

Dorset Council Nitrogen Credit Sale Terms and Conditions

1. Definitions and interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires:

Administration Fee means the administrative fee payable to the Council for processing an application for Nitrogen Credits, as published by the Council from time to time.

Applicant means the person applying to purchase Nitrogen Credits.

Buyer means the person to whom Nitrogen Credits are allocated following acceptance by the Council, receipt of payment and issue of a Nitrogen Credit Certificate.

Council means Dorset Council.

Credit Certificate means the certificate(s) issued by the Council confirming the allocation of Nitrogen Credits to a specified Development.

Development means the development identified in the Credit Certificate by planning application number.

Development Site means the land on which the Development is proposed to be carried out.

Habitat Site means any protected site affected by nutrient loading and relevant to the Development.

Natural England means the statutory nature conservation body for England.

Nitrogen Credits means credits representing mitigation capacity generated or secured by the Council and made available to assist development in addressing nutrient neutrality requirements.

Permanent Credits means Nitrogen Credits intended to provide both short and long-term mitigation for the operational lifetime of the Development, secured for 80 years

Temporary Credits means Nutrient Credits which are valid until 31st March 2030.

1.2 References to legislation include any amendment, replacement or re-enactment.

1.3 Headings are for convenience only and do not affect interpretation.

2. Nature of Nitrogen Credits

2.1 Nutrient Credits are a mechanism intended to assist a developer in addressing nutrient neutrality requirements associated with a Development.

2.2 Nitrogen Credits do not constitute:

- (a) planning permission;
- (b) confirmation that planning permission will be granted;

- (c) approval by Natural England or any competent authority;
- (d) a proprietary interest in land;
- (e) a financial instrument or investment product; or
- (f) any guarantee that the Development will be acceptable in planning, environmental or Habitats Regulations terms.

2.4 The Council may make available different categories of Nitrogen Credits, including Temporary Credits and Permanent Credits. The Buyer is responsible for ensuring that it purchases the correct type, quantity and duration of credits for the Development.

2.5 The Council shall not be liable where Nitrogen Credits are not accepted by a planning authority, Natural England or any other competent authority, unless the failure arises directly from the Council's inability to provide the credits stated in the Credit Certificate.

3. Applications and allocation

3.1 An Applicant may apply to purchase Nitrogen Credits in accordance with the Council's published process.

3.2 The Council may request such information as it reasonably requires, including:

- (a) planning application reference;
- (b) Development description;
- (c) Development Site details;
- (d) nutrient calculations;
- (e) confirmation of the number and type of credits sought; and
- (f) applicant and agent contact information and billing details.

3.3 The Council is not obliged to accept any application.

3.4 Nitrogen Credits are not reserved, held or allocated merely because an application has been submitted.

3.5 Following review of an application, the Council may issue a written offer confirming the number of Nitrogen Credits available for allocation and the price payable.

3.6 Nitrogen Credits shall only be allocated when:

- a) the Council has accepted the application and issued a written offer;
- b) the Applicant has accepted that offer in accordance with its terms;
- c) the Applicant has paid all sums due in cleared funds; and
- d) the Council has issued a Credit Certificate.

3.7 Until a Credit Certificate is issued, the Council may withdraw, amend or decline an offer to sell Nitrogen Credits.

4. No deposits or reservations

4.1 The Council does not accept deposits or reservation payments for Nitrogen Credits.

4.2 The Council does not operate a system under which Nitrogen Credits are held pending planning permission, completion of a land transaction or any other event.

4.3 The availability and price of Nitrogen Credits may change before payment is made and a Credit Certificate is issued.

5. Payment

5.1 The Buyer shall pay:

- (a) the price of the Nitrogen Credits;
- (b) the Administration Fee; and
- (c) VAT, where applicable.

