

Welcome to this website. These Website Terms of Use apply to the use and access to this website which is operated by The Footprint Calculator Pty Ltd (ABN 22 152 149 454) ("TFC") under the domain name [www.footprintcalculator.com.au](http://www.footprintcalculator.com.au) ("Website").

In these Terms of Use, "we" or "us" means The Footprint Calculator (ABN 22 152 149 454 ) and "you" means an end user of the Footprint Calculator provided on this website.

### 1. Access to and Using the Footprint Calculator

- a. **Licence:** Subject to you complying with these Terms of Use, we grant to you a non-exclusive, non-transferable licence to access and use the Footprint Calculator to generate ecological assessment reports solely in relation to the property for which you are registered (the "Specified Property"). You may not use the Footprint Calculator with respect to any other property. Please ensure the user name and the password is kept safely. You are entirely responsible for any misuse or abuse of any user names, passwords or other log in details by any person.
- b. **Access:** We will use reasonable efforts to provide you with 95% uptime to access the Footprint Calculator via this website (or other web address notified by us) during 9:00am to 5:00pm Australian Eastern Standard Time on a day that is not a Saturday, Sunday or public holiday in Sydney ("Business Hours"). Access to and use of the Footprint Calculator may be temporarily suspended for any maintenance work. We will give you at least [2] days' notice for any scheduled maintenance sessions and where practicable notify you in relation to any urgent maintenance services.
- c. **Your Data:** You may enter information, data or other content ("Data") into the Footprint Calculator to generate ecological assessment reports for the Specified Property. You will be solely responsible for the accuracy and the completeness of all Data you enter into or create using the Footprint Calculator.
- d. **Monitoring Use:** You must supervise and control the use of the Footprint Calculator in accordance with these Terms of Use. You must not and must ensure your employees or other authorised users gaining access to the Footprint Calculator do not (even after the termination or expiry of this agreement):
  - i. acquire, download, reproduce, or install the Footprint Calculator, in whole or in part, on any computer equipment other than in the course of use permitted under these Terms of Use;
  - ii. sell, lease, license, sub-license, rent, loan, timeshare, encumber, provide, disclose, distribute or otherwise transfer or make available to, or permit use of the Footprint Calculator, in whole or in part, to any third party;
  - iii. use the Footprint Calculator in any application or for any purpose requiring continuous or fail-safe operation for the avoidance of personal injury, death or illness of any person;
  - iv. decompile, disassemble, reverse engineer, attempt to derive the source code for, modify, adapt, translate or copy the Footprint Calculator, in whole or in part; or develop any software or create derivative works based upon the Footprint Calculator;
  - v. remove, tamper with, seek to override or otherwise interfere with any security or technological protection measure forming part of the Footprint Calculator; or
  - vi. remove, obliterate, or obscure from view any copyright, trade mark or confidentiality notice or legend appearing on or within the Footprint Calculator.
- e. **Updates:** We may, at our discretion, provide on the website from time to time, modifications, enhancements or revisions to the Footprint Calculator ("Updates"), including updates to or correct errors, to comply with changes to industry guidelines or technological enhancements (but excluding new revisions of the Footprint Calculators which has altered functional characteristics or any improvements), Use and access to all Updates are subject to these Terms of Use.

### 2. Our Services

- a. **Services:** We will provide you with the following Services with respect to the Footprint Calculator:

- i. a telephone help desk with a contact point during Business Hours; and
    - ii. an email help desk to be reached during Business Hours;
  - b. Performance and Exclusions: All services will be performed by us in accordance with this agreement and to a standard with accepted industry practice and all applicable laws and regulations. We may sub-contract the supply (in whole or part) of the services.
  - c. Unless otherwise agreed in writing, our obligations to perform the Services and other obligations do not include the correction of errors, defects or problems caused by:
    - i. your fault or negligence or the fault or negligence of any person acting on your behalf;
    - ii. improper or unauthorized use of the Footprint Calculators;
    - iii. any modifications or alterations of the Footprint Calculator other than by us;
    - iv. causes beyond our control such as, but not limited to, any failure arising out of any network (including the internet) or communications, power failure, electric power surges or any act of God;
    - v. your failure to comply with any reasonable guidelines, instructions, documentation or training provided by us;
    - vi. any fault, defect, omission or error in any data, the Footprint Calculator or equipment not supplied by us (including your equipment); or
    - vii. use of the Footprint Calculator with any the Footprint Calculator or equipment not approved or recommended by us, or in a manner or for a purpose in breach of these Terms of Use or not reasonably contemplated by this agreement.

