

# Acquia Minimum Terms and Conditions for Vendors/Suppliers/Contractors

## ("Minimum Terms")

Acquia Inc., with business address at 53 State Street, Boston, MA 02109, USA and its Affiliates (jointly "Acquia") expect excellence of itself and also of Acquia's vendors, contractors, and suppliers (the "Supplier") in the performance and use of third party products and services. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes hereof, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity (a current list of Acquia's Affiliates may be obtained from <https://www.acquia.com/about-us/legal/subprocessors>).

Where referenced in a statement of work, purchase order, procurement or sales agreement or master agreement, or similar document issued by Acquia Inc. or any of the Affiliates to Suppliers to purchase goods, products, or services (the "PO"), the respective Supplier agrees to comply at a minimum with the terms set forth herein. These Minimum Terms shall be in addition to any terms and conditions provided by Supplier ("Supplier Terms"). If the terms of these Minimum Terms should conflict with any Supplier Terms, the terms of these Minimum Terms shall control.

Terms contained on the face of the PO supersede those contained in these Minimum Terms and any Supplier Terms. Should Acquia and Supplier execute a valid master agreement to be used as the basis of a future business relationship between Acquia and Supplier ("Master Agreement"), the terms and conditions of the Master Agreement shall supersede these Minimum Terms and any Supplier Terms, except where specified on the face of the PO or in the Master Agreement.

✓ **SPECIFICATIONS:** All goods and services furnished pursuant to the PO shall strictly conform to the specifications, descriptions and warranties referenced in such PO.

✓ **INVOICING, PRICING, PAYMENT TERMS, RENEWALS, OVERAGE CHARGES:**

**Payment Term.** Unless in a PO to the contrary, Acquia's payment terms are net 60 days from receipt of Supplier's correct invoice.

**Renewals.** Unless in a PO to the contrary, any service shall not automatically renew at the end of the respective term. If Acquia has accepted such automatic renewal in a PO, any renewal of a procured service requires written notification to Acquia at least 60 days prior to the day until which Acquia could exercise its right to terminate the service without cause to the end of the then-current term; any such renewal notice shall include at minimum the new pricing, the price increase compared to the then-current pricing, and the new term after renewal.

**Overage Charges.** If Acquia agreed to additional charges in case Acquia's usage of a product or service exceeds any contractually agreed limitations or entitlements ("Overage Charges"), such Overage Charges are only payable if (1) such additional charges are referenced in a respective PO and (2) Supplier provided Acquia with sufficient and reasonable notification immediately upon Acquia exceeding such limitations or entitlements.

✓ **CODE OF CONDUCT.** Supplier acknowledges it has reviewed and obtained a copy of Acquia's Business Code of Conduct found at <https://www.acquia.com/legal> (the "CoC"); . Supplier agrees that it and any personnel or subcontractor providing services on behalf of the Supplier will either (i) abide by the CoC's terms and provisions, or (ii), in the event the Supplier has a substantially similar code of conduct of ethics, to abide by the Supplier's own code of conduct and ethics.

✓ **INTELLECTUAL PROPERTY, WORKS MADE FOR HIRE.**

**Indemnification.** Supplier warrants that the goods and services furnished under or used in connection with the PO (except those furnished according to Acquia's specific design) do not and will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party. If any claim, suit or proceeding is made or instituted against Acquia alleging any such infringement, Supplier shall indemnify, defend and hold Acquia harmless from and against any damages, liabilities, judgments, costs and expenses (including without limitation reasonable attorney's fees) it may incur in connection with any such claim, suit or proceeding. In the event that the goods or services or Acquia's use thereof is held to constitute an infringement, or if Supplier determines that there is a substantial risk of a finding of such infringement, Supplier agrees at its expense to: (a) procure for Acquia, at no expense to Acquia, the right to continue using the goods and services, (b) replace the goods and services with equivalent goods and services that do not infringe any such rights, or (c) modify the goods so that they become non-infringing.