5.2 Payment must be made in full and in cleared funds before any Credit Certificate is issued.

5.3 The Administration Fee is payable for processing the application and is non-refundable.

5.4 The Council may amend credit prices and the Administration Fee from time to time.

5.5 Unless expressly confirmed otherwise in writing, prices quoted by the Council are valid only for the period stated in the quote or offer.

5.6 Any offer issued by the Council may specify a period during which the quoted credit price remains available. If the Applicant fails to accept the offer or make payment within that period, the Council reserves the right to withdraw the offer and make credits available to other applicants.

6. Credit Certificate

6.1 Following receipt of payment, the Council shall issue a Credit Certificate within such period as it reasonably considers appropriate.

6.2 The Credit Certificate shall identify:

- (a) the Buyer;
- (b) the Development;
- (c) the Development Site;
- (d) the planning application reference, where available;
- (e) the number of Nutrient Credits allocated;
- (f) whether the credits are Temporary Credits or Permanent Credits;
- (g) any expiry date applicable to Temporary Credits; and
- (h) any relevant catchment or mitigation scheme.

6.3 The Credit Certificate is evidence of the allocation of credits only.

6.4 The Credit Certificate does not guarantee:

- (a) grant of planning permission;
- (b) discharge of planning conditions;
- (c) acceptance by Natural England;
- (d) acceptance by the local planning authority; or
- (e) that no further mitigation will be required.

6.5 The Buyer must not alter, amend, transfer or rely on the Credit Certificate for any development other than the Development identified in it without the Council's prior written consent.

7. Use of Nitrogen Credits

7.1 Nitrogen Credits may only be used for the Development stated in the Credit Certificate.

7.2 Nitrogen Credits may not be transferred, assigned, sold, sub-licensed or otherwise dealt with by the Buyer without the Council's prior written consent.

7.3 Where a Development changes, the Buyer must notify the Council and the relevant planning authority. The Council may require updated nutrient calculations before confirming whether the allocated Nutrient Credits remain suitable.

7.4 If additional Nitrogen Credits are required as a result of changes to the Development, the Buyer must apply separately and pay the relevant price applicable at that time and administration fee.

8. Refund policy

Dorset Council – Nitrogen Credit Refund Policy

1. General Principle

1.1 Dorset Council operates a nitrogen mitigation scheme under which nitrogen credits are made available for purchase to support development proposals.

1.2 All purchases of nitrogen credits are made on the basis that the Council is securing and maintaining temporary (short-term) and permanent (long-term) mitigation measures, and accordingly payments are generally non-refundable.

1.3 Refunds will only be considered in limited circumstances and entirely at Dorset Council's discretion.

2. No Refunds in Most Circumstances

2.1 Payments made for nitrogen credits are non-refundable, including (but not limited to) where:

- (a) the number of credits required for a development changes;
- (b) the purchaser no longer wishes to proceed with the purchase;

- (c) there are changes in planning policy, legislation, or guidance affecting the use of credits.
- (d) where the credit price has changed.

2.2 The purchase of nitrogen credits is made at the purchaser's own risk in respect of planning and regulatory outcomes.

3. Administrative Fees

3.1 An administrative fee (currently £360, subject to change) is payable in connection with the processing of nutrient credit purchases.

3.2 The administrative fee is strictly non-refundable in all circumstances, including where:

- (a) a purchase does not proceed;
- (b) a development does not receive planning permission;
- (c) the purchaser withdraws or delays the application.

4. Limited Circumstances Where Refunds May Be Considered

4.1 Dorset Council may, at its sole discretion, consider issuing a refund only where:

- (a) planning permission or any other consent is refused;
- (b) a development proposal is amended, delayed, or withdrawn;
- (c) the Council is unable to deliver the nitrogen credits due to failure, withdrawal, or material change to the mitigation scheme; or
- (d) an error by the Council results in credits being incorrectly allocated.
- (e) any other exceptional circumstance exists which the Council considers justifies a refund.