### 3. Intellectual Property

- a. Footprint Calculator IP: You acknowledge and agree that all intellectual property in and to the Footprint Calculator (including any improvement or modification of the Footprint Calculator), all intellectual property which arises in connection with the performance of the Services and all trade marks (registered and unregistered) used by us in connection with the Footprint Calculator belong to us or our licensor. Apart from the permitted use under these Terms of Use, you acquire no right, title or interest in or to any of the above by virtue of this agreement.
- b. Data: You acknowledge and agree that any Data you entered into the Footprint Calculator will become our property. You assign all rights, title and interests in and to such Data to us with effect from its creation. You consent to the use of the Data in a de-identified form for testing (including statistical testing), compiling and publishing case study material and making improvement to the Footprint Calculator by us, our licensors, agents and contractors. To the extent that any Data contain Personal Information, please refer to our Privacy Policy.

### 4. Warranties and Acknowledgments

- a. Warranty: Subject to this clause 4, we warrant that:
  - i. the Footprint Calculator will perform substantially in accordance with User Guide and Standard made available to you during the term of this agreement; and
  - ii. the Services will be rendered with due care and skill.
  - iii. We do not warrant that the Footprint Calculator will otherwise:
  - iv. be error free or that its use will be uninterrupted;
  - v. operate in combination with other software or any particular equipment, or other system; or
  - vi. provide any function other than set out in the User Guide and Standard.
- b. Exclusions: To the extent permitted by law, all warranties given by us will be void and of no effect if the breach of warranty arises out of, in whole or in part, causes specified in clause 2.2.
- c. Acknowledgments: The Footprint Calculator is subject to some important assumptions and qualifications. You acknowledge and agree that:

- i. the information provided in the Footprint Calculator (including information made available under the Library or the Standards feature) have not been separately confirmed or verified. Accordingly, the information should only be used as a guide and not as a substitute for formal professional advice;
- ii. some information in the Library has been sourced from third parties. We do not adopt or endorse any of the information sourced from third parties and are not responsible for the truth or accuracy of such information;
- iii. design guides are the property of TFC and are illustrative only and current as at the date stated. TFC make no representations through the design guides as to the relevance to your design;
- iv. we do not represent or warrant that the product(s) contained in the Library are suitable for your requirements. Before deciding to use any of the product(s), you should make your own enquiries, including where necessary engaging the services of professional consultants, as to whether the product(s) meets your requirements and are appropriate for your circumstance;
- v. the formulae used within the Footprint Calculator may change without notice;
- vi. the results shown by the Footprint Calculator are modelled estimates using calculations based on the information available. The results should only be used as an approximate guide for the sole purpose of reporting compliance with our environmentally sustainable initiatives. All results generated are indicative only. We make no representation as to the truth or accuracy of the results shown by the Footprint Calculator; and

#### 5. Limitation of Liability

- a. Prescribed Terms: Nothing in this agreement excludes, restricts or modifies the application of any legislation which by law cannot be excluded, restricted or modified. Subject to the above and any express warranties provided in this agreement, all representations, warranties, guarantees, terms and conditions which would otherwise be implied in or imposed on this agreement in connection with any goods or services supplied by us or otherwise relating to the performance of our obligations under this agreement, are excluded (including any warranty with regard to non-infringement of third party rights).
- b. Limitation of Liability: Without limiting the generality of this clause 5.
  - i. we will not be liable to you for any special, indirect or consequential loss of damage, any loss of profit or business opportunity, any business interruption or loss of business information arising out of or relating to this agreement, including claims arising out of the use or not being able to use or any defect in the Footprint Calculator or the Services; any claims arising out of any alleged reliance on the content of this website or any results generated by the Footprint Calculator whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise; and
  - ii. to the extent permitted by law, our liability for any claim arising from a breach of warranty under this agreement or any term, condition or guarantee implied or imposed by statute which by law cannot be excluded is limited, at our option, to the repair or replacement of the goods, the re-supply of those services or the payment of the cost of re-supplying those services.

#### 6. Term and Termination

- a. Term: This agreement commences on the Commencement Date and continues until the final design report has been generated for the Specified Property by the User.
- b. Termination for Breach / Insolvency: This agreement may be terminated by immediate written notice by us if we are no longer entitled to license the Footprint Calculators to you, or by a party if the other party is insolvent or in breach (other than a trivial breach causing no material harm); and where the breach is capable of remedy, the party in breach fails to remedy the breach within 30 days of written notice from the other party.
- c. Consequences of Termination: On termination or expiry of this agreement for any reason, all licences granted under this agreement terminate. Clause 1.4 (Restriction on Use), 3

(Intellectual Property), 4 (Warranties and Acknowledgements) and 5 (Limitation of Liability) survive termination or expiry of this agreement for any reason.

### 7. General

- a. Entire Agreement: These Terms of Use may only be modified by the parties in writing. These Terms of Use and any conditions imposed by applicable law constitute the entire agreement of between you and us with respect to this subject matter and supersede and replace all prior agreements and understandings between you and us relating to that subject matter. If any provision of this agreement is held invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force apart from such provision which will be deemed deleted.
- b. Assignment: You may not assign or transfer your rights or obligations under this agreement unless with our prior written consent, which may not be unreasonably withheld.
- c. Governing Law: This agreement is governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.