**Works Made for Hire.** Supplier acknowledges that

- (1) any and all inventions (whether or not patentable), works of authorship, designs, technical interfaces, human interface designs, ideas, technical and business information, discoveries, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, artwork, photographs, information and materials made, conceived or reduced to practice, in whole or in part, by Supplier during the term of this Agreement (including, without limitation, any software or computer programs, in source code and object code form, or their interfaces developed by Supplier pursuant to this Agreement, and all updates, enhancements, modifications and future versions thereof), and
- (2) which has been specially ordered or commissioned by Acquia for use as, if applicable, a contribution to a collective work, as part of an audiovisual work, as a translation, as a supplementary or derivative work, as a compilation and/or as an instructional text,



shall, to the maximum extent permitted under the United States Copyright laws (including, but not limited to, 17 U.S.C. § 101) or any equivalent laws of applicable foreign jurisdictions, be a “work made for hire” (“**Work Products**”). If such work product is not deemed to be a “work for hire”, Supplier hereby assigns and agrees to assign to Acquia the ownership of all rights, titles, and interests in such material. All Work Products shall vest in Acquia, exclusive of any Prior Code.

**Prior Code.** As used herein, “Work Product” shall not include source code, object code or algorithms owned by or developed by or in the possession of Supplier prior to the date of the PO that is not incorporated in or otherwise combined with any of Acquia’s products or services (“**Prior Code**”). Supplier grants to Acquia a perpetual, non-exclusive, sublicensable, royalty-free, worldwide, transferable right and license to use such Prior Code contained in the Work Product.

**Preservation of Rights.** Supplier shall execute and deliver any additional documents or instruments that Acquia reasonably requests to give effect to the assignment required hereunder. Supplier shall, to the extent permitted by applicable law, obtain from each of its personnel a waiver of such personnel’s moral rights under applicable law.

## CONFIDENTIALITY

**Confidential Information.** “**Confidential Information**” means all confidential or proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, which is designated as confidential or reasonably should be understood to be confidential given the nature of information and the circumstances of disclosure. Without limiting the coverage of these confidentiality obligations, the parties acknowledge and agree that Confidential Information of each party shall include the terms and conditions of the PO (including pricing and other terms set forth in an order form, statement of work, or similar), related benchmark or similar test results, other technology and technical information, security information, security audit reports, and business and marketing plans.

**Exceptions.** Confidential Information shall not include information that (i) is or becomes publicly available without a breach of any obligation owed to the Disclosing Party, (ii) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party, (iii) following its disclosure to the Receiving Party, is received by the Receiving Party from a third party without breach of any obligation owed to Disclosing Party, or (iv) is independently developed by Receiving Party without reference to or use of the Disclosing Party’s Confidential Information.

**Protection of Confidential Information.** The Receiving Party shall use the same degree of care used to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care), and, except with Disclosing Party’s written consent, shall (i) not use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement and (ii) limit access to Confidential Information of Disclosing Party to those of its and its Authorized Contractors, Affiliates’ employees, contractors and agents who need such access for purposes consistent with this Agreement and who have a duty or obligation of confidentiality no less stringent than that set forth herein.

**Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by applicable law, regulation or legal process, provided that the Receiving Party (i) provides prompt written notice to the extent legally permitted, (ii) provides reasonable assistance, at Disclosing Party’s cost, in the event the Disclosing Party wishes to oppose the disclosure, and (iii) limits disclosure to that required by law, regulation or legal process.

 **Force Majeure.** Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (which causes are hereinafter referred to as “**Force Majeure**”), to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the Covid-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy.

For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party’s financial inability to perform its obligations hereunder.

 **Insurance.** Supplier is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the business in which the Supplier is engaged at least equal to the aggregate fees pertaining to the PO. By accepting the PO, the Supplier confirms it has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

 **Compliance with Laws.** In performing its obligations under the agreement, the Supplier shall comply, and shall ensure that each of its subcontractors shall comply, with all applicable laws, statutes, regulations in force from time to time, including without limitations taking and take reasonable steps to ensure that there is no modern slavery or human trafficking in the Supplier’s or subcontractors’ supply chains or in any part of their business. Supplier shall, at its sole cost and expense, adhere to and demonstrate adherence to applicable privacy laws.

 **Use of logo.** Supplier shall not use Acquia’s name, logo, or otherwise refer to the PO in any marketing or publicity materials without the prior written consent of Acquia.