



Terms of Service – MySpan™

IMPORTANT: Please read the following MySpan™ Terms of Service carefully before downloading and/or using the MySpan™ App, using the MySpan™ service or accessing the MySpan™ Website www.designpine.com

1 Accepting the terms

- 1.1 By downloading, accessing and/or using the Service (as defined in clause 4.1) you accept and agree to be bound by these Terms of Service between you and ITI (Australia) Pty Ltd (ABN: 86 121 357 186) of 59 Dunheved Circuit, St Marys, NSW, 2760 (“we”, “us”, “our” and other similar expressions).
- 1.2 You acknowledge that these Terms of Service are between you and us only.
- 1.3 You must not use the Service and must not accept these Terms of Service if you are not 18 years or older, or if you do not have the capacity to form a binding contract with us.

2 Acknowledgment

- 2.1 This clause 2 only applies if you have accessed and use the Service through the MySpan™ App downloaded from the Apple App Store.
- 2.2 You acknowledge that we, not Apple, are solely responsible for the Service and the content within the Service.
- 2.3 Despite clause 1.2, in so far as these Terms of Service relate to your use of the Service using the MySpan™ App downloaded from the Apple App Store, you acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of these Terms of Service, and that, Apple has the right (and is deemed to have accepted that right) to enforce these Terms of Service against you.

3 Variation

- 3.1 We may at any time vary the Terms of Service by publishing the varied Terms of Service on the MySpan™ App or MySpan™ Website. You accept that by doing this, we have provided you with sufficient notice of the variation and agree to be bound by the most current version of the Terms of Service published on the MySpan™ App or MySpan™ Website.

4 The Service

- 4.1 The “**Service**” means: (a) the MySpan™ service that permits individuals to input, via a supported mobile device or computer to use MySpan™ software and via the MySpan™ Website, information about a particular construction project, including physical measurements, dimensions, spans, and specifications, and to be provided with an estimate of the amount of product required for that project, together with a costs guide for that product; (b) the MySpan™ , which is the application an individual can download onto a supported mobile device in order to access and use the Service (“**MySpan™** ”); (c) the MySpan™ website whose home page is currently accessible via URL <http://www.designpine.com> and includes all related web pages, sub pages and URLs, which an individual can use to access and use the Service (“**MySpan™ Website**”); all of which are more accurately described on the MySpan™ Website, together with any associated software, upgrades, and documentation provided by us.
- 4.2 We may extend, enhance or otherwise modify all or any part of the Service (collectively, “**Updates**”), but we are not obliged to do so. If we provide you with Updates to the Service, then those Updates will be incorporated into the Service and will be subject to these Terms of Service.

5 Right to use the Service

- 5.1 We grant you a limited non-transferable, non-sublicensable, non-assignable, non-exclusive license to access and use the Service, for your personal purposes, both on a supported

mobile device or computer that you own or control, and through the MySpan™ Website: (a) on the terms set out in these Terms of Service; (b) in so far as you have accessed and use the Service through MySpan™ Terms of Service; and (c) in accordance with any other documentation or instructions supplied by us.

6 Use of the Service

- 6.1 You must not, nor cause or permit a third party to: (a) use the Service in a manner or for a purpose which is improper, immoral or fraudulent, which infringes any person's rights (including all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trade marks, know-how, confidential information, patents, inventions and discoveries and all other rights (including moral rights) resulting from intellectual activity in the industrial, scientific, literary or artistic fields ("**Intellectual Property Rights**")), or which restricts or interferes with our provision of the Service to any other customer or user; (b) reverse engineer, disassemble or decompile all or part of the Service or attempt to derive the source code or structure of the Service (except as and only to the extent any foregoing restriction is prohibited by applicable law); (c) modify, reproduce, or create derivative works of the Service; (d) remove any copyright or other proprietary notices contained in the Service; (e) directly or indirectly export or re-export the Service; or (f) remove, circumvent, or interfere with any digital rights management or security tools or other similar technologies available on or in the Service.
- 6.2 You agree that you will not use the Service to: (a) upload or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (b) attempt to gain unauthorized access to or interfere with servers or networks connected to or used with the Service or violate the policies of such networks, through hacking, or any other means; or (c) engage in any illegal or unlawful activity, whether intentionally or unintentionally.

7 Disclaimer

- 7.1 The Service is designed to provide basic information about approximate product quantities and product specifications that may be suitable for your construction product. The information provided through the Service: (a) is based on information provided by you, which we do not verify; (b) does not take into account the nature and circumstances of your particular project; (c) does not constitute personal advice; (d) is general in nature; and (e) should only be used as a general guide.
- 7.2 The actual quantity and specification of product required for your project is dependant on a range of factors that are not taken into account by the Service, including but not limited to the nature and circumstances of the construction project you are undertaking, the application of the product, wastage, and applicable building regulations including the Building Code of Australia.
- 7.3 You must evaluate and bear all risks associated with your use of the Service, which is at your sole risk. We strongly recommend that, before making a decision to buy any product, you obtain your own expert advice, including: (a) contacting a qualified tradesperson, such as a carpenter, to independently assess the nature of your construction project, and the quantity and specification of product you require; and (b) contacting or visiting us to discuss your construction project and product requirements in more detail.