4.2 Any refund issued under this clause:

- (a) will not include the administrative fee;
- (b) will be limited to the amount paid for the nutrient credits only;
- (c) will not include any compensation for costs, losses, or delays incurred by the purchaser.

5. No Liability for Development Outcomes

5.1 The allocation of Nitrogen Credits and issue of a Credit Certificate shall not fetter, influence or prejudice Dorset Council in the exercise of its statutory functions.

5.2 The allocation of Nitrogen Credits does not guarantee that planning permission will be granted.

5.3 Dorset Council shall not be liable for:

- (a) any costs incurred by a purchaser in reliance on nitrogen credits;
- (b) any change in regulatory or policy requirements affecting nutrient neutrality.

6. No Reservation of Credits

6.1 Nitrogen credits are not reserved or held.

6.2 Credits are only secured once:

- (a) full payment has been received; and
- (b) confirmation of purchase and a certificate have been issued by the Council.

7. Changes to this Policy

7.1 Dorset Council reserves the right to amend this refund policy at any time.

9. Temporary Credits

9.1 Temporary Credits are valid only until the expiry date stated in the Credit Certificate.

9.2 The Buyer is responsible for ensuring that Temporary Credits are sufficient for the relevant period of mitigation required for the Development.

9.4 Where a Development requires mitigation in addition to Temporary Credits, the Buyer remains responsible for securing any further mitigation required.

10. Permanent Credits

10.1 Permanent Credits are intended to provide long-term mitigation secured through mitigation schemes managed, procured or otherwise made available by the Council for 80 years.

10.2 The Council shall take reasonable steps to ensure that the underlying mitigation scheme is secured and monitored in accordance with the relevant legal mechanism.

10.3 The Council does not guarantee that future changes in law, policy, guidance, nutrient calculation methodology or competent authority practice will not affect how Permanent Credits are treated.

11. Buyer acknowledgements

11.1 The Buyer acknowledges that:

- (a) nutrient neutrality requirements may change;
- (b) Natural England guidance and local planning authority requirements may change;

(c) the purchase or allocation of Nitrogen Credits does not affect the determination of any planning application;(d) the Buyer has had the opportunity to take independent legal, planning and technical advice; and
(e) the Buyer has not relied on any statement by the Council except as expressly set out in these Terms and the Credit Certificate.

12. Limitation of liability

12.1 Nothing in these Terms excludes liability for fraud, fraudulent misrepresentation, death or personal injury caused by negligence, or any liability which cannot lawfully be excluded.

12.2 Subject to clause 12.1, the Council shall not be liable for:

- (a) refusal of planning permission;
- (b) delay in planning determination;
- (c) changes in law, policy or guidance;
- (d) loss of profit;
- (e) loss of development value;
- (f) finance costs;
- (g) professional fees;
- (h) indirect or consequential loss.

12.3 The Council's total liability shall not exceed the sum paid by the Buyer for the relevant Nitrogen Credits.

13. No guarantee of availability

13.1 Nitrogen Credits are limited and subject to availability.

13.2 The Council may withdraw Nitrogen Credits from sale or amend its process at any time before allocation.

13.3 The Council is not liable where Nitrogen Credits are unavailable.

14. Data and records

14.1 The Council may retain information relating to applications, payments, allocations and Credit Certificates for audit, planning, monitoring and reporting purposes.

14.2 The Council may share relevant information with the local planning authority, Natural England and other competent authorities where reasonably required.

14.3 Dorset Council may share aggregated and anonymised information relating to Nitrogen Credits, including allocation figures and housing delivery information, with government departments, public authorities and regulatory bodies.

15. General

15.1 These Terms may be updated by the Council from time to time.

15.2 The version applying to a Buyer shall be the version in force at the date the Council accepts the application, unless otherwise agreed.

15.3 These Terms are governed by the law of England and Wales.

15.4 The courts of England and Wales shall have exclusive jurisdiction.