**(a)** is in breach of the terms of this agreement, including confidentiality;

**(b)** has made a warranty, representation or statement that proves to be materially untrue or misleading when made;

**(c)** fails to perform or observe an obligation under this agreement, including the payment of money or compliance with an applicable time limit; or

**(d)** enters into a scheme of arrangement, suspends payment of its debts, trades while insolvent or has an insolvency professional appointed to administer or wind up its affairs.

**11.4** If a party is in default under this agreement and has not remedied that default within thirty (30) days of receiving a notice of default from the other party, the party not in default may cancel this agreement.

## 12. Disclaimer

**12.1** You acknowledge and agree that the success of our services is dependent on the fulfilment and execution of our marketing recommendations in your business, including your attitude, persistence, and full participation in the Program.

## 13. Limitation of liability

**13.1** The liability for any claim relating to this agreement will be reduced to the extent to which the other party's negligence contributed to the damage relating to the claim.

**13.2** Other than as required under the ACL, we make no warranties or representations about the suitability, reliability, availability, timeliness or accuracy of any services provided.

**13.3** To the fullest extent permitted by law, we:

**(a)** exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in this agreement; and

**(b)** exclude all liability for consequential or incidental damages suffered by you or any other person or entity resulting from any claim based on breach of warranty, breach of contract, or any other law, even if we should have known of the possibility of the damage or loss being suffered.

**13.4** Where warranties are implied by law our liability will be limited in respect of any claim to, at our option, supplying the services or promptly remedying the fault in the services.

**13.5** The parties agree that our total aggregate liability for all claims relating to this agreement is limited to the fees received actually by us from you in the billing cycle immediately preceding the date of claim.

**13.6** This limitation of liability applies to the fullest extent permitted by law and survives any termination or expiration of this agreement or your use of our services.

## 14. Indemnity

**14.1** You indemnify us and our employees, officers, and agents from and against all actions, claims, losses, damages, costs (including legal costs), penalties associated with any act or omission of ours in provision of our Services to you, or in relation to a breach or default by you of a provision of this agreement. Any indemnity will be reduced by the extent that the loss or damage has been contributed to by our negligence. This means that if you cause a claim, you will be responsible for paying the costs we incur to have to defend against that claim.

**14.2** Neither party is liable to the other party for any lost profits or consequential damages of the other party arising directly or indirectly as a result of entering into this agreement.

## 15. Non-Solicitation

**15.1** You agree that, for a period of twelve (12) months after your agreement with us comes to an end, you will not canvass, solicit, or approach any of our staff or contractors, with a view to employing or contracting directly to them. Our staff and contractors are carefully selected and trained and you understand that the purpose of this clause is to ensure our business does not incur unnecessary recruitment and training costs in the event that you poach or attempt to poach our staff or contractors.

**15.2** You agree the restrictions in this clause:

**(a)** are reasonable and necessary to protect our business and the goodwill of our business;

**(b)** confer a benefit on us which is no more than reasonable or necessarily required for the protection of our business.

**15.3** You agree that our offer to provide these services constitute valuable consideration for your agreeing to the provisions in this clause.

## **16. Dispute Resolution**

**16.1** Any dispute arising out of or relating to this agreement which cannot be settled by negotiation between the parties will be submitted to mediation only in a Queensland Dispute Resolution Centre <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/dispute-resolution-centres>.

## **17. Notices**

**17.1** Any communication required to be given pursuant to this agreement must be done so in writing.

**17.2** Notices may be delivered in person, sent by trackable post to the address of the party shown in the Schedule (or a later notified address) or sent by email to the email address of the party shown in the Schedule (or a later notified email address).

**17.3** A notice will be deemed received immediately if given in person, ten (10) Business Days after the date of mailing if sent by trackable post and the next Business Day if sent by email.

**17.4** Notices will not be validly given if provided by text message or via social media account, unless otherwise ordered by a Court of competent jurisdiction.

## **18. Definitions and Interpretation**

**18.1** In this agreement, words set out in the Schedule have the corresponding meaning and the same meaning in these terms and conditions.

**18.2** The following words have the following meanings:

**Business** means providing online sales and technical consulting, marketing, and online store development for online business owners, online or in person;

**Business Day** means a day in which commercial banks in Queensland are authorised or required by law to be open;

**Confidential Information** means the information, forms, specifications, processes, statements, formulae, trade secrets, drawings and data (and copies and extracts made from that information and data), source and object codes, business and marketing plans and projections, customer information, lists, designs, plans, documents, videos, know-how, information about existing, new or envisioned products, services and processes and their development and performance, any techniques, methodologies, pricing, technical information, computer software, business and financial information and models concerning:

(a) the operations and dealing of each party's business;

(b) the organisation, finance, customers, markets, suppliers, intellectual property and know-how of a party and any of its related or associated entities; which confers or tends to confer a competitive advantage over one who does not possess the information, or which has been obtained as a result of this agreement.

**Force Majeure** includes an event outside the influence or control of a party, such as a severe weather event, significant civil unrest, government restrictions/lockdowns, cyber-attack or major technology, internet, or power outage, or otherwise an occurrence beyond the reasonable control of the affected party which directly causes either party to be unable to comply with all or a material part of its obligations under this agreement.

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999, and any terms defined in GST Law used in this agreement will have the same meaning as stated in GST Law;

**Public Holiday** means a day in which commercial banks in Queensland are authorised to be closed for business;

**18.3 Interpretation** – in this agreement, unless the context requires otherwise:

- (a) if a word or phrase is defined, then other grammatical versions of the word or phrase will have the corresponding meaning;
- (b) words in the singular include the plural and vice versa;
- (c) 'includes' and similar words mean includes without limitation;
- (d) a reference to this agreement includes all parts of the agreement and any amendments made in writing;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of this agreement;
- (f) headings are for convenience and do not affect the interpretation of this agreement;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, corporation, government or other body or other legal entity;
- (h) a reference to a party includes that parties' directors, officers, employees, legal personal representatives, successors and assigns; and
- (i) a reference to currency or monetary figure means Australian dollars.

## **19. General**

**19.1 Relationship** – This agreement sets out the relationship between the parties as independent contractors and does not create any partnership, joint venture or employment relationship. This agreement does not create any legal relationship other than the contractual relationship formed under the provisions of this agreement.

**19.2 Costs** – Each party will pay their own costs for negotiating and entering into this agreement. Any subscriptions or ongoing costs for plugins, themes or third party services related to the execution of the TX Marketing Method are your sole responsibility.

**19.3 No Waiver** - Any failure by a party to enforce any provision of this agreement, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this agreement.

**19.4 Entire Agreement** – This agreement and any documents specifically referred to in it, contain the entire agreement between the parties and supersede all prior agreements and understandings, whether oral or written, relating to the subject matter of this agreement.

**19.5 Assignment** – neither party may assign their rights under this agreement without the written consent of the other party.

**19.6 Variation** – Due to the fast paced nature and the ongoing and often unforeseen changes in the digital marketing and ecommerce space, Phase 3 Ecom reserves the right to update the terms and conditions that make up this Client Services Agreement.

**19.7 Severability** - If any of the provisions of this agreement are determined to be invalid or unenforceable, then the invalid or unenforceable provision will be severed, and the remainder of the terms and conditions will continue in effect.

**19.8** Governing Law - This agreement is governed by and construed in accordance with the laws of the state of Queensland, Australia and the parties agree to submit disputes arising out of or in connection with this agreement to the courts of Queensland, Australia.  
End.