8 Limitation of liability

- 8.1 Nothing in these Terms of Service is or should be interpreted as an attempt to modify, limit or exclude terms, condition, warranties and guarantees which are imposed by any applicable law and which cannot be modified, limited or excluded (including statutory rights under any applicable consumer protection legislation) (a "**Non-Excludable Provision**"). To the fullest extent permitted by law, we exclude all other terms, conditions, warranties and guarantees which might be implied into these Terms of Service.
- 8.2 Other than any Non-Excludable Provision, you do not rely on any representation, term, warranty, condition, guarantee or other provision made by us or on our behalf which is not expressly stated in these Terms of Service. In particular, the Service is provided on an "as-is" and "as available" basis and we make no warranty or representation that the Service: (a) will meet your requirements; (b) will be compatible with your mobile device or computer; (c) will be available on an uninterrupted, timely, secure, or error-free basis; (d) will not infringe the

Intellectual Property Rights of any person; (e) will be accurate, reliable, complete, legal, or safe; or (f) is appropriate for use outside Australia.

- 8.3 If we are prohibited from modifying, limiting or excluding your remedy for a breach of the Non-Excludable Provision, then our total liability for breach of the Non-Excludable Provision is limited to at our option to the supplying of the Service again, or the payment of the cost of having the Service supplied again.
- 8.4 Subject to clauses 8.1 and 8.3, we disclaim any liability whatsoever for any one claim or series of connected claims under these Terms of Service or in connection with the Service, arising out of any breach of contract, breach of warranty, tort (including negligence and strict liability), breach of statutory duty, under an indemnity or any other theory, including but not limited to any liability arising out of or caused by: (a) any computer virus, trojan horse or other damage caused by malware or hackers; (b) any malfunction or failure of our or your software, system, hardware or connectivity; (c) improper or unauthorised use of the Service; (d) your use of the Service in breach of these Terms of Service; (e) any reasons beyond our reasonable control or predictability; (f) any over or under supply of product based on the estimated quantity of product calculated used the Service; (g) the supply of product to you to a specification which is not suitable for your particular project or circumstances; or (h) any loss of business, loss of revenues, loss of profits, loss of goodwill, loss of content, loss of data, or any other indirect, special, consequential, exemplary or punitive damages.

9 Third Party Content

- 9.1 The Service may display, contain links to, or otherwise give you access to third-party communications, content, products, Service or websites (“**Third-Party Content**”) over which we have no control. The Third Party Content is provided for convenience only and may not remain current or be maintained.
- 9.2 We do not monitor, investigate, sponsor, endorse, adopt, confirm, guarantee or approve the Third Party Content. We do not control and make no representation about the accuracy, integrity, or quality of Third-Party Content.
- 9.3 By using the Service, you may be exposed to content that is offensive, indecent or otherwise objectionable. Your access to and use of Third-Party Content is at your sole discretion and risk. We have no liability to you in connection with your access to and use of the Third-Party Content

10 Viruses

- 10.1 You must make your own precautions to ensure that the process which you use for accessing the Service does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your mobile device.

11 Availability and support

- 11.1 While we intend to make the Service available 24 hours a day, seven days a week, we may temporarily limit or suspend the availability of all or part of the Service if it is necessary for reasons of public safety, security or maintenance of the Service, interoperability of Service, data protection or to perform work that is necessary for operational or technical reasons.
- 11.2 We are solely responsible for providing any maintenance and support services with respect to the Service. You acknowledge that neither Apple or Google (as applicable) has no obligation whatsoever to furnish any maintenance and support services with respect to the Service.

12 Ownership

- 12.1 We (and our licensors, where applicable) own all right, title and interest, including all related Intellectual Property Rights, in and to the MySpan™ App and the MySpan™ Website. No rights of ownership in or related to the Service, including the MySpan™ App and the MySpan™ Website, are conveyed to you. The MySpan™ name and logo belong to us (and our licensors, where applicable), and no right or license is granted to use them by implication, estoppel or otherwise. We (and our licensors, where applicable) reserve all rights not granted in these Terms of Service.

- 12.2 In the event of any third party claim that the Service or your possession and use of the Service infringes that third party's Intellectual Property Rights, we will be solely responsible for the investigation, defense, settlement and discharge of any such claim.

13 Privacy

- 13.1 Each of us (i.e. you and we) must comply with all applicable laws and codes dealing with an individual's privacy.
- 13.2 We collect, store, use and disclose personal information in accordance with our privacy policy – available here www.designpine.com/privacy

14 Apple warranty notification

- 14.1 This clause 14 only applies if you have accessed and use the Service through the MySpan™ App downloaded from the Apple App Store.
- 14.2 In the event of any failure of the Service to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price paid by you (if any) for the Service to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty must be directed to us.

15 Service feedback

- 15.1 We, not Apple or Google (as applicable), are responsible for addressing any claim made by you or any third party relating to the Service or your possession or use of the Service, including, but not limited to (if applicable): (a) product liability claims; (b) any claims that the Service fails to conform to any applicable legal or regulatory environment; and (c) claims arising under consumer protection or similar legislation.
- 15.2 If you have any questions, complaints or claims with respect to the Service, they should be directed to us by mail, phone or email as per the details set out in clause 20.1.

16 Indemnity

- 16.1 You indemnify us, our partners and our affiliate companies from and against any claim, suit, action, demand, damage, debt, loss, cost, expense (including litigation costs and attorneys' fees) and liability arising from or in connection with: (a) your use of the Service; or (b) your breach of these Terms of Service.
- 16.2 We reserve the right, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify us and you agree to cooperate with our defence of these claims. You agree not to settle any matter without our prior written consent. We will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

17 Suspension

- 17.1 We may without notice suspend your access to and use of the Service if: (a) you breach these Terms of Service; or (b) we reasonably believe that your access and use of the Service will cause technical incapacity to the Service which will continue unless access or use is suspended.
- 17.2 You must not object to any delay in restoring access to the Service when a suspension is lifted. We will act promptly to restore access when we are satisfied that the reason for suspension has been removed.

18 Term

- 18.1 A legally binding agreement will be formed on the date you accept these Terms of Service (“**Agreement**”) and will remain in full force and effect while you use the Service, unless earlier terminated in accordance with these Terms of Service.

19 Termination

- 19.1 In addition and without prejudice to any other rights or remedies, we may terminate the Agreement at any time for any reason at our sole discretion with or without notice to you,

including if we in good faith believe you have violated any other provision of these Terms of Service.

- 19.2 Upon termination of the Agreement, your right to use the MySpan™ App and MySpan™ Website will automatically terminate immediately.
- 19.3 Termination of the Agreement does not affect any accrued rights or liabilities either you or we have under the Agreement nor does it affect any provision these Terms of Service which is expressly or by implication intended to operate after termination.

20 Notices

- 20.1 Notices given under these Terms of Service must be in writing and delivered by hand or by email. The address for delivery of a notice to you is the email address linked to your account. The address for delivery of a notice to us is:

ITI (Australia) Pty Limited
59 Dunheved Circuit
St Marys, NSW, 2760
Email: marketing@iti.net.au
Phone: **02 8805 5000**

21 U.S Government restrictions

- 21.1 You represent and warrant that: (a) you are not located in a country that is subject to a U.S. Government embargo, or has been designated by the U.S. Government as a “terrorist supporting” country; and (b) you are not listed on any U.S Government list of prohibited or restricted parties.

22 General

- 22.1 These Terms of Service constitute the entire understanding between the parties and supersede all previous and contemporaneous communications, representations, or agreements with respect to your access and use of the Service.
- 22.2 Nothing in these Terms of Service will create an agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship between you and us
- 22.3 No failure or delay of either party in exercising any right, power, or privilege under these Terms of Service (and no course of dealing between the parties) operates as a waiver of any such right, power or privilege. No waiver of any default on any one occasion constitutes a waiver of any subsequent default. No single or partial exercise of any right, power, or privilege precludes the further or full exercise of such right, power or privilege.
- 22.4 If any provision of these Terms of Service is held to be unenforceable, the parties agree to substitute the affected provision with an enforceable provision that approximates the intent and economic effect of the affected provision.
- 22.5 If any one or more of the provisions of these Terms of Service are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction or a panel of arbitrators, the remaining provisions of these Terms of Service will be unimpaired and will remain in full force and effect.
- 22.6 Your rights and obligations under these Terms of Service are personal and may not be assigned or dealt with in any way without our approval, which we may withhold in our absolute discretion.
- 22.7 Each party must do everything reasonably required by the other to give full effect to these Terms of Service.
- 22.8 In the interpretation of these Terms of Service, the following provisions apply unless the context otherwise requires: (a) the singular includes the plural and vice versa; (b) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa; (c) a reference to any gender includes all genders; (d) a reference to any party to these Terms of Service or any other document or arrangement includes that party’s executors, administrators, substitutes, successors and permitted assigns; (e) a reference to dollars or \$ means the lawful currency of Australia; (f) where an expression is defined, another part of speech or grammatical form of that expression

has a corresponding meaning; (g) headings are for ease of reference only and do not affect interpretation; (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms of Service or any part of it; and (i) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar inclusive expressions.

- 22.9 These Terms of Service and all matters regarding the interpretation and/or enforcement of these Terms of Service, are governed exclusively by the laws in force in the State of New South Wales, Australia and the parties submit to the jurisdiction of the courts of New South Wales.